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# FEDERAL REGISTER

Vol. 88 Friday,

No. 169 September 1, 2023

Pages 60317–60564

OFFICE OF THE FEDERAL REGISTER

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# Rules and Regulations

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

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 302, 317, 319, 330, 731, 754, and 920

**RIN 3206–AO00**

## Fair Chance To Compete for Jobs

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations governing when, during the hiring process, a hiring agency can request information typically collected during a background investigation from an applicant for Federal employment. In addition, OPM is issuing new regulations establishing the requirement for the timing of collection of criminal history information and for governing complaint procedures under which an applicant for a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency in reference to the timing of collection of criminal history information. Furthermore, the final rule outlines adverse action procedures that apply when it is alleged that an agency employee has violated the requirements and appeal procedures that will be available from a determination by OPM adverse to the Federal employee. Nothing in this rule shall be read in derogation of any individual's rights under Title VII. This rule implements the Fair Chance to Compete for Jobs Act of 2019 (Fair Chance Act). With some exceptions, the Fair Chance Act prohibits Federal agencies and Federal contractors acting on their behalf from requesting that an applicant for Federal employment disclose criminal history record information before the agency makes a conditional offer of employment to that applicant. The Fair Chance Act identifies some positions to which the prohibition shall not apply. It also requires OPM to establish complaint procedures under which an applicant for a position in the civil service may submit a complaint, or any other information, relating to compliance with the Fair Chance Act by an employee of an agency, establishes minimum penalties and procedures to be followed before a penalty may be assessed, and requires OPM to establish appeal procedures available in the event of a determination adverse to the Federal employee.

**DATES:** Effective October 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** Timothy Curry by email at *employeeaccountability@opm.gov* or by telephone at (202) 606–2930, with respect to 5 CFR part 754; Lisa Loss by email at *SuitEA@opm.gov* or by telephone at (202) 606–7017, with respect to 5 CFR part 731; and Mike Gilmore by email at *Michael.Gilmore@opm.gov* or by telephone at (202) 936–3261, by fax at (202) 606–4430, or by TTY at (202) 418–3134for all other parts.

**SUPPLEMENTARY INFORMATION:**

### Background

Provisions of the Fair Chance Act were incorporated into the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92), which was signed into law by the President on December 20, 2019. The Fair Chance Act places limitations on agency requests for criminal history record information prior to a conditional offer of employment. It also requires a complaint process by which applicants for appointment to a position in the civil service may submit a complaint, or any other information, relating to compliance with the requirements of the Fair Chance Act. Furthermore, the Fair Chance Act establishes requirements and procedures regarding penalties for violations. Because of these statutory requirements, OPM issued proposed regulations published at 87 FR 24885, April 27, 2022, pertaining to when, during the hiring process, a hiring agency can request information typically collected during a background investigation from an applicant for Federal employment.

### The Existing 'Ban the Box' Rule

On December 1, 2016, OPM issued a final rule at 81 FR 86555 that revised its regulations pertaining to when, during the hiring process, a hiring agency can request information typically collected during a background investigation from an applicant for Federal employment. The changes were to promote compliance with Merit System Principles as well as the goal of the Federal Interagency Reentry Council and the Presidential Memorandum of January 31, 2014, ''Enhancing Safeguards to Prevent the Undue Denial of Federal Employment Opportunities to the Unemployed and Those Facing Financial Difficulty Through No Fault of Their Own,'' otherwise known as ''Ban the Box'' rules. As noted by OPM when it first promulgated the rule, the intent of the rule was to conform regulatory requirements to what OPM believed was already the predominant agency practice, as many agencies already employed the practice of waiting until the later stages of the hiring process to collect criminal history information.

Current OPM regulations at 5 CFR parts 330 and 731 prevent agencies, unless an exception is granted by OPM, from making inquiries into an applicant's criminal or credit history of the sort asked on OPM Optional Form (OF) 306, titled Declaration for Federal Employment, in the 'Background Information' section or other forms used to conduct suitability investigations for Federal employment unless the hiring agency has made a conditional offer of employment to the applicant. The Fair Chance Act contains the same prohibition with respect to criminal history and does not address credit history. The Fair Chance Act has elaborated on the methods of inquiry not permitted and provides for certain exceptions to the rule. Furthermore, the Fair Chance Act requires OPM, when making additional exceptions, to give due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

The OF 306 is used to assist OPM and Federal agencies in determining a person's suitability for employment as well as to provide other information that is required of applicants. Applicants must answer the questions on the form before they can be appointed or converted to a new appointment in the competitive, excepted, or Senior Executive Service. For most of the information on the OF 306, agencies may determine the timing of the

collection of the OF 306 in the application and hiring process; however, unless permitted by law, they may not ask applicants to answer the questions on the form that address criminal history information until a conditional offer of employment has been extended. Further, unless they have been granted an exception by OPM, agencies may not ask individuals to complete the question that relates to credit history. Most applicants are likely to be asked to complete the form after a conditional offer of employment has been made. OPM's authority to direct Federal agencies to use the OF 306 is found in 5 U.S.C. 1302, 3301, 3304, 3328, 7301, and 8716; 5 CFR part 731; and E.O. 10577 and E.O. 13467, as amended. The OF 306 is one aspect of vetting that can be collected, in accordance with the provisions outlined in this rule, and used to begin to assess suitability in advance of the initiation of a required background investigation.

**Explanation of OPM's Final Rule Under the Fair Chance Act**

*1. Restrictions on Preemployment Criminal Inquiries*

OPM is issuing these provisions under section 1122(b)(1) of the Fair Chance Act, under which the Director of OPM ''shall issue such regulations as are necessary to carry out chapter 92 of title 5, United States Code (as implemented by this subtitle).'' OPM is also issuing these provisions to implement the requirements of 5 U.S.C. 9202(c)(2), as added by the Fair Chance Act, which requires the OPM Director to issue regulations identifying positions with respect to which the prohibition shall not apply giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions, beyond those already identified in the statute.

Unless otherwise required by law, an employee of an agency may not request, in oral or written form (including through the Declaration for Federal Employment (OF 306) or any similar successor form, the USAJOBS internet website, or any other electronic means) that an applicant for an appointment to a position in the civil service disclose criminal history record information regarding the applicant before the appointing authority extends a conditional offer to the applicant. Under the provisions of the Fair Chance Act, this prohibition does not apply under the following circumstances:

- Determinations of eligibility described under clause (i), (ii) or (iii) of 5 U.S.C. 9101(b)(1)(A) *i.e.,* for (i) access to classified information; (ii) assignment to or retention in sensitive national security duties or positions; or (iii) acceptance or retention in the armed forces; or
- Recruitment of a Federal law enforcement officer (defined in 18 U.S.C. 115(c)).

The Fair Chance Act applies to all appointments in the Executive branch; *i.e.,* to appointments in the competitive service, the excepted service, and the Senior Executive Service (SES). Therefore, OPM is (1) revising the provisions in 5 CFR part 330, subpart M, which currently implements the Ban the Box rules for the competitive service, by removing the reference to criminal history so that the Fair Chance Act can be implemented for all types of appointments in a newly created part 920; (2) preserving the existing Ban the Box rules restricting pre-employment credit inquiries for appointments in the competitive service; and (3) amending part 731 to incorporate the exceptions to this provision as established by law and to refer agencies to the newly created part 920 for guidance on other types of positions for which the prohibition under the Fair Chance Act for collecting criminal history information will not apply. For the convenience of the reader, we are placing these provisions in the newly created part 920 rather than repeat the provisions in parts 302, Employment in the Excepted Service; 317, Employment in the Senior Executive Service; 319, Employment in the Senior-Level and Scientific and Professional Positions; 330, Recruitment Selection, and Placement (General); and 731, Suitability. OPM also amends parts 302, 317, and 319 to include a reference as a reminder that these types of positions are subject to the provisions of the Fair Chance Act found in chapter 92 of title 5, U.S.C., and 5 CFR part 920.

This final rule will continue to permit agencies to make an objection, pass-over request, or suitability determination on the basis of criminal or credit history record information only after the applicant's qualifications for the position being filled have been fairly assessed and the hiring agency has made a conditional offer of employment to the applicant. Exceptions previously granted to agencies by OPM pursuant to 5 CFR part 330 subpart M (*i.e.,* the Ban the Box provisions) continue to be valid.

*2. Complaint, Adverse Action, and Appeal Procedures*

Under section 9203, the Fair Chance Act requires the Director of OPM to establish and publish procedures under which an applicant for an appointment to a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee with 5 U.S.C. 9202. Under the provisions of section 9204, the Fair Chance Act further establishes minimum requirements regarding penalties for violations of the Fair Chance Act and provides that such penalties may be entered only after notice to the Federal employee accused and an opportunity for a hearing on the record (thereby, indirectly, establishing minimum procedural requirements before an adverse determination can be made). Finally, the Fair Chance Act requires the Director of OPM, by rule, to establish procedures providing for an appeal from any adverse action taken under section 9204 by no later than 30 days after the date of the action. The Fair Chance Act further notes in section 9205 that an adverse action taken under the Fair Chance Act shall not be subject to the procedures under chapter 75 of title 5 or, except as provided for in the appeal process established under the Fair Chance Act, be subject to appeal or judicial review. Therefore, OPM is issuing final regulations governing complaint procedures under which an applicant for a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency with section 9202 of title 5, and adverse action and appeal procedures for alleged violations of section 9202 of title 5.

**Public Comments**

In response to the proposed rule, OPM received 20 comments during the 60-day public comment period from individuals (including Federal employees), organizations, and Federal agencies. At the conclusion of the public comment period, OPM reviewed and analyzed the comments. In general, the comments ranged from categorical rejection of the proposed regulations to strong support. OPM reviewed and carefully considered all comments and arguments made in support of and in opposition to the proposed changes. The comments are summarized below, together with a discussion of the suggestions for revision that were considered and either adopted, adopted in part, or declined, and the rationale therefor. Finally, comments beyond the scope of the proposed changes or which were vague or incomplete are not addressed below.

In the first section below, we address general or overarching comments. In the sections that follow, we address comments related to specific portions of the regulations.

**General Comments**

Some commenters offered support for the Fair Chance Act because it provides individuals who have been incarcerated an opportunity to be considered for employment based upon their skills and experience rather than what may be irrelevant, inaccurate, or stale criminal history records. One commenter shared their perspective that wrongful convictions happen often, and individuals who did commit the crime have time to reflect and change for the better. This commenter opined that the requirements of the Act should be enough for them to get another chance at life and redeem themselves. Similarly, another commenter shared their perspective that a lot of people are incarcerated for unfair reasons, and they and others who perhaps did commit the crime deserve a second chance.

OPM agrees that the Fair Chance Act advances important goals in that it places limitations on actions Federal agencies may take in the hiring process that would be detrimental for individuals who have been incarcerated. OPM's implementing regulations allow job applicants to present their qualifications and abilities for assessment and to be considered solely based on their merits without the specter of a criminal record during the selection process. Consistent with the statute, the regulations provide the opportunity for a qualified applicant with a criminal history record to advance in the hiring process in the same manner as a qualified applicant without a criminal history record.

Several organizations commended OPM for taking steps to implement strong regulations. These organizations stated their support for ''the adoption of final regulations that provide additional clarity to both hiring agencies and the public, allow for effective enforcement of the new law, and reinforce the clear language and intent of the Fair Chance Act.'' In addition, the organizations expressed gratitude for OPM's commitment to effectively implementing the Fair Chance Act. These organizations also requested that OPM incorporate additional protections and clarifications into the final rule. OPM notes that several public comments resulted in additional clarifications and changes in this final rule. These changes are addressed below in their respective areas of the Supplementary Information section of this preamble. OPM will address other comments in guidance that it will be issuing to assist agencies with implementing the requirements of this rule.

As for more general comments, one commenter stated that the proposed rule ensures ''criminals gain employment.'' This commenter characterized the rule as a political tactic and questioned how the proposed rule would help the government other than add union employees. Also, the commenter shared their observation of numerous employees leaving the government to seek a ''higher professional working atmosphere.''

These final implementing regulations resulted from a bipartisan law that enjoyed Congressional support across two Administrations. The scope of OPM's regulations is determined by the contours of the law Congress drafted and directed OPM to implement. As such, OPM will not make any revisions to the rule based on this comment. This regulation prohibits Federal agencies and Federal contractors acting on their behalf from requesting that an applicant for Federal employment disclose criminal history record information before the agency makes a conditional offer of employment to that applicant. This final rule does not eliminate the requirement of agencies performing their due diligence in examining an applicant's criminal history or other relevant background information once a conditional offer of employment has been extended. Further, this regulation improves the government by supporting the Administration's initiative on diversity, equity, inclusion, and accessibility (DEIA), further positioning the Federal government as a model employer, and providing opportunities for talented, skilled individuals—both with and without a criminal history record—to put their talents to use to advance the mission of the Federal Government.

OPM disagrees that this rule will diminish professionalism in the Federal workforce. As stated in the regulatory impact analysis of this rule, studies show that employment is the single most important factor in reducing recidivism; people with criminal history records are no more likely to be fired for misconduct than people without records; and they are statistically less likely to quit, which saves employers in turnover costs. Therefore, the regulations benefit not only the Federal government as an employer but also American society as a whole and at the family and community levels.

Two individuals suggested changes based on the type of offense committed. One commenter, who generally supported the rule, stated that the rule may be too broad in removing access to criminal history. The individual suggested that people who have been convicted of sexual or violent offenses still be screened, but people whose records do not reflect a threat to safety have that barrier removed. Another commenter asked OPM to create an exception to the proposed rule for sexual offenders, specifically, suggesting that this exception would permit agencies to eliminate applicants who are sexual offenders from the hiring process before determining whether they qualify for a position.

OPM cannot adopt these suggestions because they are contrary to the text of the Fair Chance Act. The Fair Chance Act makes it unlawful, with few exceptions, to request criminal history from an applicant before the agency makes a conditional offer of employment to that applicant. As discussed, OPM's implementing regulations allow job applicants to present their qualifications and abilities for assessment and be considered based on their merits without the specter of a criminal history record during the selection process. The regulations provide the opportunity for qualified applicants with criminal history records to advance in the hiring process just as a qualified applicant without a criminal history record would advance. Moreover, in most cases, the separate personnel vetting determination can and should occur after the selection process and a conditional offer of employment has been made, thereby separating criminal history as an aspect of the vetting process from factors that are relevant at the time of the initial hiring assessment.

Two agencies commented that they already make offers of conditional employment before requesting criminal history, so this rule will have no negative impact to their policies and procedures.

Below we summarize the public comments that are most appropriately addressed by reference to the specific portion of the regulations to which the comments applied.

**Part 302—Employment in the Excepted Service**

This final rule adds § 302.107 to subpart A to incorporate the requirements of the Fair Chance Act. This section addresses when inquiries into an applicant's criminal history may be made and circumstances under which exceptions may be requested and considered by OPM.

OPM received no comments on this section.

**Part 317—Employment in the Senior Executive Service**

This final rule adds § 317.202 to subpart B to incorporate the requirements of the Fair Chance Act. Section 317.202 addresses when inquiries into an applicant's criminal history may be made and circumstances under which exceptions may be requested and considered by OPM.

OPM received no comments on this section.

**Part 319—Employment in Senior-Level and Scientific and Professional Positions**

This final rule adds § 319.106 to subpart A to incorporate the requirements of the Fair Chance Act. Section 319.106 addresses when inquiries into an applicant's criminal history may be made and circumstances under which exceptions may be requested and considered by OPM.

OPM received no comments on this section.

**Part 330—Recruitment, Selection, and Placement (General)**

The Fair Chance Act does not specifically address the timing of suitability inquiries into a job applicant's credit history. The Presidential Memorandum on Enhancing Safeguards to Prevent the Undue Denial of Federal Employment Opportunities to the Unemployed and Those Facing Financial Difficulty Through No Fault of Their Own of January 31, 2014, however, addresses credit history and is still in effect. Consistent with existing law and the Presidential Memorandum, OPM's revision of § 330.1300 retains its prohibition on making inquiries into a job applicant's credit history and removes any reference to criminal history. The prohibition on using criminal history is addressed in part 920.

OPM received no comments on this section.

**Part 731—Suitability**

The Fair Chance Act does not specifically address the timing of suitability inquiries into a job applicant's credit history. The Presidential Memorandum on Enhancing Safeguards to Prevent the Undue Denial of Federal Employment Opportunities to the Unemployed and Those Facing Financial Difficulty Through No Fault of Their Own of January 31, 2014, however, addresses credit history, and is still in effect. In accordance with this Memorandum, applicants should not face undue obstacles to Federal employment because they are unemployed or face financial difficulties through no fault of their own. Agencies must take steps to ensure fair treatment of all applicants, as well as Federal employees, throughout the recruiting and hiring process. One of the ways that Federal agencies can ensure fair treatment for applicants who have experienced periods of unemployment and/or financial difficulty is to avoid unnecessary screening mechanisms, especially at early stages of the hiring process, before a candidate's qualifications have been fully assessed. Consistent with existing policy and the Presidential Memorandum, OPM's revision of § 731.103(d)(1) retains the prohibition on making inquiries into a job applicant's credit history and updates the reference to the prohibition relating to criminal history to align with the new part 920, which reflects the requirements of the Fair Chance Act. Both reduce the opportunity for information to be misused at the preliminary screening stage.

Several organizations addressed the proposed changes to this part in conjunction with changes to part 920. The comments that address the content of both parts are summarized below. Several organizations commented that language in § 731.103(d)(1) is less clear than in § 920.102(b) with regard to positions that are exempt because the hiring agency is required by statute to make inquiries into an applicant's criminal history prior to making a conditional offer. The organizations raised concerns that the language may be misconstrued as allowing exemptions any time consideration of criminal history is required by law, even if the timing is not mandated by law. OPM agrees and will make a change for clarity, by striking the portion of the sentence reading ''Except as required by law.''

**Part 754—Complaint Procedures, Adverse Actions, and Appeals for Criminal History Inquiries Prior to Conditional Offer**

An organization expressed support for OPM's proposed new part 754, which the organization stated ''creates a compliance mechanism for aggrieved applicants affected by 'Ban the Box' violations and disciplinary mechanisms for employees who continue to unlawfully require pre-offer of disclosure of criminal or credit history in violation of the Fair Chance Act.''

**Subpart A—Complaint Procedures**

The Fair Chance Act directs OPM to establish and publish procedures under which an applicant for an appointment to a position in the civil service may submit a complaint, or any other information, regarding compliance with 5 U.S.C. 9202. Based on these unique requirements, OPM adds a new 5 CFR part 754 to implement the complaint procedure requirements of the Fair Chance Act. The rule appears in subpart A of 5 CFR part 754 as ''Complaint Procedures.'' This final rule provides the regulatory framework for the complaint process for job applicants to allege violations of the nature described in the Fair Chance Act. This regulatory scheme is significant because job applicants do not have the ability to use any existing statutory or regulatory complaint procedures that may be available for other employment-related complaints, such as those of the U.S. Office of Special Counsel, which investigates prohibited personnel practices.

Subpart A establishes procedures under which an applicant for an appointment to a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency with section 9202, as required by section 1122(b)(1) of the Fair Chance Act.

*Section 754.101 Coverage*

This final rule describes who may use the agency complaint procedures and the actions covered and provides key terms that track the definitions in part 920.

OPM received no comments on this section.

*Section 754.102 Agency Complaint Process*

This section establishes the complaint process to be utilized for actions taken under this part. The process includes respective roles for OPM and Federal government agencies.

Several organizations observed that OPM's proposed regulations include key protections and clarifications, which the organizations urged OPM to retain in the final rule, including the complaint and investigation process as required by the Fair Chance Act. In addition to the strengths they recognized in the proposed regulations, the organizations urged OPM to incorporate additional protections and clarifications into the final rule, including ensuring the complaint processes implemented by hiring agencies are fair and transparent. These organizations expounded that, in addition to individual agency processes for receiving complaints, OPM should clarify some of the elements of the complaint process as well as enhance

protections as reflected immediately below.

Regarding § 754.102(a), some organizations recommended that OPM develop a centralized means for receiving complaints and forwarding them to the appropriate agency for an agency investigation. Organizations expressed concern that, while the rule requires each hiring agency to establish and publicize systems for receiving complaints from applicants regarding violations of the Fair Chance Act, some job applicants will likely remain confused as to whom to submit such a complaint or may feel more comfortable submitting a complaint directly to OPM instead of to the hiring agency that likely just rejected them for a job based on their criminal history record. These organizations posited that, even if OPM does not implement a centralized means for receiving Fair Chance Act complaints, the regulations should provide that any complaint related to a violation of the Fair Chance Act that is submitted directly to OPM shall be forwarded to the appropriate agency for investigation and will be considered timely if it was submitted to OPM within the time period described in the regulations.

OPM is confident that agencies will develop complaint processes that are fair and transparent, making centralized complaint intake unnecessary. Notably, the rule requires that agencies include information about the complaint process in their job announcements. This public notice aids in accomplishing complaint process transparency. Therefore, OPM will decline to adopt the organizations' recommendations to establish a centralized compliant process. As stated in the proposed rule, OPM believes there is ample precedent for agencies to establish internal procedures for receipt and investigation of employment-related complaints against the agency and to accomplish these tasks in a fair and impartial manner. Moreover, adding a procedural layer that involves OPM receiving a complaint and forwarding it to the appropriate agency adds time to the process that may delay resolution of the matter which would disserve applicants. Additionally, OPM does not have the resources necessary to effectively administer a new government-wide complaint process, and we have concluded that it is more efficient and cost-effective for agencies to leverage their existing resources. That said, to the extent OPM receives a complaint, OPM will promptly forward it to the appropriate agency.

As stated in the proposed rule, direct submission of complaints to agencies is a long-standing process with which the public is familiar. For example, currently, applicants submit Federal sector equal employment opportunity (EEO) complaints to agencies rather than to the Equal Employment Opportunity Commission (EEOC). Thus, if OPM were to change this long-standing process as the commenter seeks, it may create—not prevent—confusion.

To ensure applicants are informed, OPM encourages agencies to widely publicize information about the Fair Chance Act complaint process to job applicants, and, as stated above, agencies' job announcements must include information about the complaint process. OPM also notes that one safeguard the rule affords is that applicants have an opportunity to submit a complaint or any other information after 30 days if the applicant's rights to do so were not properly publicized. In addition, the agency must conduct outreach to inform an applicant of the procedure for submitting a complaint when it has reasonable cause to believe that the applicant is attempting to file a complaint. The employing agency has the ability to extend the 30-day time limit when an applicant shows that the applicant was not notified of the time limits and was not otherwise aware of them, that the applicant did not know and reasonably should not have known that the non-compliance with section 9202 and part 920 occurred, to consider a reasonable accommodation of a disability, or for other proper and adequate reasons considered by the agency. The agency must apply the regulatory provisions to determine if a complaint forwarded by OPM was timely filed, or if there is proper and adequate basis for an extension.

Additionally, with respect to § 754.102(a), an organization recommended that OPM consider ''whether a more robust set of standards is needed to ensure that agencies will not brush aside complaints.'' The organization stated that allowing complainants the option of submitting complaints directly to OPM in lieu of to the agency (as an alternative to concurrent and centralized intake as discussed above) offers a method whereby effective standard-setting and robust enforcement could be better ensured.

OPM will not make any revisions based on this comment. For the same reasons that OPM will not adopt concurrent or centralized complaint intake, OPM will not accept the recommendation to allow applicants to submit complaints directly to OPM. Agencies routinely receive and investigate allegations of wrongdoing against agency employees, including complex and sensitive matters such as off-duty misconduct, on-duty drug or alcohol use, and workplace harassment. An alleged violation of section 9202 of the Fair Chance Act and part 920 is well within the range of misconduct that agencies can handle in a fair and impartial manner.

Although we did not receive a comment in regard to § 754.102(a)(3), this rule corrects a cross reference in the regulatory text. The corrected reference now states ''paragraph (a)(2) of this section'' instead of ''paragraph (b) of this section''.

In discussing the agency investigation process as outlined in § 754.102(b), an organization discussed that § 754.102 delegates to the employing agencies the task of ensuring compliance with the Fair Chance Act by having the agencies receive and investigate complaints made against them. The organization noted that the rule places a restriction that the same official cannot be both the executing-advising officer for the recruitment and the investigator. The organization stated, ''. . . that is surely part of the minimum that should be expected of any investigatory process but likely does not go far enough in ensuring an impartial process.''

OPM disagrees with the organization's assertion that the investigatory process as outlined in § 754.102(b) is insufficient to achieve an impartial process. OPM believes there is abundant precedent, such as appeals of agency classification decisions and agency programs related to eliminating discriminatory practices and policies, for agencies to establish internal procedures for receipt and investigation of employment-related complaints in a fair and impartial manner. An agency must follow its investigatory procedures and gather all relevant information about an alleged violation of 5 U.S.C. 9202 and 5 CFR part 920. The investigation will be the foundation for an assessment of what misconduct, if any, occurred and any individual(s) responsible. Upon receipt of the agency's administrative report, OPM will consider the specific facts and circumstances on a case-by-case basis to determine whether to proceed. OPM believes that with appropriate OPM guidance and oversight, agencies can effectively investigate violations of Fair Chance Act requirements.

In further discussion of the agency investigation, an organization recommended that OPM should allow complainants to make submissions to OPM that would supplement, correct, or rebut the factual record that the agency's

investigative process yielded pursuant to the agency's administrative report under § 754.102(b)(5). The organization recommended also that a complainant be allowed to make submissions of facts directly to OPM either in parallel to the agency's required report or within a reasonable time after being notified of the report's contents, before OPM adjudication takes place.

OPM will not make any revisions based on this comment. Part 754 lays out a straightforward administrative process with a framework for complaint intake and investigation that provides clear parameters and, where appropriate, agency discretion. Along with the complaint itself, an applicant may submit any other information the applicant deems necessary to ensure a complete factual record before OPM's adjudication takes place. The agency's administrative report to OPM should include ''a complete copy of all information gathered during the investigation.'' If OPM needs additional information from an applicant or agency employee for the purpose of adjudicating the complaint, OPM may make a request to the agency. For these reasons, it is unnecessary to create a mechanism for applicants to make submissions directly to OPM.

Some organizations recommended with respect to § 754.102(b) that OPM ''ensure sufficient time for a complainant to respond to a hiring agency's request for information.'' These organizations also urged OPM to put mechanisms in place that ''ensure that agencies do not use a complainant's failure to quickly respond to a request for additional information as an excuse for abandoning an investigation.'' The organizations continued that, in some cases, additional information beyond the initial complaint may not truly be needed from the complainant, and the investigation should therefore not be suspended even if the complainant fails to respond.

In response to these comments, and as discussed in greater detail below, we have added regulatory text to provide an objective timeframe of 10 days for applicants to respond to a request for additional information, yet we also indicate that the agency may extend this timeframe if the agency deems that extenuating circumstances warrant extension. Further, OPM would discourage agencies from using a complainant's failure to respond or failure to ''quickly respond'' to a request for additional information as the sole reason for abandoning an investigation. Instead, agency investigators should determine whether they can otherwise develop a record that allows a reasonable fact finder to draw conclusions as to whether non-compliance with section 9202 and part 920 occurred.

Furthermore, the organizations stated that the regulations must require hiring agencies to provide complainants with a reasonable amount of time to respond to any such requests for information. The commenters asserted that it is not a complainant's job to follow up on the complaint, and in fact, complainants will likely have been denied a job opportunity by the agency and may be employed elsewhere, still in search of employment while the investigation proceeds, or living under stresses related to unemployment, which could impact their ability to respond quickly. One of the organizations, speaking on behalf of itself and several collaborating organizations, opined that OPM's rule appropriately includes a time limit for an agency to complete its investigation so that investigations do not drag on indefinitely.

For these reasons, the organizations recommended that complainants receive 30 days to respond to such requests. They further suggested that OPM may wish to also provide in the regulations that an agency may receive additional time to complete the investigation beyond the 60-day investigative period if the complainant takes unusually long to respond.

OPM agrees with this recommendation to specify a reasonable amount of time for an applicant to respond to any such request for information during the investigation, which is consistent with OPM's establishment of a time limit for the investigation. Under ordinary circumstances, OPM believes a period of 10 calendar days from the date of the request is reasonable and balances the need for timely conclusion of the investigation. This brief but sufficient response period of 10 calendar days does not require additional time beyond the 60-day investigative period. However, as stated above, the agency may extend the applicant's response period for extenuating circumstances. In addition, an agency may extend the investigation period if the agency provides more than 10 calendar days for the applicant to respond to an agency's request for information.

An organization expressed concern that § 754.102(b)(2) delegates to agencies the discretion to determine the appropriate fact-finding methods for investigating the complaint, ''subject only to the oversight and future issuances described respectively in proposed sections 754.102(d)(1) and (d)(3)'' and recommended that OPM consider if more rigorous standards are needed.

OPM will not make any changes based on this comment. To reiterate, OPM believes there is abundant precedent, such as appeals of agency classification decisions and agency programs related to eliminating discriminatory practices and policies, for agencies to establish internal procedures for investigation of employment-related complaints in a fair and impartial manner. OPM believes that with appropriate OPM guidance and oversight, agencies can effectively investigate violations of Fair Chance Act requirements.

In further response to comments that expressed support for additional clarity for hiring agencies and a final rule that is effective and efficient, § 754.102(b)(5) will also permit the agency to send its administrative report to OPM via electronic mail at *employeeaccountability@opm.gov* as an alternative to postal delivery as proposed.

Regarding § 754.102(c), some organizations recommended that OPM require that the hiring agency and/or OPM inform the complainant of the results of an investigation and the ultimate findings. One of the organizations, speaking on behalf of itself and several collaborating organizations, noted that in § 754.102(c)(2), ''the subject of the complaint'' appears to refer to the agency employee who allegedly inquired about an applicant's criminal history record before a conditional offer. The organizations asserted that the regulations are silent on when, how, and by whom the complainant will be notified of the result of OPM's adjudication, and a complainant is another interested party who should be timely informed of the outcome. The organizations urged OPM to supplement § 754.102(c)(2) to specify that OPM will simultaneously notify the complainant in writing of its findings and decision.

OPM will not revise § 754.102(c) based on this comment. It is correct that the subject of the complaint is the agency employee who allegedly violated section 9202 of the Fair Chance Act and part 920 of this regulation. OPM plans to issue guidance to assist with implementation of this rule. An agency may only share information from the records concerning an individual's Fair Chance Act complaint pursuant to the Privacy Act and the applicable system of records notice, for example, with those who have a need to know, such as human resources staff involved in advising management and any management official responsible for

approving the action, or others to whom disclosure is permitted pursuant to a routine use. As an interested party, an applicant has the option of submitting a Freedom of Information Act request to obtain any releasable information about the investigation and outcome.

OPM is revising the wording of § 754.102(c) to clarify that OPM will notify the agency and the subject(s) of the complaint regarding OPM's assessment that a violation may have occurred such that OPM is initiating the subpart B adverse action proceedings.

*Section 754.103 Applicant Representatives*

This section describes the requirements for an applicant's representative.

An agency asked if it is OPM's intent that an applicant under the definition be considered part of the bargaining unit if the position is a covered position. It is not OPM's intent that an applicant, who is not already employed by the agency in a bargaining unit position, as defined in newly created part 920, be considered part of the bargaining unit solely because the position for which the individual applied is covered by a collective bargaining agreement. OPM believes it is appropriate and fair for an applicant to receive assistance throughout the complaint process, subject to the restrictions outlined in § 754.103.

**Subpart B—Adverse Actions**

OPM adds subpart B, Adverse Actions, which describes the adverse actions and appeals process related to violations of the Fair Chance Act. This new subpart also describes the specific penalties to be imposed by OPM for each violation of 5 U.S.C. 9202. These provisions are significant because under the Fair Chance Act, the procedures of chapter 75 of title 5, United States Code, Adverse Actions, are not applicable and appeal or judicial review is not applicable except as provided under procedures established by the Director of OPM.

*Section 754.201 Coverage*

This section describes which actions and employees are covered by the new adverse action procedures established by OPM pursuant to the Fair Chance Act and defines key terms used in the subpart.

OPM received no comments on this section.

*Section 754.202 Penalty Determination*

This section describes the specific penalties OPM may direct an agency to process when an agency employee has been found to have violated section 9202 of the Fair Chance Act. The Fair Chance Act specifies certain penalties for violations of the statute, which are written warnings, suspensions without pay, and civil penalties of various amounts depending on the violation. Notably the range of penalties under the Fair Chance Act includes some forms of penalty that are not enumerated under the ''adverse actions'' provisions found in chapter 75 of title 5, United States Code (written warnings, civil penalties). For certain violations, under the Fair Chance Act OPM can direct the employing agency to collect a civil penalty and remit it to the Treasury, for deposit in the Treasury. OPM invited public comment on the method for collecting and remitting civil penalties. However, we did not receive any such comments.

A commenter asserted that current case law shows that the proposed penalty determinations are inconsistent with penalties upheld for violating Federal regulations. This commenter opined that, while these recommendations include increasing days of suspensions and adding civil penalties for the fourth and greater offenses, they are still setting precedent that a Federal employee could violate Federal regulations more than five times and still maintain their Federal employment. The commenter suggested adjusting penalty determinations to include proposed removal for multiple violations of the Fair Chance Act, decrease the number of potential violations that have penalty determinations, and add an aggravating factor of intent to violate government regulations as a reason to increase the penalty on an earlier offense. The commenter requested, to the degree that OPM can influence the penalties required, that discretion be afforded to the agencies so they can weigh relevant factors.

OPM will not make any revisions based on this comment. Congress, through the Fair Chance Act, prescribed the range of penalties OPM may direct an agency to process when an agency employee has been found to have violated section 9202 of the Fair Chance Act and part 920 of this regulation. Therefore, OPM will not add removal to the penalty range, decrease the number of violations prescribed as a threshold for a certain penalty, or add an aggravating factor of intent to the regulation. Note that OPM is the proposing and deciding authority for penalties imposed for section 9202 violations. Accordingly, OPM, not the employing agency, is responsible for evaluating the facts and circumstances in each case. Also, the penalty scheme developed by Congress in the Fair Chance Act is unique to violations of section 9202 of the Act.

An agency shared observations that written warnings are maintained in a local file and removed after a certain period, and reprimands are maintained in an employee's Official Personnel Folder (OPF) temporarily and removed after a certain period. The agency asked if it is OPM's intent to have ''reprimands'' for violations of section 9202 maintained on the permanent side of an employee's OPF.

OPM will not make any revisions based on this comment. OPM notes that Congress elected not to include a reprimand in its prescribed range of penalties for a violation of section 9202 of the Act, and we will not add a reprimand as a penalty option. To clarify, section 9204 of the Act defines a written warning as an adverse action for the purpose of addressing a first violation of section 9202. Further, the Act specifies that after OPM provides procedural rights, if we determine that an employee has committed a first violation of section 9202, OPM shall issue a written warning that includes a description of the violation and the additional penalties that may apply for subsequent violations, and direct the employee's agency to file such warning in the employee's official personnel record. Thus, a written warning issued under § 754.202 is an adverse action and is subject to the same procedures as other adverse actions, including permanent retention in the employee's OPF.

OPM is revising its proposed regulatory text for § 754.202(a) to parallel the language in paragraph (b), making clear that the process for a penalty determination for the first violation and subsequent violations is the same and that OPM's determination of violation and imposition of a penalty occurs only after the employee has been provided the procedural rights in § 754.203.

*Section 754.203 Procedures*

The final rule establishes the procedures to be utilized for actions taken under this subpart.

OPM received no comments on this section.

*Section 754.204 Appeal Rights*

This section describes the appeal rights for those actions taken by OPM under § 754.203. Appeal rights are conferred for suspensions of more than 14 days or any decision to impose a civil penalty under this subpart.

OPM received no comments on this section.

*Section 754.205 Agency Records*

This section outlines the records that OPM and the covered agency must maintain and their obligations under the Privacy Act.

An organization asserted that the proposed rule provides no guidance about how the investigatory process should handle private or sensitive information that may be disclosed, intentionally or inadvertently, in the course of the fact-gathering and reporting process. The organization recommended that OPM consider analyzing and potentially issuing guidelines or revised rules that would require that the processes to implement the Fair Chance Act requirements are consistent with the intent of the statute and other applicable Federal law concerning privacy and sensitivity of personal information including but not limited to criminal conviction-related history. The commenter also suggested that agencies and OPM take into account local, Tribal, and State privacy and fair chance-type laws when carrying out their investigatory and oversight responsibilities under this rule.

We disagree with the organization's assertion that the rule provides no guidance about the handling of private or sensitive information that may be disclosed, intentionally or inadvertently, in the course of the investigatory process. In the Supplemental Information section of the proposed rule, OPM addressed handling of private or sensitive information by stating that OPM and agencies have obligations under the Privacy Act. Private or sensitive information disclosed during the investigation will be added to the agency's administrative file and is covered by Federal law in accordance with the Privacy Act requirements of this section. Indeed, the regulatory text for § 754.205 states, ''The complaint, the applicant's supporting material, the agency's administrative file, the notice of the proposed action, the employee's written reply, if any, any summary or transcript of the employee's oral reply, if any, the notice of decision, and any order to the covered agency effecting the action together with any supporting material, must be maintained in an appropriate system of records under the Privacy Act.''

Regarding the organization's recommendation that agencies and OPM consider local, Tribal, and State privacy and fair chance-type laws, OPM will not make any revisions to this rule. As noted above, the records received through the Fair Chance complaint investigation process are subject to the requirements of the Privacy Act. Federal agencies have well-established Privacy Act programs. Under the Privacy Act and other Federal laws, records are protected from unauthorized access and misuse through various administrative, technical, and physical security measures. OPM's regulations and guidance implement applicable Federal statutes for Federal personnel management. Congress has not authorized coverage under any other type of law for the Fair Chance Act implementation.

**Part 920—Timing of Criminal History Inquiries**

OPM is regulating the provisions of the Fair Chance Act in 5 CFR part 920 because these provisions apply to positions in the excepted, Senior Executive, and competitive services. For the convenience of the reader, we are placing them in one location rather than repeat the provisions in parts 302, 317, 319, and 330, respectively. Additionally, some agencies may have positions that are exempt from part 302 but not exempt from the provisions of the Fair Chance Act.

**Subpart A—General Provisions**

Subpart A of part 920 contains general provisions that are applicable to the timing of criminal history inquiries. This subpart explains which positions are covered by this part and which positions may be excluded. This subpart also provides definitions for the purpose of this part.

*Section 920.101 Definitions*

This section contains definitions necessary for the administration of this part.

Several organizations commented that OPM's proposed definition of ''conditional offer''—defined as ''an offer of employment in the civil service that is conditioned upon the results of a criminal history inquiry''—does not provide that a conditional offer can be revoked for reasons other than a criminal history inquiry, and that therefore OPM should clarify that the criminal history inquiry should be isolated from other necessary background screening. OPM agrees that the proposed definition of ''conditional offer'' is too narrow, and is revising the definition in § 920.101 in this final rule to read as follows: ''conditional offer means an offer of employment to a position in the civil service that is conditioned upon the results of a background investigation, including, as relevant here, the results of a criminal history inquiry.''

These organizations also encouraged OPM to clarify in its regulations that a hiring agency must extend a conditional offer in writing before inquiring about criminal history record information. OPM declines to make changes in response to this comment. OPM believes that agencies already extend all conditional offers in writing and that such clarification is unnecessary. OPM will, however, consider whether to address this point in subsequent guidance.

OPM received a comment from one agency recommending that OPM add language to the definition of ''applicant'' in 920.101(a) that explicitly includes or excludes current Federal employees. OPM is not adopting this suggestion. An ''applicant'' is defined as a person who has applied to an agency under its procedures for accepting applications. OPM notes that an applicant may, at times, be a Federal employee. The definition of ''applicant'' in the rule encompasses any person who has applied to an agency under its procedures for accepting applications; therefore, further clarification is not necessary.

*Section 920.102 Positions Covered by Fair Chance Act Regulations*

Section 920.102 explains which positions are covered by this part and which positions may be excluded.

Several organizations asked for OPM to remove the open-ended possibility for case-by-case exceptions, arguing that the statute requires OPM to list within the regulation the additional positions to which the exception may apply. Therefore, they argued that the proposal to grant case-by-case exceptions is contrary to the statute. OPM is adopting this recommendation in this final rule. The final rule deletes the language in § 920.201(b)(3) from the notice of proposed rulemaking that indicated that OPM will continue to consider case-by-case exceptions for exempting positions from the Fair Chance Act criminal history inquiry requirements. Previously, agencies were permitted to make requests for exceptions to the timing of collection of criminal history information based upon a job-related need, and with appropriate supporting information, including, for example, for positions in which criminal history information is required to determine whether the applicant is eligible for further consideration for the position. OPM granted these requests, which will remain in effect.

During the public comment period, one agency asked OPM to consider positions that have contact with minors to be an exception to the proposed rule.

Another agency recommended that OPM exempt (1) Testing Designated Positions and positions requiring Certification Licensure or Registration from the Act based on the sensitive nature of duties for covered positions; and (2) positions that provide direct care to elderly and to individuals with physical, mental, and intellectual disabilities which impair their ability to manage their personal affairs. The comments do not provide sufficient information for OPM to determine that all such positions—above and beyond those that are already exempted by statute—should be exempted from the Fair Chance Act's requirement to delay criminal history information, and, at this time, OPM is not exempting any additional positions in this regulation. To the extent agencies believe that additional positions should be exempt from such requirements, agencies should alert OPM, which will carefully consider any input for the purpose of future rulemaking or guidance.

Several organizations also asked that OPM provide clarity to agencies regarding their legal responsibility to conduct individualized assessments and otherwise fairly consider applicants with criminal history records even after a conditional offer and in accordance with Title VII and EEOC requirements. OPM notes that these rules only pertain to the timing of inquiries into an applicant's criminal history, not to the substantive selection process for Federal employment. OPM does not believe it is necessary to modify the regulation in response to these comments, but OPM does note that agencies have an independent obligation to comply with Title VII and that nothing in this rule shall be read in derogation of any individual's rights under Title VII.

A commenter asked how this regulation relates to the Bond Amendment when hiring for sensitive positions. As is addressed in § 920.201(b), the prohibition for requesting criminal history information before a conditional job offer does not apply for positions that require a determination of eligibility for access to classified information or which have been designated as a sensitive position under the Position Designation System issued by OPM and the Office of the Director of National Intelligence. Therefore, these changes have no effect on the requirements of the Bond Amendment.

**Subpart B—Timing of Inquiries Regarding Criminal History**

Subpart B addresses when inquiries into an applicant's criminal history may be made.

*Section 920.201 Limitations on Criminal History Inquiries*

Section 920.201 describes the agency personnel who are covered by the prohibition of criminal history inquiries at certain points in the recruitment and hiring process, as well as the restrictions on when criminal history inquiries may be made and the exceptions for this limitation. This section also establishes notification requirements of the prohibition to applicants.

Several organizations asked that additional instructions be provided to hiring agencies about what actions must be delayed until after a conditional offer and how staff should respond if criminal history information is disclosed before a conditional offer. These organizations also commented that agencies should be directed, within the regulation, to not consider criminal history information that may be inadvertently disclosed earlier in the process or gained through informal attempts, such as through internet searches. OPM believes that part 920 clearly and with significant detail outlines the applicability of the limitations in terms of the means through which agencies may obtain information of this nature and the timing of which they may employ such means. Furthermore, this section requires agencies to publicize this prohibition, when applicable, within the job announcement, giving applicants the opportunity to know that the information is not to be requested ahead of the job offer. Therefore, OPM will not make any changes in this regulation based on these comments; OPM will, however, provide further instructions to agencies on these points in supplemental guidance.

*Section 920.202 Violations*

This section defines what constitutes a violation of the Fair Chance Act and the prohibition in section 920.201.

In the above sections, OPM has addressed the comments received related to section 920.202.

**Expected Impact of This Final Rule**

*A. Statement of Need*

OPM is issuing this final rule to implement the provisions of the Fair Chance Act found in chapter 92 of title 5, United States Code. This statute prohibits Federal agencies and Federal contractors acting on their behalf from requesting that applicants for employment disclose criminal history record information before the agency makes a conditional offer of employment to that employee. The Fair Chance Act identifies some positions to which the prohibition shall not apply and requires OPM to issue regulations identifying additional positions to which the prohibition shall not apply. It also requires OPM to establish complaint procedures under which an applicant for a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency with the Fair Chance Act, and adverse action and appeal procedures when it has been determined that a Federal employee has violated the Fair Chance Act. OPM is implementing these statutory requirements in the least burdensome way it can while still effectuating the Fair Chance Act.

*B. Impact*

The final rule allows job applicants to present their qualifications and abilities for assessment and be considered based on their merits without the specter of a criminal history record during the selection process. Various studies show that offenders who maintain steady employment are less likely to become involved in criminal behavior after release from prison.[1] Although several factors may impact recidivism (such as family ties, and mental and physical health), it is widely held that stable employment supports relationship and financial goals that decrease the likelihood of re-offending.[2] As the nation's largest employer and a model employer, through this rule the Federal government will demonstrate an example of fair hiring practices by removing unnecessary barriers for people with records who desire to join the Federal workforce. Given that people with criminal history records are statistically less likely to quit,[3] Federal employers stand to save in turnover costs. For example, in a 2021 study, the Society for Human Resources Management found that 73% of business leaders and human resources professionals said workers with criminal records were just as or more dependable than workers without criminal records.[4] Not only does employment of formerly incarcerated

[1] Berg. & Huebner, ''Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism'' (April 28, 2011).

[2] Link, Ward, & Stansfield, ''Consequences of Mental and Physical Health for Reentry and Recidivism: Toward a Health-based Model of Desistance'' (March 27, 2019).

[3] Lee-Johnson, ''Give Job Applicants with Criminal Records a Fair Chance'' (September 21, 2020), and Society for Human Resources Management, ''2021 Getting Talent Back to Work Report'' (May 2021).

[4] Society for Human Resources Management, ''2021 Getting Talent Back to Work Report'' (May 2021).

individuals affect rates of recidivism, it benefits communities and society by reducing criminal justice costs, crime victimization costs, and the costs of incarceration to the reoffenders and their families.[5]

OPM believes there is significant value in being able to demonstrate the effect of these final regulations on both Federal agencies and formerly incarcerated individuals. As noted earlier, however, OPM currently does not have and is not aware of any data to show what impact, if any, OPM's existing ''Ban the Box'' rules have had on agency hiring processes. Therefore, OPM invited comments regarding any hiring data agencies may have that demonstrate the effect of either OPM's prior regulations or the potential impact of these proposed rules. This included ways that the proposed rules may impact the size of applicant pools for positions not previously covered by OPM's regulation, including positions in the excepted service as well as positions in the U.S. Postal Service and the Postal Regulatory Commission.

Several organizations commented with recommendations for the data that OPM should collect. Those recommendations include the following:

- Number of applicants provided a conditional offer (and number of those with a conviction record)
- Number of applicants with a conviction record whose conditional offers were rescinded by the hiring agency
- The convictions (offense and years elapsed) based upon which conditional offers were rescinded
- Number of applicants with a conviction record who were hired and the positions into which they were hired
- Demographic information for all of these categories

OPM appreciates these public comments and will take these recommendations into account as it formulates a data strategy including in consultation with other agency partners.

*C. Regulatory Alternatives*

OPM's implementing regulations are required by statute and cannot be avoided. In the final regulations for part 754, OPM fleshes out procedures for receiving and investigating complaints, or any other information, as well as procedural and appeal rights for an agency employee alleged to have violated section 9202. The statute establishes the agencies and employees covered by 5 CFR 754, available penalties that can be imposed for an employee found to have violated section 9202, and the 30-day timeframe for appealing an adverse action.

First, OPM considered the option of receiving complaints, and any other information, directly from applicants and conducting its own outreach and investigative fact-finding, as appropriate to the nature of the applicant's submission. But agencies have already established internal procedures for receipt and investigation of employment-related complaints against the agency and to accomplish these tasks in a fair and impartial manner. Therefore, we have laid out an approach that we believe is minimally burdensome for agencies and straightforward for applicants. Subject to OPM guidelines and oversight, the final rule assigns to each agency covered by the Fair Chance Act regulations the responsibility to receive complaints, or any other information, and any applicable supporting material. Further, this final rule delegates to each agency OPM's responsibility to conduct an investigation of the complaint, or any other information, regarding compliance with 5 U.S.C. 9202. OPM believes that establishing a process that is similar to other successful and effective processes will facilitate implementation of the Fair Chance Act complaint process in covered agencies as agencies are already familiar with these similar processes. While the final rule provides parameters to guide agencies and facilitate governmentwide consistency, the assignment and delegation to agencies reduces the need for what would be more extensive regulations if OPM were directly receiving and investigating complaints, and other information, related to an alleged violation of section 9202.

Regarding the procedures for adverse actions, the statute requires notice and an opportunity for a hearing on the record by OPM for any employee alleged to have committed a violation of section 9202. Section 9205 further notes that the procedures of chapter 75 of title 5, United States Code, are not applicable and that appeal or judicial review are not applicable except as provided under procedures established by the Director of OPM. Because chapter 75 procedures are not available, the final rule establishes an alternative to implement the unique procedural and appeal elements of the Fair Chance Act. In developing the procedures, OPM considered the benefits of adapting the adverse action procedures found at 5 CFR part 752 rather than another approach. Adapting the part 752 procedures affords agencies the benefit of familiarity, facilitates ease of transfer in knowledge and skills to the new regulations, and reduces the need for more extensive or complex regulations.

*D. Costs*

OPM did not receive any comments on the estimated costs in the proposed rule. The economic assessment is finalized with no changes.

Costs Related to Parts 302, 317, 319, 330, 731, and 920—Restrictions on Preemployment Criminal History Inquiries Prior to Conditional Offer

This rule will affect the operations of over 80 Federal agencies ranging from cabinet-level departments to small independent agencies. This rule expands the prohibition on making inquiries into an applicant's criminal background prior to a conditional offer of employment. The prohibition currently applies to positions in the competitive service. This final rule will expand this prohibition to include agencies with positions in the excepted service and the Senior Executive Service. There are approximately 20 agencies in the Executive Branch that are fully in the excepted service that will be impacted by this final rule. We estimate that this rule will require individuals employed by these agencies to develop policies and procedures to implement the rule when making appointments. For the purpose of this cost analysis, with regard to parts 302, 317, 319, 330, 731, and 920, the assumed average salary rate of Federal employees performing this work will be the rate in 2022 for GS–14, step 5, from the Washington, DC, locality pay table ($143,064 annual locality rate and $68.55 hourly locality rate). We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of $137.10 per hour.

In order to comply with the regulatory changes in this final rule, affected agencies will need to review the rule and update their policies and procedures. We estimate that, in the first year following publication of the final rule, this will require an average of 250 hours of work by employees with an average hourly cost of $137.10. This would result in estimated costs in that first year of implementation of about $34,275 per agency, and about $2,742,000 in total governmentwide. We do not believe this rule will substantially increase the ongoing administrative costs to agencies (including the administrative costs of administering the program and hiring

[5] U.S. Department of Labor, ''Reducing Recidivism and Increasing Opportunity'' (June 2018).

and training new staff) as this rule sets out leveraging existing procedures.

Costs Related to Part 754—Complaint Procedures, Adverse Actions, and Appeals for Criminal History Inquiries Prior to Conditional Offer

Regarding the implementation of the regulatory requirements in part 754, in the event of a complaint by an applicant, agencies will incur labor costs associated with the investigation into the complaint. OPM will incur labor costs associated with reviewing the results of the investigation and reaching a determination, which could include issuing a notice of proposed action to the subject of the complaint, considering any response, and making a final determination. In the event OPM directs the employing agency to take an action as a result of a founded complaint, OPM would incur labor costs in responding to and/or defending any appeal by the subject of the complaint to the Merit Systems Protection Board (MSPB).

In order to estimate the costs to implement the final regulatory requirements in part 754 for complaint procedures, adverse actions, and appeals, OPM made certain assumptions and considered that some costs may vary depending on agency size and the extent to which an agency is able to leverage existing policies, practices, and procedures. For this cost analysis, the assumed staffing for Federal employees performing the work required by the regulations in part 754 is one executive; one GS–14, step 5; a GS–15, step 5; and one GS–7, step 5 in the Washington, DC, locality area. The 2022 basic rate of pay for an executive at an agency with a certified SES performance appraisal system ranges from $135,468 to $203,700 annually, for an average of $169,584 per year or $81.26 per hour. For General Schedule employees in the Washington, DC, locality area, the 2022 pay table rates are $168,282 annually and $80.63 hourly for GS–15, step 5; $143,064 annually and $68.55 for GS–14, step 5, and $57,393 annually and $27.50 hourly for GS–7, step 5. We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in assumed hourly labor costs of $162.51 for an executive; $161.27 for a GS–15, step 5; $137.10 for a GS–14, step 5; and $55 for a GS–7, step 5.

As to overall complaint procedures, program implementation and oversight, OPM assumes it will incur certain upfront costs and then ongoing costs. For example, the establishment of new processing codes requires one-time updates to OPM's databases and personnel action processing handbook. After the issuance of any final rule effecting part 754, OPM may develop additional materials related to its implementation. This includes, but is not limited to, procedures and guidance related to agency obligations to report to OPM actions taken to investigate any complaints filed by an applicant regarding an agency's compliance with 5 U.S.C. 9202 and adverse actions taken at the direction of OPM for non-compliance with 5 U.S.C. 9202. OPM estimates that the cost for its implementation and oversight in the first year will be $30,370.00 and $3,687.04 on average in subsequent years.

OPM estimates that it will cost each agency $21,319.04 in the first year to establish an internal policy for handling alleged violations of 5 U.S.C. 9202. We assume that larger agencies advertise more vacancies and are therefore likely to receive a greater number of complaints. We estimate the annual cost of complaint intake and investigation for large agencies to be $172,746.00 (based on an average of 30 complaints per large agency); medium size agencies $115,164.00 (for 20 complaints); and small size agencies $57,582.00 (for 10 complaints). The total estimated cost for agencies to receive and investigate complaints is $345,492.00 annually, which averages to $5,758.20 per complaint.

For agency outreach regarding any other information that may potentially be an attempt to file a complaint for an alleged violation of 5 U.S.C. 9202, OPM again assumes that larger agencies advertise more vacancies and are therefore likely to experience a greater number of such instances. We estimate that large agencies on average may conduct 30 instances of outreach and incur $8,226.00 for the total number of instances. Medium size agencies may conduct outreach for 20 instances and incur $5,484.00 total. Small agencies may conduct outreach for 10 instances and incur $2,742.00 total. The total estimated annual cost of agency outreach is $16,452.00 and the average cost of agency outreach is $274.20 per instance.

Following agency intake, outreach (if applicable), and investigation, OPM is responsible for administering the adverse action procedures as outlined in § 754.203. Based on the estimate for the annual number of complaints that Federal agencies may receive (60 for large, medium, and small agencies combined), OPM estimates that 25%, or 15, of the complaints may result in a finding of a violation of 5 U.S.C. 9202. While OPM will carefully review and consider each investigative file submitted by agencies, OPM expects that only those investigations that result in a finding of a violation will generate a meaningful increase in cost above staff's usual duties and responsibilities. Assuming 15 such cases, the total cost for OPM's administration of the adverse action procedures, including proposing an action, considering any reply, and issuing a decision, is estimated to be $159,818.40. The average cost for OPM per adverse action is $10,654.56.

Under this final regulation, agencies are responsible for processing any adverse action imposed by OPM. Agencies routinely process suspensions for other forms of misconduct. Thus, applying those same procedures to adverse actions imposed for violations of 5 U.S.C. 9202 will be a negligible cost for agencies as they will be leveraging existing processes and procedures. However, OPM does anticipate some cost for the one-time update to agency processing systems for the new codes established by OPM to identify that the adverse actions are taken under 5 U.S.C. 9202, as well as the establishment of agency procedures for the collection of civil penalties. OPM estimates the costs to agencies in the first year for updating their systems and procedures and processing actions to be $24,690.04. Thereafter, we estimate that the average cost for an agency to process an adverse action, including any civil penalty, is $960.50 per action.

The available penalties for violations of 5 U.S.C. 9202 include written warnings and short suspensions (14 days or less) that are not grievable or appealable. Further, an employee's first two violations of section 9202 will result in a penalty no stronger than a seven-day suspension. For only a third or subsequent violation would OPM impose a penalty that may be appealable to the MSPB. While such an appeal to the MSPB is possible, we believe that it will be rare that an employee violates section 9202 three or more times. OPM anticipates that if 15 adverse actions are imposed per year, OPM anticipates that only one on average will be appealable to the MSPB. We therefore do not believe there will be a measurable impact on MSPB operations and thus, we have not estimated costs for the MSPB.

Because any appeal filed is against OPM and not the employing agency, OPM will be responsible for defending the action. OPM estimates $11,447.84 to defend an appeal.

The remaining requirements of part 754 for complaint procedures, adverse actions, and appeals will require

minimal costs for OPM or agencies, or only negligible costs. With respect to informing applicants of the agency's complaint procedures via the agency's public website and in vacancy announcements, the additional cost to agencies will be small. Agencies already provide notice on their public websites and in vacancy announcements about how an applicant can file an EEO complaint. Also, agencies provide information to the public on their external websites about how to file an Inspector General complaint. Thus, an additional notice does not present a significant additional cost. In conclusion, OPM estimates a cost of $598,141.47 to implement the complaint procedures under the final Fair Chance Act regulations in the first year and the recurring cost per year to be $32,782.34.

Indirect Costs

We note that the final rule may have indirect costs on other entities. Section 1122(d) of the Fair Chance Act amends section 207(d)(2) of the Congressional Accountability Act of 1995 to require the Board of Directors of the Office of Congressional Workplace Rights to promulgate regulations that are ''the same'' as OPM's ''except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' Section 1122(e) of the Fair Chance Act similarly amends 28 U.S.C. 604(e)(5)(B) to require the Director of the Administrative Office of the U.S. Courts to promulgate regulations that are ''the same'' as OPM's ''except to the extent that the Director . . . may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this subsection.'' Finally, section 1123(c) of the Fair Chance Act requires the Federal Acquisition Regulation (FAR) Council to amend the FAR ''to be consistent with'' OPM's regulations ''to the maximum extent practicable'' and to ''include together with such revision an explanation of any substantive modification of the Office of Personnel Management regulations, including an explanation of how such modification will more effectively implement the rights and protections under this section.'' Such indirect costs are not quantifiable since sections 1122(d)–(e) and 1123(c) of the Fair Chance Act give the other entities significant leeway to adopt, reject, or modify OPM's regulations with respect to the populations covered by those sections.

*E. Benefits*

This final regulation provides the opportunity for a qualified applicant with a criminal history record to advance in the hiring process just as a qualified applicant without a criminal history record would advance. The regulation benefit not only the Federal government as an employer but also American society as a whole at the family and community levels in terms of a strengthened economy.

This final regulation will support the Administration's priority to advance comprehensive equity. The final rule can help Federal agencies realize the vision of the Federal government as a model employer and to advance the principles of diversity, equity, inclusion, and accessibility. Finally, another benefit of this rule is increased transparency and accountability in the Federal hiring process. The regulations provide applicants who believe they have been subjected to a violation of 5 U.S.C. 9202 the right to report the alleged violation and holds accountable Federal employees found to have committed such a violation.

*F. Request for Comment and Data*

In addition to the questions posed in the regulatory analysis and given the limited information on the Federal Government's implementation on Ban the Box, OPM requested comment on the implementation and impacts of Ban the Box efforts in the private sectors. As noted above, OPM received multiple responses regarding the data that OPM should collect to inform the impact of this effort. OPM appreciates the responses received and is formulating a strategy for future data collections.

*G. List of Sources*

Berg, Mark T. & Huebner, Beth M. ''Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism.'' *Justice Quarterly,* April 28, 2011, 382. *https://doi.org/10.1080/07418825.2010.498383*

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Link, Nathan W., Ward, Jeffrey T., & Stansfield, Richard. ''Consequences of Mental and Physical Health for Reentry and Recidivism: Toward a Health-based Model of Desistance.'' *Criminology,* March 27, 2019, 544. *https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9125.12213*

National Employment Law Project. ''FAQ: Fair Chance to Compete for Jobs Act of 2019,'' December 2019. *https://s27147.pcdn.co/wp-content/uploads/Fact-Sheet-FAQ-Federal-Fair-Chance-Compete-Jobs-Act-2019.pdf*

Society for Human Resources Management. ''2021 Getting Talent Back to Work Report: A Workplace Survey on Hiring and Working with People with Criminal Records,'' May 2021. *https://www.gettingtalentbacktowork.org/wp-content/uploads/2021/05/2021-GTBTW_Report.pdf*

U.S. Department of Labor. ''Reducing Recidivism and Increasing Opportunity: Benefits and Costs of the RecycleForce Enhanced Transitional Jobs Program,'' June 2018. *https://www.mdrc.org/sites/default/files/ETJD_STED_Benefit_Cost_Technical_Supplement_508.pdf*

**Executive Orders 13563 and 12866, Regulatory Review**

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget as significant.

**Regulatory Flexibility Act**

The OPM Director certifies that this rule will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

**E.O. 13132, Federalism**

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

**E.O. 12988, Civil Justice Reform**

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local or Tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

**Congressional Review Act**

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA) (5 U.S.C. 801 *et seq.*) requires rules to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this rule before its effective date, as required by 5 U.S.C. 801. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA (5 U.S.C. 804).

**Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521)**

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule makes reference to an OMB approved collection of information subject to the PRA titled *Declaration for Federal Employment (OF 306),* OMB Control Number 3206–0182. The systems of record notice for this collection is *https://www.opm.gov/information-management/privacy-policy/sorn/opm-sorn-govt-1-general-personnel-records.pdf.*

OPM requested comments as part of the proposed rule on this information collection. While no comments were received on the burden or cost estimate, OPM did receive other comments. In response to comments regarding the timing of asking applicants about criminal history, OPM is replacing a sentence in the instructions to add clarity to the timing within the process when an individual is most likely to be asked to complete the form (*i.e.,* after a tentative job offer has been made). Should an individual need to fill out an OF 306, it can be done in several ways such as through USAStaffing, in response to an email from the hiring agency, or through other electronic means.

**List of Subjects in 5 CFR Part 302, 317, 319, 330, 731, 754, and 920**

Administrative practice and procedure, Government employees.

Office of Personnel Management.

**Kayyonne Marston,**

*Federal Register Liaison.*

Accordingly, for the reasons stated in the preamble, OPM amends chapter I of title 5, Code of Federal Regulations, as follows:

## PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

■ 1. Revise the authority citation for part 302 to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302, 3317, 3318, 3319, 3320, 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq.;* § 302.107 also issued under 5 U.S.C. 9201–9206 and Pub. L. 116–92, sec. 1122(b)(1).

■ 2. Add § 302.107 to subpart A to read as follows:

**§ 302.107 Suitability inquiries regarding criminal history.**

Agency inquiries regarding criminal history must be done in accordance with the requirements under chapter 92 of title 5, U.S. Code and part 920 of this chapter.

## PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

■ 3. Revise the authority citation for part 317 to read as follows:

**Authority:** 5 U.S.C. 3392, 3393, 3395, 3397, 3592, 3593, 3595, 3596, 8414, AND 8421. § 317.202 also issued under 5 U.S.C. 9201–9206 and Pub. L. 116–92, sec. 1122(b)(1).

■ 4. Add § 317.202 to subpart B to read as follows:

**§ 317.202 Suitability inquiries regarding criminal history.**

Agency inquiries regarding criminal history must be done in accordance with the requirements under chapter 92 of title 5, U.S. Code and part 920 of this chapter.

## PART 319—EMPLOYMENT IN THE SENIOR-LEVEL AND SCIENTIFIC AND PROFESSIONAL POSITIONS

■ 5. Revise the authority citation for part 319 to read as follows:

**Authority:** 5 U.S.C. 1104, 3104, 3324, 3325, 5108, AND 5376. § 319.106 also issued under 5 U.S.C. 9201–9206 and Pub. L. 116–92, sec. 1122(b)(1).

■ 6. Add § 319.106 to subpart A to read as follows:

**§ 319.106 Suitability inquiries regarding criminal history.**

Agency inquiries regarding criminal history must be done in accordance with the requirements under chapter 92 of title 5, U.S. Code and part 920 of this chapter.

## PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

■ 7. Revise the authority citation for part 330 to read as follows:

**Authority:** 5 U.S.C. 1104, 1302, 3301, 3302, 3304, and 3330; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218; Section 330.103 also issued under 5 U.S.C. 3327; Subpart B also issued under 5 U.S.C. 3315 and 8151; Section 330.401 also issued under 5 U.S.C. 3310; Subparts F and G also issued under Presidential Memorandum on Career Transition Assistance for Federal Employees, September 12, 1995; Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b). § 330.1301 also issued under 5 U.S.C. 9201–9206 and Pub. L. 116–92, sec. 1122(b)(1).

■ 8. Revise subpart M, consisting of §§ 330.1300 and 330.1301, to read as follows:

### Subpart M—Timing of Background Investigations

**§ 330.1300 Timing of suitability inquiries in competitive hiring.**

(a) A hiring agency may not make specific inquiries concerning an applicant's credit background of the sort asked on the OF–306, Declaration for Federal Employment, or other forms used to conduct suitability investigations for Federal employment (*i.e.,* inquiries into an applicant's adverse credit history) unless the hiring agency has made a conditional offer of employment to the applicant. Agencies may make inquiries into an applicant's Selective Service registration, military service, citizenship status, where applicable, or previous work history, prior to making a conditional offer of employment to an applicant.

(b) However, in certain situations, agencies may have a business need to obtain information about the credit background of applicants earlier in the hiring process to determine if they meet the qualifications requirements or are suitable for the position being filled. If so, agencies must request an exception from the Office of Personnel Management in order to determine an applicant's ability to meet qualifications or suitability for Federal employment prior to making a conditional offer of employment to the applicant(s). OPM will grant exceptions only when the agency demonstrates specific job-related reasons why the agency needs to

evaluate an applicant's adverse credit history earlier in the process. OPM will consider such factors as, but not limited to, the nature of the position being filled and whether a clean credit history record would be essential to the ability to perform one of the duties of the position effectively. OPM may also consider positions for which the expense of completing the examination makes it appropriate to review an applicant's credit background at the outset of the process (*e.g.,* a position that requires that an applicant complete a rigorous training regimen and pass an examination based upon the training before the applicant's selection can be finalized). A hiring agency must request and receive an OPM-approved exception prior to issuing public notice for a position for which the agency will collect credit background information prior to completion of the assessment process and the making of a conditional offer of employment.

**§ 330.1301 Suitability inquiries regarding criminal history.**

Agency inquiries regarding criminal history must be done in accordance with the requirements under chapter 92 of title 5, U.S. Code and part 920 of this chapter.

## PART 731—SUITABILITY

■ 9. Revise the authority citation for part 731 to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 7301, 9201–9206; Pub. L. 116–92, sec. 1122(b)(1); E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, as amended; E.O. 13467, 3 CFR, 2009 Comp., p. 198; E.O. 13488, 3 CFR, 2010 Comp., p. 189; 5 CFR, parts 1, 2 and 5; Presidential Memorandum on Enhancing Safeguards to Prevent the Undue Denial of Federal Employment Opportunities to the Unemployed and Those Facing Financial Difficulty Through No Fault of Their Own, January 31, 2014.

■ 11. In § 731.103, revise paragraph (d)(1) to read as follows:

**§ 731.103 Delegation to agencies.**

* * * * *

(d) * * *

(1) A hiring agency may not make specific inquiries concerning an applicant's criminal or credit background in oral or written form (including through the OF–306 or other forms used to conduct suitability investigations for Federal employment, USAJOBS, or any other electronic means) unless the hiring agency has made a conditional offer of employment to the applicant. Agencies may request an exception to the provision for making credit inquiries in advance of a conditional offer in accordance with the provisions in 5 CFR part 330, subpart M. For criminal inquiries prior to a conditional offer, this prohibition does not apply to applicants for positions excepted under 5 CFR 920.201(b). Agencies may make inquiries into an applicant's Selective Service registration, military service, citizenship status, where applicable, or previous work history, prior to making a conditional offer of employment to an applicant.

* * * * *

■ 12. Add part 754 as follows:

## PART 754—COMPLAINT PROCEDURES, ADVERSE ACTIONS, AND APPEALS FOR CRIMINAL HISTORY INQUIRIES PRIOR TO CONDITIONAL OFFER

### Subpart A—Complaint Procedures

Sec.

754.101 Coverage.
754.102 Agency complaint process.
754.103 Applicant representatives.

### Subpart B—Adverse Actions

754.201 Coverage.
754.202 Penalty determination.
754.203 Procedures.
754.204 Appeal rights.
754.205 Agency records.

**Authority:** 5 U.S.C. 554(a)(2), 1103(a)(5)(A), 1104(a)(2), 9201–9205, and Pub. L. 116–92, sec. 1122(b)(1).

### Subpart A—Complaint Procedures

**§ 754.101 Coverage.**

(a) *Actions covered.* A complaint, or any other information, submitted by an applicant for an appointment to a civil service position relating to compliance with section 9202 of title 5, United States Code.

(b) *Definitions.* In this subpart, *Agency, applicant, appointing authority, conditional offer, criminal history record information,* and *employee* have the meanings set forth in 5 CFR 920.101.

**§ 754.102 Agency complaint process.**

(a) *Complaint intake.* (1) Within 90 days of the effective date of this part, each agency must establish and publicize an accessible program for the agency to receive a complaint, or any other information, from an applicant, and any applicable supporting material, relating to the agency's compliance with section 9202 of title 5, United States Code and part 920 of this chapter, in accordance with the guidelines and standards established in this section and the issuances described in paragraph (d)(3) of this section.

(2) An applicant may submit a complaint, or any other information, to an agency within 30 calendar days of the date of the alleged non-compliance by an employee of an agency with section 9202 of title 5, United States Code and part 920 of this chapter.

(3) The agency shall extend the 30-calendar-day time limit in paragraph (a)(2) of this section when the applicant shows that the applicant was not notified of the time limits and was not otherwise aware of them, that the applicant did not know and reasonably should not have known that the non-compliance with 5 U.S.C. 9202 and part 920 of this chapter occurred, to consider a reasonable accommodation of a disability, or for other proper and adequate reasons considered by the agency.

(4) The agency must conduct outreach to inform an applicant of the procedure for submitting a complaint when it has reasonable cause to believe that the applicant is attempting to file a complaint.

(b) *Agency investigation.* (1) Acting under delegated authority from OPM and subject to the limitations and requirements of paragraph (d) of this section, the agency employing the employee against whom the complaint has been filed shall investigate the complaint, unless the employee is an administrative law judge appointed under 5 U.S.C. 3105. To carry out this function in an impartial manner, the same agency official(s) responsible for executing and advising on the recruitment action may not also be responsible for managing, advising, or overseeing the agency complaint process established in this section.

(2) In carrying out its delegated responsibilities under paragraph (b)(1) of this section, the agency shall develop an impartial and appropriate factual record adequate for OPM to make findings on the claims raised by any written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether non-compliance with 5 U.S.C. 9202 and part 920 of this chapter occurred. Agencies have discretion to determine the appropriate fact-finding methods that efficiently and thoroughly address the matters at issue.

(3) The agency must delegate to the investigator sufficient authority to secure the production, from agency employees and contractors, of documentary and testimonial evidence needed to investigate and report on the complaint.

(4) The applicant or applicant's representative must be given a reasonable time to respond to a request for documentary and testimonial

evidence. This time period will not exceed 10 calendar days under ordinary circumstances. However, in the agency's discretion, an agency may grant an extension under extenuating circumstances.

(5) The agency shall complete its investigation within 60 calendar days of the date of the filing of the complaint. An agency may extend the investigation period when the agency has provided more than 10 calendar days for the applicant to respond to a request for documentary and testimonial evidence pursuant to paragraph (b)(4) of this section. Notwithstanding an extension, the agency shall complete the investigation as expeditiously as possible.

(6) Within 30 calendar days of completing its investigation, the agency shall provide to OPM an administrative report. This report should include the applicant's complaint, or any other information submitted by the applicant, the agency's factual findings, a complete copy of all information gathered during the investigation, and any other information that the agency believes OPM should consider. The report should be submitted to the Manager, Employee Accountability, Accountability and Workforce Relations, Employee Services, Office of Personnel Management, 1900 E Street NW, Room 7H28, Washington, DC 20415 or *employeeaccountability@opm.gov.*

(c) *OPM adjudication.* (1) At OPM's discretion, OPM may request the agency provide additional information as necessary.

(2) OPM shall notify the agency and the subject(s) of the complaint in writing of its assessment of the complaint, including any decision to initiate adverse action proceedings under subpart B of this part.

(d) *OPM oversight.* (1) OPM may revoke an agency's delegation under this section if an agency fails to conform to this section or OPM issuances as described in paragraph (d)(3) of this section.

(2) OPM retains jurisdiction to make final determinations and take actions regarding the receipt and investigation of complaints, or any other information; record-keeping; and reporting related to an allegation of non-compliance with 5 U.S.C. 9202 and part 920 of this chapter. Paragraphs (a) and (b) of this section notwithstanding, OPM may, in its discretion, exercise its jurisdiction under this section in any case it deems necessary.

(3) OPM may set forth policies, procedures, standards, and supplementary guidance for the implementation of this section in OPM issuances.

### § 754.103 Applicant representatives.

An applicant may select a representative of the applicant's choice to assist the applicant during the complaint process. An agency may disallow as an applicant's representative an individual whose activities as a representative would cause a conflict of interest or position; an agency employee who cannot be released from official duties because of the priority needs of the Government; or an agency employee whose release would give rise to unreasonable costs to the Government.

## Subpart B—Adverse Actions

### § 754.201 Coverage.

(a) *Actions covered.* This subpart applies to actions taken under 5 U.S.C. 9204.

(b) *Employees covered.* This subpart covers an employee of an agency as defined and ''employee'' has the meaning given the term in 5 CFR 920.101.

(c) *Definitions.* In this subpart—

*Civil penalty* means a monetary penalty imposed on an employee of a covered agency when it has been determined the employee has violated the Fair Chance Act.

*Day* means a calendar day.

*Director* means the Director of OPM or Director's designee.

*Suspension* means the placing of an employee of a covered agency in a temporary status without duties and pay when it has been determined the employee violated the Fair Chance Act.

### § 754.202 Penalty determination.

(a) *First violation.* If the Director or Director's designee determines, after OPM provides the procedural rights in § 754.203, that an employee of an agency has violated 5 U.S.C. 9202 and part 920 of this chapter, the Director or Director's designee shall issue to the employee a written warning that includes a description of the violation and the additional penalties that may apply for subsequent violations; and direct the agency to file such warning in the employee's official personnel record file.

(b) *Subsequent violations.* If the Director or Director's designee determines, after OPM provides the procedural rights in § 754.203, that an employee of an agency has committed a subsequent violation of 5 U.S.C. 9202 and part 920 of this chapter, the Director or Director's designee may take the following action:

(1) For a second violation, order a suspension of the employee for a period of not more than 7 days.

(2) For a third violation, order a suspension of the employee for a period of more than 7 days.

(3) For a fourth violation—

(i) Order a suspension of the employee for a period of more than 7 days; and

(ii) Order the employee's agency to collect a civil penalty against the employee in an amount that is not more than $250, and remit the penalty amount to the U.S. Department of Treasury for deposit in the Treasury.

(4) For a fifth violation—

(i) Order a suspension of the employee for a period of more than 7 days; and

(ii) Order the employee's agency to collect a civil penalty against the employee in an amount that is not more than $500, and remit the penalty amount to the U.S. Department of Treasury for deposit in the Treasury.

(5) For any subsequent violation—

(i) Order a suspension of the employee for a period of more than 7 days; and

(ii) Order the employee's agency to collect a civil penalty against the employee in an amount that is not more than $1,000, and remit the penalty amount to the U.S. Department of Treasury for deposit in the Treasury.

(c) *Duration of suspension and penalty amount.* The Director or Director's Designee has discretion to determine the duration of a suspension and the amount of a penalty under this section, subject only to the minimum and maximum durations and amounts specified in this section.

(d) *Agency responsibilities.* An agency shall carry out an order of the Director to suspend an employee, or to collect and remit a civil penalty, pursuant to processing and recordkeeping instructions issued by OPM.

(1) The agency shall carry out the order of the Director to suspend the employee as soon as practicable.

(2) The agency shall carry out the order of the Director to collect and remit a civil penalty as soon as practicable, unless the employee timely appeals the action under § 754.204, in which case the agency shall collect and remit the civil penalty as soon as practicable after the Merit Systems Protection Board issues a final decision sustaining the action.

(e) *Administrative law judges.* Paragraphs (a) through (d) of this section do not apply if the Director or Director's designee believes that an administrative law judge has violated 5 U.S.C. 9202 and part 920 of this chapter. In any such

case the Director or Director's designee shall file a complaint with the Merit Systems Protection Board proposing an action set forth in 5 U.S.C. 9204 and describing with particularity the facts that support the proposed agency action, and the Board will determine whether the action is for good cause under its regulations in 5 CFR part 1201, subpart D.

**§ 754.203 Procedures.**

(a) *Notice of proposed action.* An employee against whom action is proposed under this subpart is entitled to at least 30 days' advance written notice. The notice must state the specific reason(s) for the proposed action and inform the employee of the right to review the material which is relied on to support the reasons for the proposed action given in the notice before any final decision is made by the Director or Director's designee.

(b) *Employee's answer.* (1) An employee may answer orally and in writing. The employee's agency must give the employee a reasonable amount of official time to review the material relied on to support OPM's proposed action, to prepare and present an answer orally and in writing, and to secure affidavits, if the employee is in an active duty status. OPM may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the employee's answer, within such time as would be reasonable, but not less than 7 days.

(2) The Director or Director's Designee may designate an Office of Personnel Management official to hear the employee's oral answer, and confer authority on that person to make or recommend a final decision on the proposed adverse action.

(c) *Representation.* An employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from the employee's official position would give rise to unreasonable costs or whose priority work assignments preclude release.

(d) *OPM decision.* (1) In arriving at a decision, the Director or Director's Designee will consider only the complaint, the applicant's supporting material, the agency's administrative file, the reasons specified in the notice of proposed action, and any oral and written answer by the employee or the employee's representative.

(2) The decision notice must specify in writing the reasons for the decision and advise the employee of any appeal rights.

(e) *Administrative Law Judges.* This section does not apply if the Director or Director's designee believes that an administrative law judge has violated 5 U.S.C. 9202 and part 920 of this chapter.

**§ 754.204 Appeal rights.**

(a) An employee against whom an action is taken by OPM under § 754.203 may appeal to the Merit Systems Protection Board, under the regulations of the Board, but only to the extent the action concerns suspensions for more than 14 days or combines a suspension and a civil penalty. An appeal must be filed by not later than 30 days after the effective date of the action. The procedures for filing an appeal with the Board are found at 5 CFR part 1201.

(b) If the Board finds that one or more of the charges brought by OPM against the employee is supported by a preponderance of the evidence, regardless of whether all specifications are sustained, it must affirm OPM's action. The Board may neither review whether the adverse action is for such cause as will promote the efficiency of the service, nor mitigate the duration of a suspension or the amount of a civil penalty ordered under this part.

(c) An appeal against OPM is the exclusive avenue of appeal. The employee has no right to file a separate appeal against the employing agency for processing a personnel action as ordered by OPM under § 754.202.

(d) OPM's action under § 754.202 of this part is not subject to an agency's administrative grievance procedure or a negotiated grievance procedure under a collective bargaining agreement between an exclusive bargaining representative and any agency.

**§ 754.205 Agency records.**

The complaint, the applicant's supporting material, the agency's administrative file, the notice of the proposed action, the employee's written reply, if any, summary or transcript of the employee's oral reply, if any, the notice of decision, and any order to the covered agency effecting the action together with any supporting material, must be maintained in the applicable Privacy Act system of records.

■ 13. Add part 920 to read as follows:

## PART 920—TIMING OF CRIMINAL HISTORY INQUIRIES

**Subpart A—General Provisions**

Sec.

920.101 Definitions.
920.102 Positions covered by Fair Chance Act regulations.

**Subpart B—Timing of Inquiries Regarding Criminal History**

920.201 Limitations on criminal history inquiries.
920.202 Violations.

**Authority:** 5 U.S.C. 1103(a)(5)(A), 9201–9206 and Pub. L. 116–92, sec. 1122(b)(1).

### Subpart A—General Provisions

**§ 920.101 Definitions.**

For the purpose of this part:

*Agency* means—

(1) An Executive agency as such term is defined in 5 U.S.C. 105, including—

(i) An Executive department defined in 5 U.S.C. 101;

(ii) A Government corporation defined in 5 U.S.C. 103(1); and

(iii) An independent establishment defined in 5 U.S.C. 104, including the Government Accountability Office;

(2) A military department as defined in 5 U.S.C. 102;

(3) The United States Postal Service and the Postal Regulatory Commission; and

(4) Each component of the Executive Office of the President that is an independent establishment, or that has a position in the competitive service, with respect to an applicant for the position.

*Applicant* means a person who has applied to an agency under its procedures for accepting applications consistent with governmentwide regulations, as applicable.

*Appointing authority* means an employee in the executive branch of the Government of the United States that has authority to make appointments to positions in the civil service.

*Conditional offer* means an offer of employment to a position in the civil service that is conditioned upon the results of a background investigation, including, as relevant here, the results of a criminal history inquiry.

*Criminal history record information*—(1) Except as provided in paragraphs (2) and (3) f this definition, has the meaning given the term in section 9101(a) of title 5, United States Code;

(2) Includes any information described in the first sentence of section 9101(a)(2) of title 5, United States Code, that has been sealed or expunged pursuant to law; and

(3) Includes information collected by a criminal justice agency, relating to an act or alleged act of juvenile delinquency, that is analogous to criminal history record information (including such information that has been sealed or expunged pursuant to law).

*Employee* means an ''employee'' as defined in 5 U.S.C. 2105 and an employee of the United States Postal Service or the Postal Regulatory Commission.

*Political appointment* means an appointment by the President without Senate confirmation (except those appointed under 5 CFR 213.3102(c)); an appointment to a position compensated under the Executive Schedule (5 U.S.C. 5312 through 5316); an appointment of a White House Fellow to be assigned as an assistant to a top-level Federal officer (5 CFR 213.3102(z)); a Schedule C appointment (5 CFR 213.3301, 213.3302); a noncareer, limited term, or limited emergency Senior Executive Service appointment (5 CFR part 317, subpart F); an appointee to serve in a political capacity under agency-specific authority; and a provisional political appointment.

**§ 920.102 Positions covered by Fair Chance Act regulations.**

(a) *Positions covered.* This part applies to all positions in the competitive service, excepted service, and Senior Executive Service in an agency.

(b) *Exempt positions.* For purposes of this part an exempt position is any position for which a hiring agency is required by statutory authority to make inquiries into an applicant's criminal history prior to extending an offer of employment to the applicant.

## Subpart B—Timing of Inquiries Regarding Criminal History

**§ 920.201 Limitations on criminal history inquiries.**

(a) *Applicability.* An employee of an agency may not request, in oral or written form (including through the Declaration for Federal Employment (Office of Personnel Management Optional Form 306) or any similar successor form, the USAJOBS internet website, or any other electronic means) that an applicant for an appointment to a position in the civil service disclose criminal history record information regarding the applicant before the appointing authority extends a conditional offer to the applicant. This includes the following points in the recruitment and hiring process:

(1) Initial application, through a job opportunity announcement on USAJOBS, or through any recruitment/public notification such as on the agency's website/social media, etc.;

(2) After an agency receives an initial application through its back-end system, through shared service providers/recruiters/contractors, or orally or via email and other forms of electronic notification; and

(3) Prior to, during, or after a job interview. This prohibition applies to agency personnel, including when they act through shared service providers, contractors (acting on behalf of the agency) involved in the agency's recruitment and hiring process, or automated systems (specific to the agency or governmentwide).

(b) *Exceptions for certain positions.* (1) The prohibition under paragraph (a) of this section shall not apply with respect to an applicant for an appointment to a position:

(i) Which is exempt in accordance with § 920.102(b);

(ii) That requires a determination of eligibility for access to classified information;

(iii) Has been designated as a sensitive position under the Position Designation System issued by OPM and the Office of Director of National Intelligence, which describes in greater detail agency requirements for designating positions that could bring about a material adverse effect on the national security;

(iv) Is a dual-status military technician position in which an applicant or employee is subject to a determination of eligibility for acceptance or retention in the armed forces, in connection with concurrent military membership; or

(v) Is a Federal law enforcement officer position meeting the definition in section 115(c) of title 18, U.S. Code.

(2) The prohibition under paragraph (a) of this section shall not apply with respect to an applicant for a political appointment.

(c) *Notification to applicants.* Each agency must publicize to applicants the prohibition described in paragraph (a) of this section in job opportunity announcements and on agency websites/portals for positions that do not require a posting on USAJOBS, such as excepted service positions, and in addition to information on where it has posted about its complaint intake process under as required by part 754 of this chapter.

**§ 920.202 Violations.**

(a) An agency employee may not request, orally or in writing, information about an applicant's criminal history prior to making a conditional offer of employment to that applicant unless the position is exempted or excepted in accordance with § 920.201(b).

(b) A violation (or prohibited action) as defined in paragraph (a) of this section occurs when agency personnel, shared service providers, or contractors (acting on behalf of the agency) involved in the agency's recruitment and hiring process, either personally or through automated systems (specific to the agency or governmentwide), make oral or written requests prior to giving a conditional offer of employment—

(1) In a job opportunity announcement on USAJOBS or in any recruitment/public notification such as on the agency's website or social media;

(2) In communications sent after an agency receives an initial application, through an agency's talent acquisition system, shared service providers/recruiters/contractors, orally or in writing (including via email and other forms of electronic notification); or

(3) Prior to, during, or after a job interview or other applicant assessment.

(c) When a prohibited request, announcement, or communication is publicly posted or simultaneously distributed to multiple applicants, it constitutes a single violation.

(d) Any violation as defined in paragraph (a) of this section is subject to the complaint and penalty procedures in part 754 of this chapter.

[FR Doc. 2023–18242 Filed 8–31–23; 8:45 am]

BILLING CODE 6325–39–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Chapter I

**[Docket No. FDA–2019–D–4212]**

## Wholesale Distributor Verification Requirement for Saleable Returned Drug Product and Dispenser Verification Requirements When Investigating a Suspect or Illegitimate Product—Compliance Policies, Revision 1; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, Department of Health and Human Services (HHS).

**ACTION:** Notification of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''Wholesale Distributor Verification Requirement for Saleable Returned Drug Product and Dispenser Verification Requirements When Investigating a Suspect or Illegitimate Product—Compliance Policies, Revision 1.'' This revised guidance explains that FDA intends to extend for an additional year (from November 27, 2023, to November 27, 2024), the enforcement policies

described in the guidance entitled ''Wholesale Distributor Verification Requirement for Saleable Returned Drug Product and Dispenser Verification Requirements When Investigating a Suspect or Illegitimate Product—Compliance Policies,'' published in the **Federal Register** on October 23, 2020 (the 2020 Compliance Policies). The 2020 Compliance Policies relate to provisions in the Federal Food, Drug, and Cosmetic Act (FD&C Act), as added by the Drug Supply Chain Security Act (DSCSA), requiring wholesale distributors to verify the product identifier prior to further distributing saleable returned product and requiring dispensers to verify the product identifier for suspect or illegitimate product in the dispenser's possession or control.

**DATES:** The announcement of the guidance is published in the **Federal Register** on September 1, 2023.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2019–D–4212 for ''Wholesale Distributor Verification Requirement for Saleable Returned Drug Product and Dispenser Verification Requirements When Investigating a Suspect or Illegitimate Product—Compliance Policies.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Sarah Venti, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3130, *drugtrackandtrace@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On October 23, 2020, FDA published the 2020 Compliance Policies. FDA is announcing the availability of a guidance for industry entitled ''Wholesale Distributor Verification Requirement for Saleable Returned Drug Product and Dispenser Verification Requirements When Investigating a Suspect or Illegitimate Product—Compliance Policies, Revision 1'', which extends the enforcement policies described in the 2020 Compliance Policies for an additional year, from November 27, 2023, until November 27, 2024. As described in this revised guidance, FDA does not intend to take enforcement action, prior to November 27, 2024, against wholesale distributors who do not verify the product identifier prior to further distributing saleable returned product, or against dispensers who do not verify the product identifier of the statutorily designated proportion of suspect or illegitimate product in the dispenser's possession or control, as required under section 582 of the FD&C Act (21 U.S.C. 360eee–1), as added by the DSCSA (Title II of Pub. L. 113–54).

This revised guidance is being issued consistent with FDA's good guidance practices regulations (21 CFR 10.115). FDA is implementing this guidance without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (21 CFR 10.115(g)(2)). FDA made this determination because this guidance document provides information pertaining to statutory requirements that FDA had planned to begin enforcing as of November 27,

2023, for wholesale distributors to verify the product identifier prior to further distributing saleable returned product under section 582(c)(4)(D) of the FD&C Act and for dispensers to verify the product identifier, including the standardized numerical identifier, for suspect or illegitimate product in the dispenser's possession or control under section 582(d)(4)(A)(ii)(II) and (d)(4)(B)(iii) of the FD&C Act. It is important that FDA provide this information before that date. Although this guidance document is being implemented immediately, it remains subject to comment in accordance with the Agency's good guidance practices (21 CFR 10.115(g)(3)).

Beginning November 27, 2019, wholesale distributors were required, under section 582(c)(4)(D) of the FD&C Act, to verify the product identifier, including the standardized numerical identifier, on each sealed homogeneous case of saleable returned product, or, if such product is not in a sealed homogeneous case, on each package of saleable returned product, prior to further distributing such returned product. In the **Federal Register** published September 24, 2019 (84 FR 50044), FDA issued a notice announcing the availability of the Wholesale Distributor Verification Requirement for Saleable Returned Drug Product—Compliance Policy guidance (2019 Compliance Policy), which described a 1-year enforcement policy with respect to this wholesale distributor requirement, until November 27, 2020. The Agency subsequently published the 2020 Compliance Policies, which extended the enforcement policy in the 2019 Compliance Policy with respect to this wholesale distributor requirement for 3 years, until November 27, 2023, and also included an enforcement policy until that same date with respect to the requirement for dispensers to verify the product identifier, including the standardized numerical identifier, for suspect or illegitimate product in the dispenser's possession or control.

Since the announcement of the 2020 Compliance Policies, FDA has received additional comments and feedback from wholesale distributors, as well as other trading partners and stakeholders, expressing concern with industry-wide readiness for implementation of the verification of saleable returned product requirement for wholesale distributors and the challenges stakeholders face with developing interoperable, electronic systems to enable such verification and achieve interoperability between networks. Specifically, comments received point out continuing challenges posed by the large volume of saleable returned product, explaining that wholesale distributors still need more time to test verification systems using real-time volumes of saleable returned product with all trading partners involved, as opposed to using small-scale pilot test projects. Given all these concerns, FDA recognizes that some wholesale distributors may need additional time, beyond November 27, 2023, before they can begin verifying returned products prior to resale or other further distribution as required by section 582(c)(4)(D) of the FD&C Act in an efficient, secure, and timely manner. Additionally, section 582 of the FD&C Act requires certain trading partners (manufacturers, repackagers, wholesale distributors, and dispensers) to exchange transaction information, transaction history, and a transaction statement when engaging in transactions involving certain prescription drugs. Section 581(27)(E) of the FD&C Act (21 U.S.C. 360eee(27)(E)) requires that the transaction statement include a statement that the entity transferring ownership in a transaction had systems and processes in place to comply with verification requirements under section 582 of the FD&C Act. This revised guidance also explains that, prior to November 27, 2024, FDA does not intend to take action against a wholesale distributor for providing a transaction statement to a subsequent purchaser of product on the basis that such wholesale distributor does not yet have systems and processes in place to comply with the saleable return verification requirements under section 582(c)(4)(D) of the FD&C Act. The guidance explains the scope of the compliance policy in further detail.

In addition to helping minimize possible disruptions in the distribution of certain prescription drugs in the United States, FDA believes that by extending the enforcement approach described in the 2020 Compliance Policies until November 27, 2024, wholesale distributors will be able to focus resources and efforts on the requirements for enhanced drug distribution security under section 582(g) of the FD&C Act (as described below). Thus, instead of developing separate processes or infrastructures solely for the saleable return verification requirement, wholesale distributors can incorporate the saleable return verification requirements into the enhanced verification required under section 582(g) of the FD&C Act.

Further, section 582 of the FD&C Act, as added by the DSCSA, also established the requirements that specify how dispensers must investigate suspect and illegitimate product. As part of the investigation, section 582(d)(4)(A)(ii)(II) of the FD&C Act requires dispensers to verify the product identifier, including the standardized numerical identifier, of at least three packages or 10 percent of such suspect product, whichever is greater, or all packages, if there are fewer than three, corresponds with the product identifier for such product in the dispenser's possession or control. Section 582(d)(4)(B)(iii) of the FD&C Act requires dispensers to verify product as described in section 582(d)(4)(A)(ii), which includes the section 582(d)(4)(A)(ii)(II) requirement, in response to a notification from FDA or a trading partner that the product is an illegitimate product.

In response to comments received from stakeholders regarding dispenser readiness to meet these requirements, and to minimize possible disruptions in the distribution of affected prescription drugs in the United States, this guidance also announces that FDA does not intend to take action before November 27, 2024, against dispensers who do not verify the product identifier of the statutorily designated proportion of suspect product as required by section 582(d)(4)(A)(ii)(II) of the FD&C Act, and that part of section 582(d)(4)(B)(iii) of the FD&C Act that requires dispensers to perform the same verification activities of section 582(d)(4)(A)(ii)(II) when responding to a notification of illegitimate product from FDA or another trading partner. FDA believes that the 1-year extension under this guidance of the applicable 2020 Compliance Policies will facilitate the ability of dispensers to ensure the systems and processes that are put into place to meet the enhanced drug distribution security requirements, which FDA will generally not enforce before November 27, 2024, will also fulfill the dispenser verification requirements under section 582(d)(4) of the FD&C Act.

In the ''Enhanced Drug Distribution Security Requirements Under Section 582(g)(1) of the Federal Food, Drug, and Cosmetic Act—Compliance Policies'' (Enhanced Drug Distribution Security Compliance Policies) (88 FR 58498), FDA announced a 1-year enforcement policy with respect to the enhanced drug distribution security requirements set to take effect on November 27, 2023. FDA chose to adopt this enforcement policy until November 27, 2024, because FDA was aware that some stakeholders were facing challenges with implementing the section 582(g) requirements and needed additional time to comply with these requirements.

While FDA generally expects trading partners to have the systems and

processes in place to meet the requirements of section 582(g) of the FD&C Act, FDA recognizes that some technical and operational issues may not be fully resolved by November 27, 2023. The Agency believes the Enhanced Drug Distribution Security Compliance Policies can help trading partners address such issues by accommodating the additional time that may be needed to implement, troubleshoot, and mature their systems and processes. For additional information about enhanced drug distribution security please see the June 2021 draft guidance for industry entitled ''Enhanced Drug Distribution Security at the Package Level Under the Drug Supply Chain Security Act'' (available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/enhanced-drug-distribution-security-package-level-under-drug-supply-chain-security-act*).

This guidance represents the current thinking of FDA on ''Wholesale Distributor Verification Requirement for Saleable Returned Drug Product and Dispenser Verification Requirements When Investigating a Suspect or Illegitimate Product—Compliance Policies.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.[1]

## II. Paperwork Reduction Act of 1995

FDA concludes that this guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: August 28, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–18899 Filed 8–31–23; 8:45 am]

**BILLING CODE 4164–01–P**

[1] The Office of the Federal Register has published this document under the category ''Rules and Regulations'' pursuant to its interpretation of 1 CFR 5.9(b). We note that the categorization as such for purposes of publication in the **Federal Register** does not affect the content or intent of the document. See 1 CFR 5.1(c).

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket No. USCG–2023–0651]**

## Special Local Regulations; Portland Dragon Boat Races, Willamette River, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce special local regulations for the Portland Dragon Boat Races from September 9 through 10, 2023, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Thirteenth Coast Guard District identifies the regulated area for this event on the Willamette River in Portland, OR. During the enforcement periods, the operator of any vessel in the regulated area must comply with the directions from the Patrol Commander or any official patrol vessel. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the Captain of the Port, Sector Columbia River.

**DATES:** The regulations in 33 CFR 100.1302 will be enforced from 7:30 a.m. until 5:30 p.m., each day from September 9 through 10, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call or email LT Carlie Gilligan, Waterways Management Division, Sector Columbia River, Coast Guard; telephone 503–240–9319, email *SCRWWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce special local regulations in 33 CFR 100.1302 for the Portland Dragon Boat Races regulated area from 7:30 a.m. to 5:30 p.m. on September 9 and 10, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Thirteenth Coast Guard District, § 100.1302, specifies the location of the regulated area for the Portland Dragon Boat Races which encompasses portions of the Willamette River in Portland, OR. During the enforcement periods, as reflected in § 100.1302, vessels may not transit the regulated areas without approval from the Patrol Commander or an Official Patrol Vessel. Vessels permitted to transit must operate at a no wake speed, in a manner which will not endanger participants or other crafts in the event.

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

Dated: August 21, 2023.

**J.W. Noggle,**

*Captain, U.S. Coast Guard, Captain of the Port Columbia River.*

[FR Doc. 2023–18917 Filed 8–31–23; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

**RIN 2900–AR25**

## Presumptive Service Connection for Respiratory Conditions Due to Exposure to Fine Particulate Matter

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This rulemaking adopts as final, with changes, an interim final rule that amended the Department of Veterans Affairs (VA) adjudication regulations governing presumptive service connection based on presumed exposures to fine particulate matter. The amendment was necessary to provide health care, services, and benefits to Gulf War Veterans who were exposed to fine particulate matter associated with deployment to the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, and Uzbekistan. The amendment eased the evidentiary burden of Gulf War Veterans who file claims with VA for asthma, rhinitis, and sinusitis, to include rhinosinusitis.

**DATES:**

*Effective date:* This rule is effective October 31, 2023.

*Applicability date:* The provisions of this final rule shall apply to all applications for benefits that are received by VA on or after the effective date of this final rule or that are pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on the effective date of this final rule.

**FOR FURTHER INFORMATION CONTACT:** Jane Allen, Policy Analyst; Robert Parks, Chief, Part 3 Regulations Staff (211), Compensation Service (21C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue

NW, Washington, DC 20420, 202–461–9700. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On August 5, 2021, VA published an interim final rule in the **Federal Register** (86 FR 42724) to amend its adjudication regulations to establish presumptive service connection for asthma, rhinitis, and sinusitis, to include rhinosinusitis, in association with presumed exposure to fine particulate matter. These presumptions apply to veterans who served on active military, naval, air, or space service in the Southwest Asia theater of operations during the Persian Gulf War (hereinafter Gulf War), as well as in Afghanistan, Syria, Djibouti, or Uzbekistan, on or after September 19, 2001. VA provided a 60-day comment period which ended on October 4, 2021. VA received comments from the National Veterans Legal Services Program, National Law School Veterans Clinic Consortium, Stronghold Freedom Foundation, Disabled American Veterans, Veterans of Foreign Wars, Wounded Warrior Project, and nineteen individuals. Nine of the comments received expressed general support of the rule. VA has made limited changes based on the comments, as discussed below.

**I. Asthma, Obstructive Sleep Apnea, and Respiratory Illnesses Under 38 CFR 3.317**

VA received one comment suggesting that asthma, obstructive sleep apnea, and other respiratory illnesses should be considered medically unexplained chronic multisystem illnesses under 38 CFR 3.317, Compensation for certain disabilities occurring in Persian Gulf veterans. This commenter stated that evidence is not required to prove that an illness is associated with a veteran's service in Southwest Asia for claims under 38 U.S.C. 1117 and 38 CFR 3.317. However, this rulemaking and the interim final rule address regulations governing presumptive service connection for respiratory conditions based on presumed exposures to fine particulate matter. The rulemaking does not address 38 CFR 3.317 or whether certain conditions may be considered medically unexplained chronic multisymptom illnesses. Further, as explained in the interim final rule, the Secretary relied on the broad authority under 38 U.S.C. 501(a) when establishing section 3.320. Section 3.320 and the presumptions it established are not based on the same authority that underlies section 3.317, to include 38 U.S.C. 1117 and 1118. Therefore, this comment is outside the scope of the rulemaking, and VA makes no change based on it.

**II. Service in Afghanistan Under 38 CFR 3.317(a) and (b)**

One commenter expressed concern that VA considers veterans who served in Afghanistan to be exposed to infectious diseases and fine particulate matter in the same manner as other veterans in Southwest Asia, however, excludes their service from the exposures and illnesses under paragraph (a) and (b) of 38 CFR 3.317. However, as explained above, this rulemaking and the interim final rule address regulations governing presumptive service connection for respiratory conditions based on presumed exposures to fine particulate matter and do not address 38 CFR 3.317.

Paragraphs (a) and (b) of 38 CFR 3.317 regulate claims for compensation due to undiagnosed illnesses and medically unexplained chronic multisymptom illnesses. The rule establishing 38 CFR 3.317 (a) and (b) (75 FR 59968) was based on a National Academies of Sciences, Engineering, and Medicine (NASEM) review focused primarily upon health effects of exposure to hazards associated with service in the Southwest Asia theater of operations, as that area was defined for purposes of the 1991 Gulf War. See Executive Order 12744 (Jan. 12, 1991). Afghanistan is not located in Southwest Asia and therefore was not included as a qualifying location under 38 CFR 3.317(a) and (b). However, section 405 of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168, (PACT Act) expanded the definition of a Persian Gulf veteran by adding Afghanistan, Israel, Egypt, Turkey, Syria, and Jordan as eligible locations under 38 U.S.C. 1117. Thus, individuals with service in Afghanistan are no longer excluded from the exposures and illnesses under paragraph (a) and (b) of 38 CFR 3.317 due to the PACT Act. But implementing that provision of the PACT Act is beyond the scope of this rule, and VA plans to address that statutory change in a separate rulemaking. Therefore, VA makes no changes based on this comment.

**III. Effective Dates**

Three commenters inquired about effective dates and stated that claims for the three new presumptive conditions should be granted retroactive effective dates in the same manner as claims under *Nehmer* v. *United States Department of Veterans Affairs. Nehmer* was a class-action lawsuit against VA by Vietnam veterans and their survivors, who alleged that VA had improperly denied their claims for service-connected compensation for disabilities allegedly caused by exposure to the herbicide Agent Orange in service. *See Nehmer* v. *U.S. Department of Veterans Affairs,* No. CV–86–6161 TEH (N.D. Cal.). 38 CFR 3.816 regulates effective date rules required by *Nehmer* and defines a *Nehmer* class member as ''a Vietnam veteran who has a covered herbicide disease; or a surviving spouse, child, or parent of a deceased Vietnam veteran who died from a covered herbicide disease.'' 38 CFR 3.816(b). VA notes that the effective date provisions of the *Nehmer* court order and section 3.816 apply only to claims based on exposure to herbicides in the Republic of Vietnam during the Vietnam era and are therefore inapplicable to this final rule.

Further, as stated in the interim final rule, this rule applies to claims received by VA on or after the effective date of the rule and to claims pending before VA on that date. This will ensure that VA adheres to the provisions of its change-of-law regulation, 38 CFR 3.114, which states, ''[w]here pension, compensation, dependency and indemnity compensation . . . is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue.'' Section 3.114 reflects ordinary statutory effective date principles that VA is bound to apply in cases outside the scope of *Nehmer. See* 38 U.S.C. 5110. Specifically, the law requires that the effective date for an award of benefits pursuant to an Act or administrative issue ''shall not be earlier than the effective date of the Act or administrative issue.'' 38 U.S.C. 5110(g).

Therefore, VA makes no changes based on these comments.

**IV. Exposures in Other Locations**

One commenter inquired whether the interim final rule included exposure to fine particulate matter in other locations, specifically in Germany. 38 CFR 3.320 was based on scientific and medical studies that focused on the respiratory effects of fine particulate matter for Veterans who served in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, and Uzbekistan during the Gulf War. As stated in the interim final rule, veterans began reporting a variety of respiratory health issues during and after the initial

Gulf War conflict. As a result, Congress mandated that VA study the health outcomes of veterans deployed to the Southwest Asia theater of operations. VA then requested NASEM to study the evidence regarding respiratory health outcomes in veterans of the Southwest Asia conflicts. The results of that study form the basis for this rulemaking. As Germany was not a location considered in the study, it cannot be included as a qualifying location under 38 CFR 3.320. VA makes no changes based on this comment.

**V. Eligible Locations in Southwest Asia**

One commenter questioned whether eligible locations in Southwest Asia, Afghanistan, Syria, Djibouti, or Uzbekistan will be limited to specific bases or combat outposts. The simple answer is no. A qualifying period of service for presumptive service connection based on exposure to fine particulate matter is defined as service in the Southwest Asia theater of operations during the Gulf War, or in Afghanistan, Syria, Djibouti or Uzbekistan on or after September 19, 2001, during the Gulf War. The Southwest Asia theater of operations refers to Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations. 38 CFR 3.317(e)(2). The eligible locations listed under 38 CFR 3.320 are more expansive than specific bases or combat outposts. VA makes no changes based on this comment.

**VI. Combat Presumption**

One commenter stated that VA failed to consider that for ''veterans who claim that their condition is a result of their combat service in Southwest Asia, their [*sic*] becomes an evidentiary burden shift that requires the VA to show affirmative evidence proving that the claimed presumptive condition did not manifest during service in Southwest Asia, the VA must confirm if an event after service caused the veteran's condition, or the VA must confirm if the claimed condition was directly caused as a result of the veteran's own willful misconduct or while under the influence of drugs or alcohol.'' The commenter suggested that claims based on combat service for asthma, rhinitis, and sinusitis, to include rhinosinusitis, already have a presumption in place that is equally advantageous to veterans as the new 38 CFR 3.320. VA disagrees with this suggestion.

There are three basic elements required to establish service connection: (1) a current disability, (2) an injury or disease that was incurred or aggravated during service, and (3) a causal relationship between the injury or disease and the veteran's current disability. Several presumptions have been created to ease the burden of providing evidence of these three elements.

Consideration of combat service is directed by 38 CFR 3.304(d), which provides a reduced evidentiary burden for combat veterans in proving an in-service illness or injury (Element #2). *See Collette* v. *Brown,* 82 F.3d 389, 392–93 (Fed. Cir. 1996). However, the reduced evidentiary burden provided by 38 CFR 3.304(d) should not be confused with the presumption provided by 38 CFR 3.320. 38 CFR 3.320 eases the evidentiary burden of proving exposure to fine particulate matter in service (Element #2) and additionally addresses the requirement to demonstrate causation (Element #3). Claims for service connection based on combat must still show ''a causal relationship between the present disability and the injury, disease, or aggravation of a preexisting injury or disease incurred during active duty.'' *See Shedden* v. *Principi,* 381 F.3d 1163, 1167 (Fed. Cir. 2004). We also note that while the presumptions in section 3.320 should, in the vast majority of cases, obviate the question of whether a given disease or injury was incurred in combat, to the extent rare cases genuinely implicate both regulations, VA sees no reason why they cannot operate to benefit the same veteran. As the presumption under the new 38 CFR 3.320 addresses different and additional aspects of establishing entitlement to service connection than 38 CFR 3.304(d), VA makes no changes based on this comment.

**VII. Presumptive Service Connection for Vietnam Veterans Exposed to Asbestos**

One commenter proposed that VA establish presumptive service connection for Vietnam Veterans who served aboard World War II era ships and were exposed to asbestos. As previously explained, this rulemaking is based on current medical and scientific evidence related to the respiratory health effects of fine particulate matter for veterans who served in the Southwest Asia theater of operations during the Gulf War, or in Afghanistan, Syria, Djibouti or Uzbekistan on or after September 19, 2001, during the Gulf War. As this comment is beyond the scope of our rulemaking, VA makes no changes based on this comment.

**VIII. Allergic Rhinitis**

One commenter asked whether veterans who are currently service connected for allergic rhinitis with a 0 percent evaluation can file an appeal based on this amendment and what the criteria would be. Veterans who are already service connected and seek an increased evaluation because their condition has worsened should submit a claim for increased evaluation on VA Form 21–526EZ, Application for Disability Compensation and Related Compensation Benefits. VA makes no changes based on this comment.

Another commenter inquired whether claims for allergic rhinitis would warrant a VA examination to determine if this condition was in fact ''chronic rhinitis'' and therefore eligible for presumptive service connection. Generally, pursuant to 38 CFR 3.159(c)(4), VA will assist a claimant in obtaining an examination if it is necessary to decide the claim. An examination may serve the purpose of obtaining medical evidence relevant to establishing entitlement to benefits, such as information about diagnosis, onset, and etiology, or may be necessary to develop adequate information for rating purposes. Applying the criteria from 38 CFR 3.159(c)(4) to the substantive criteria of the version of section 3.320 implemented by the interim final rule, an examination is warranted in claims under 38 CFR 3.320(a)(2) when three criteria are met: (1) the veteran claims a qualifying condition listed at 38 CFR 3.320(a)(2)(i)–(iii) (or signs or symptoms of a qualifying condition under 38 CFR 3.320(a)(2)), (2) the veteran's military records show a qualifying period of service under 38 CFR 3.320(a)(5), and (3) evidence shows that the veteran's qualifying condition manifested within 10 years from the date of last discharge. However, as explained below, VA is removing the 10-year manifestation period, and so that criterion is no longer necessary for an examination to be warranted. Allergic rhinitis is a covered condition under 38 CFR 3.320 as long as the condition is chronic in nature and not an acute manifestation. VA makes no changes based on this comment.

**IX. Chronicity Should Be Presumed**

One commenter recommended that VA explicitly state that chronicity is presumed to be innate to asthma, rhinitis, and sinusitis, to include rhinosinusitis. The paragraph heading at 38 CFR 3.320(a)(2) is ''*Chronic diseases associated with exposure to fine particulate matter.*'' 38 CFR 3.320 makes clear that the diseases associated with

exposure to fine particulate matter are chronic in nature. However, as explained in the interim final rule notice, diseases that are seasonal or acute allergic manifestations in nature are not covered diseases as, pursuant to 38 CFR 3.380, ''[s]easonal and other acute allergic manifestations subsiding in the absence of or removal of the allergen are generally to be regarded as acute diseases, healing without residuals.'' Therefore, VA makes no changes based on this comment.

**X. Additional Respiratory Conditions Should Be Included Under 38 CFR 3.320**

One commenter stated that VA failed to provide a reasonable explanation as to why asthma, rhinitis, and sinusitis, to include rhinosinusitis, were approved for presumptive service connection and not all 27 health outcomes listed in NASEM's 2020 report, Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations. As explained in the interim final rule, NASEM's report identified 27 of the most prevalent respiratory health outcomes experienced by Gulf War veterans. Of the 27 respiratory health outcomes, only three respiratory symptoms met the criteria for limited or suggestive evidence of an association with service in Southwest Asia: chronic persistent cough, shortness of breath (dyspnea), and wheezing. The remaining 24 conditions, including asthma, rhinitis, and sinusitis, had inadequate or insufficient evidence to determine an association.

To respond to the findings in NASEM's 2020 report, VA convened a workgroup of VA subject matter experts in disability compensation, health care, infectious diseases, occupational and environmental medicine, public health, epidemiology, toxicology, and research. The VA workgroup reviewed the most claimed chronic conditions related to airborne hazards for disability compensation benefits and found that asthma, sinusitis, and rhinitis were the most claimed and granted (on the basis of direct service connection) respiratory conditions, and these conditions also most closely represented the symptomatology of chronic persistent cough, shortness of breath (dyspnea), and wheeze. The VA workgroup then analyzed respiratory claims data comparing veterans who were deployed to Southwest Asia with veterans who had never been deployed. The VA workgroup found that the claim rates and service connection prevalence rates for asthma, rhinitis, and sinusitis were higher than for non-deployed veterans.

VA recognizes that there are limitations in evidence specific to deployed service members and a range in the strength of association between fine particulate matter exposure and the 27 respiratory health outcomes. However, section 501(a)(1) of title 38, United States Code, provides that ''[t]he Secretary has authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by [VA] and are consistent with those laws, including . . . regulations with respect to the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under such laws.'' This broad authority includes the establishment of a presumption of service connection and exposure under specified circumstances, provided there is a rational basis for the presumptions. For the reasons noted above and in the interim final rule, including the review of NASEM's 2020 report, review of internal claims data, and a comprehensive supplemental literature review, the Secretary has determined that there was a rational basis to support a presumption of service connection when there is proof of qualifying service (38 CFR 3.320(a)(5)) and the subsequent development of asthma, rhinitis, or sinusitis, to include rhinosinusitis. However, the Secretary also determined that there was not a rational basis at this time to support creating a presumption of service connection for the remaining 24 health outcomes listed in NASEM's 2020 report. VA makes no changes based on this comment.

Multiple commenters also suggested that VA should create presumptions for additional conditions. For example, one commenter suggested that secondary health concerns for individuals diagnosed with asthma or severe sinusitis should be reviewed and added to 38 CFR 3.320. VA recognizes that chronic respiratory conditions can lead to numerous secondary health effects. However, for the reasons explained above and in the interim final rule, the Secretary determined that at this time there was a reasonable basis to support creating presumptions of service connection for only the three listed conditions. VA makes no changes based on this comment.

Another commenter specifically requested that VA create a presumption of service connection for chronic obstructive pulmonary disorder (COPD), chronic bronchitis, obstructive sleep apnea, and emphysema. The commenter stated that COPD, chronic bronchitis, obstructive sleep apnea, and emphysema involve symptoms of chronic persistent cough, shortness of breath, and wheezing and have increased claim rates that are comparable to or exceed those for asthma, rhinitis, and sinusitis. Another commenter questioned why obstructive sleep apnea was not added as a presumptive condition. For the reasons provided below, VA makes no changes based on these comments.

The complexity of the etiologic factors associated with obstructive sleep apnea were considered when establishing new presumptions under 38 CFR 3.320. Unlike asthma, sinusitis, and rhinitis, obstructive sleep apnea can be related to anatomic risk factors, such as craniofacial profile, structural abnormalities (*e.g.,* pharyngeal wall instability) and neck circumference. Furthermore, obesity and high body mass index are the strongest risk factors for obstructive sleep apnea.[1]

Additionally, provisions of the PACT Act added presumptions related to Gulf War service for additional respiratory conditions, including COPD, chronic bronchitis, and emphysema. Incorporation of provisions of this Act relevant to this regulation will be the subject of separate and future rulemakings.

Further, we note that section 202 of the PACT Act created a new process for establishing presumptions of service connection based on toxic exposure. Under the new process, VA is required to publish notice in the **Federal Register**, no less than once per year, to notify the public of the formal evaluations of environmental exposures and adverse health outcomes that the Secretary plans to conduct. With each notice published in the **Federal Register**, VA will seek public comment and hold an open meeting for members of the public to ensure that the public participates in the decision-making process (38 U.S.C. 1171–1174). VA welcomes comments and contributions from the public on future notices.

**XI. 10-Year Manifestation Period**

VA received nine comments that either objected to or requested revision

[1] Abbasi A, Gupta SS, Sabharwal N, Meghrajani V, Sharma S, Kamholz S, Kupfer Y. A comprehensive review of obstructive sleep apnea. Sleep Sci. 2021 Apr–Jun;14(2):142–154. doi: 10.5935/1984–0063.20200056. PMID: 34381578; PMCID: PMC8340897.

Sutherland K, Keenan BT, Bittencourt L, Chen NH, Gislason T, Leinwand S, Magalang UJ, Maislin G, Mazzotti DR, McArdle N, Mindel J, Pack AI, Penzel T, Singh B, Tufik S, Schwab RJ, Cistulli PA; SAGIC Investigators. A Global Comparison of Anatomic Risk Factors and Their Relationship to Obstructive Sleep Apnea Severity in Clinical Samples. J Clin Sleep Med. 2019 Apr 15;15(4):629–639. doi: 10.5664/jcsm.7730. PMID: 30952214; PMCID: PMC6457518.

of the 10-year manifestation period requirement. VA found that several comments identified factors that were not considered in our initial analysis. Based on the substantive comments received, summarized below, VA will amend 38 CFR 3.320(a)(2) to remove the requirement that asthma, sinusitis, and rhinitis manifest within 10 years from the date of the most recent separation from military service.

VA received one comment that questioned whether the 10-year manifestation period starts following the most recent period of service, even if qualifying service in the defined locations did not occur during that period of service, or whether the manifestation period begins at the end of the period of service during which actual qualifying service took place, even if there is a later, separate period of active service during which no qualifying service took place. Another commenter stated that the 10-year manifestation period was poorly defined.

Several commenters recommended that the 10-year manifestation period be extended beyond 10 years. One commenter noted they had suffered symptoms of respiratory illness since their discharge in 2006 but did not receive a formal diagnosis until 2020, more than 10 years since discharge. The commenter felt that they would not be eligible for presumptive service connection based on the 10-year manifestation period.

Several commenters objected to the 10-year manifestation period stating that many veterans do not seek treatment and self-treat with over-the-counter medications, making it difficult to produce medical records in support of their claim. One commenter noted that symptoms of asthma, rhinitis, and sinusitis that would warrant a non-compensable rating may not require treatment from a medical provider, and veterans may not seek medical treatment until their symptoms increase in severity and self-treatment of the disability is no longer sufficient. Several commenters also stated that veterans who served during the Gulf War were not aware that there was a possible connection between their symptoms and their service, as the scientific studies on the effects of fine particulate matter did not exist at the time; therefore, they may not have collected and maintained medical records in support of their claims.

Two commenters stated that the 10-year manifestation period for asthma, rhinitis, and sinusitis, to include rhinosinusitis, was not based on evidence establishing their development and should therefore be removed.

One commenter recommended elimination of the 10-year manifestation period and stated that for the majority of the diseases for which VA has recognized a presumption due to exposure to toxic substances, VA has not required that the disease manifest itself within any specific period of time after exposure.

One commenter stated that VA should not impose a manifestation period unless and until it provides the public with adequate notice and an opportunity to comment on a proposed manifestation period after publicly disclosing and providing all the scientific evidence it reviewed and considered. The commenter further stated that VA not citing every study used in its decision-making is a failure in Administrative Procedure Act required notice.

One commenter disagreed with the 10-year manifestation period starting after the veteran's most recent discharge, even if that discharge did not include a qualifying period of service, as long as there was a previous deployment to a qualifying location. The commenter recommended that the 10-year manifestation period begin at the date of discharge that included deployment to a qualifying location.

VA appreciates the substantive comments received on the interim final rule. Upon further evaluation, and weighing the evidence and claims data available against the substantive comments received, VA will amend 38 CFR 3.320(a)(2) to remove the 10-year manifestation requirement under 38 CFR 3.320(a)(2). While claims data was given significant weight in VA's initial determination, VA acknowledges that sufficient consideration was not given to the difficulties veterans may face in documenting the onset of their disease. In addition, section 405 of the PACT Act removed the manifestation period requirement under 38 U.S.C. 1117 (codified at 38 CFR 3.317). As stated above, incorporation of provisions Public Law 117–168 will be the subject of separate and future rulemaking.

**XII. Cause-and-Effect Standard**

One commenter urged VA to reject a cause-and-effect standard in deciding whether to adopt a presumption of service connection and recommended a statistical association test as the most appropriate standard to use. In addition, the commenter urged VA to apply a statistical association test consistently when creating new presumptions. VA notes that it did not employ a cause-and-effect standard in determining to establish the presumptions of service connection for asthma, rhinitis, and sinusitis, to include rhinosinusitis. We note that the PACT Act created a new process for establishing presumptions of service connection based on toxic exposure. As stated above, implementation of provisions in Public Law 117–168 will be the subject of separate and future rulemaking. Therefore, VA makes no changes based on this comment.

**XIII. Definition of Qualifying Period of Service**

One commenter suggested that VA revise the language describing qualifying periods of service because the current wording may be misinterpreted as excluding Gulf War Veterans who served prior to September 19, 2001. The commenter noted that including the definition of the Southwest Asia theater of operations and the definition of the Gulf War within 38 CFR 3.320 would improve clarity. VA agrees with this recommendation and will amend 38 CFR 3.320 to include new paragraph (a)(6). 38 CFR 3.320(a)(6) will provide the definition of the Southwest Asia theater of operations, also found at 38 CFR 3.317(e)(2), and the definition of the Gulf War, also found at 38 CFR 3.2(i). This addition will clarify the intent of the regulation.

Additionally, VA is amending the definition of the qualifying periods of service in paragraph (a)(5) by adding space service to the list of types of service as it was inadvertently omitted from the interim final rule.

**XIV. Clarifications/Future Reviews**

One commenter asked that VA clarify that this rule in no way precludes future rules providing presumptive service connection for health conditions resulting from Gulf War service that are not respiratory in nature. While this rulemaking is based on current medical and scientific evidence related to the respiratory health effects of fine particulate matter on veterans who served during the Gulf War, VA will continue to review new scientific evidence as it develops relating to all health effects resulting from exposure to fine particulate matter. This rulemaking does not limit the future establishment of presumptive service connection for conditions related to respiratory or other body systems.

One commenter requested that VA notify stakeholders promptly regarding the progress of its ongoing review of health outcomes related to exposure to fine particulate matter, its expected timetable, the steps it is taking and will take as part of the review, and the

opportunities for additional public comment that will be provided. VA appreciates the comments and valuable feedback it receives from its stakeholders and will continue to participate in notice-and-comment rulemaking (as appropriate) on future presumptive conditions.

VA appreciates all comments submitted in response to the interim final rule. Based on the rationale stated in the interim final rule and in this document, the final rule is adopted with changes as noted.

**Administrative Procedure Act**

VA has considered all comments submitted in response to the interim final rule and does not consider any to be objecting to the rule. Rather, the comments received have suggested ways in which the rule could be refined or liberalized. And for the reasons set forth in the foregoing responses to those comments, VA has made changes. Accordingly, based upon the authorities and reasons set forth in the interim final rule, VA is adopting the provisions of the interim final rule as a final rule with the changes as described above.

**Executive Orders 12866, 13563 and 14094**

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 and Executive Order 13563. The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under Executive Order 12866, section 3(f)(1), as amended by Executive Order 14094. The Regulatory Impact Analysis (RIA) associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

**Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601–612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a). On August 5, 2021, VA published an interim final rule in the **Federal Register** (86 FR 42724). This Final rule adopts the Interim Final rule without changes.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and Tribal governments, or on the private sector.

**Paperwork Reduction Act**

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Assistance Listing**

The Assistance Listing program numbers and titles for this rule are 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans, Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

**Congressional Review Act**

Under the Congressional Review Act, this regulatory action may result in an annual effect on the economy of $100 million or more, 5 U.S.C. 804(2), and so is subject to the 60-day delay in effective date under 5 U.S.C. 801(a)(3). In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this Regulation and the Regulatory Impact Analysis (RIA) associated with the Regulation.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, and Veterans.

*Signing Authority*

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on August 25, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Jeffrey M. Martin,**

*Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, the interim final rule amending 38 CFR part 3, which was published at 86 FR 42724, is adopted as final with the following changes:

## PART 3—ADJUDICATION

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

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

## Subpart A—Pension Compensation and Dependency and Indemnity Compensation

■ 2. Revise § 3.320 to read as follows:

### § 3.320 Claims based on exposure to fine particulate matter.

(a) *Service connection based on presumed exposure to fine particulate matter*—(1) *General.* Except as provided in paragraph (b) of this section, a disease listed in paragraphs (a)(2) and (3) of this section shall be service connected even though there is no evidence of such disease during the period of military service.

(2) *Chronic diseases associated with exposure to fine particulate matter.* The following chronic diseases will be service connected if manifested to any degree (including non-compensable) at any time following separation from a qualifying period of military service as defined in paragraph (a)(5) of this section.

(i) Asthma.

(ii) Rhinitis.

(iii) Sinusitis, to include rhinosinusitis.

(3) *Rare cancers associated with exposure to fine particulate matter.* The following rare cancers will be service connected if manifested to any degree (including non-compensable) at any time following separation from a qualifying period of military service as defined in paragraph (a)(5) of this section.

(i) Squamous cell carcinoma of the larynx.

(ii) Squamous cell carcinoma of the trachea.

(iii) Adenocarcinoma of the trachea.

(iv) Salivary gland-type tumors of the trachea.

(v) Adenosquamous carcinoma of the lung.

(vi) Large cell carcinoma of the lung.

(vii) Salivary gland-type tumors of the lung.

(viii) Sarcomatoid carcinoma of the lung.

(ix) Typical and atypical carcinoid of the lung.

(4) *Presumption of exposure.* A Veteran who has a qualifying period of service as defined in paragraph (a)(5) of this section shall be presumed to have been exposed to fine, particulate matter during such service, unless there is affirmative evidence to establish that the veteran was not exposed to fine, particulate matter during that service.

(5) *Qualifying period of service.* The term *qualifying period of service* means any period of active military, naval, air, or space service in:

(i) The Southwest Asia theater of operations during the Persian Gulf War.

(ii) Afghanistan, Syria, Djibouti, or Uzbekistan on or after September 19, 2001, during the Persian Gulf War.

(6) *Definitions.* (i) The term *Southwest Asia theater of operations means* Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations, as defined in § 3.317(e)(2).

(ii) The term *Persian Gulf War* means August 2, 1990, through date to be prescribed by Presidential proclamation or law, as defined in § 3.2(i).

(b) *Exceptions.* A disease listed in paragraphs (a)(2) and (3) of this section shall not be presumed service connected if there is affirmative evidence that:

(1) The disease was not incurred during or aggravated by a qualifying period of service; or

(2) The disease was caused by a supervening condition or event that occurred between the Veteran's most recent departure from a qualifying period of service and the onset of the disease; or

(3) The disease is the result of the Veteran's own willful misconduct.

(Authority: 38 U.S.C. 501(a))

[FR Doc. 2023–18979 Filed 8–31–23; 8:45 am]

**BILLING CODE 8320–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R01–OAR–2023–0297; FRL–11046–02–R1]**

## Air Plan Approval; Rhode Island; Organic Solvent Cleaning Regulation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This SIP amendment consists of revisions to the Rhode Island Air Pollution Control Regulation No. 36 Control of Emissions from Organic Solvent Cleaning. The SIP revisions include minor regulatory changes to provide consistency with federal regulations for National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning. This action is being taken in accordance with the Clean Air Act (CAA).

**DATES:** This rule is effective on October 2, 2023.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2023–0297. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

**FOR FURTHER INFORMATION CONTACT:** Michele Kosin, Physical Scientist, Air Quality Planning Unit, Air Programs Branch (Mail Code 5–MI), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1175; *Kosin.michele@epa.gov.*

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

### Table of Contents

I. Background and Purpose
II. Final Action
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

### I. Background and Purpose

On June 23, 2023, EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Rhode Island. *See* 88 FR 41056. The NPRM proposed approval of revisions to the Rhode Island Air Pollution Control Regulation (APCR) No. 36, Control of Emissions from Organic Solvent Cleaning. The SIP revisions include minor regulatory changes that provide consistency with federal regulations for National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning. The formal SIP revision was submitted by Rhode Island on June 9, 2022.

Other specific requirements of Rhode Island's order and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

### II. Final Action

EPA is approving revisions to the Rhode Island APCR No. 36, Control of Emissions from Organic Solvent Cleaning.

### III. Incorporation by Reference

In this rule, the EPA is approving and finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Rhode Island's 250–RICR–120–05–36, Control of Emissions from Organic Solvent Cleaning dated May 3, 2022, which regulates emissions related to halogenated solvent cleaning. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (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 State implementation plan, 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.[1]

### 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. *See* 42 U.S.C.

[1] 62 FR 27968 (May 22, 1997).

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 Clean Air Act. Accordingly, this proposed 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 proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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, 001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on 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 Rhode Island Department of Environmental Management 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 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.

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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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).

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 31, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 24, 2023.

**David Cash,**

*Regional Administrator, EPA Region 1.*

Part 52 of 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 OO—Rhode Island

■ 2. In § 52.2070(c), amend the table by revising the entry for ''Air Pollution Control Regulation 36'' to read as follows:

**§ 52.2070 Identification of plan.**

* * * * *

EPA-APPROVED RHODE ISLAND REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| * | * | * | * | * |
| Air Pollution Control Regulation 36. | Control of Emissions from Organic Solvent Cleaning. | 5/3/2022 | 9/1/2023 [Insert **Federal Register** citation]. | Revisions made to part 36 for consistency with NESHAP for Halogenated Solvent Cleaning (40 CFR part 63, subpart T). |

EPA-APPROVED RHODE ISLAND REGULATIONS—Continued

| State citation | Title/subject | State effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| * | * | * | * | * * |

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[FR Doc. 2023–18684 Filed 8–31–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[EPA–R01–OAR–2020–0007; FRL–10498–02–R1]**

## Approval of the Clean Air Act, Authority for Hazardous Air Pollutants: Air Emissions Standards for Halogenated Solvent Cleaning Machines; State of Rhode Island Department of Environmental Management

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is granting the Rhode Island Department of Environmental Management (RI DEM) the authority to implement and enforce the amended Rhode Island Code of Regulations, Control of Emissions from Organic Solvent Cleaning (Organic Solvent Cleaning Rule), and the General Definitions Regulation (General Definitions Rule) in place of the National Emission Standard for Halogenated Solvent Cleaning (Halogenated Solvent NESHAP) as a partial rule substitution as it applies to organic solvent cleaning machines in Rhode Island. RI DEM's amended Organic Solvent Cleaning Rule and General Definitions Rule will apply to all sources that otherwise would be regulated by the Halogenated Solvent NESHAP, except for continuous web cleaning machines, for which the Halogenated Solvent NESHAP will continue to apply. This approval makes RI DEM's amended Organic Solvent Cleaning Rule and General Definitions Rule federally enforceable. This action is being taken under the Clean Air Act.

**DATES:** This rule is effective on October 2, 2023. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 2, 2023.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2020–0007. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

**FOR FURTHER INFORMATION CONTACT:** Liam Numrich, Air Permits, Toxics, and Indoor Programs Branch, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code 5–MI), Boston, MA 02109–3912, telephone number 617–918–1307, *numrich.liam@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

### Table of Contents

I. Background and Purpose
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III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

### I. Background and Purpose

On January 22, 2022 (87 FR 78621), the EPA published a Notice of Proposed Rulemaking (NPRM) that proposed approval of RI DEM's amended rules in the Rhode Island Code of Regulations, Control of Emissions from Organic Solvent Cleaning (Organic Solvent Cleaning Rule), and the General Definitions Regulation (General Definitions Rule) in place of the National Emission Standard for Halogenated Solvent Cleaning (Halogenated Solvent NESHAP) as a partial rule substitution as it applies to organic solvent cleaning machines in Rhode Island.

Under CAA section 112(l), the EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements for hazardous air pollutants (HAPs). The Federal regulations governing the EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (*see* 58 FR 62262 (November 26, 1993), as amended by 65 FR 55810 (September 14, 2000)). Under these regulations, a state air pollution control agency has the option to request EPA's approval to substitute a state rule for the applicable Federal rule (*e.g.,* the National Emission Standards for Hazardous Air Pollutants). Upon approval by EPA, the state agency is authorized to implement and enforce its rule in place of the Federal rule.

The EPA promulgated the Halogenated Solvent NESHAP on December 2, 1994. *See* 40 CFR part 63, subpart T. The EPA promulgated several amendments to the Halogenated Solvent NESHAP, with the latest amendments promulgated on May 3, 2007 (*see* 72 FR 25138).

On June 18, 2010, the EPA approved the Rhode Island Air Pollution Control Regulation No. 36, currently codified in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning (Organic Solvent Cleaning Rule), and Rhode Island Air Pollution Control General Definitions Regulation, currently codified in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 0 General Definitions Regulation (General Definitions Rule), as a partial rule substitution for the Halogenated Solvent NESHAP, applicable to all sources in Rhode Island, except for continuous web cleaning machines,[1] for which the

[1] The regulatory text promulgated in 40 CFR 63.99(a)(40)(ii) on June 10, 2010 specifies that the EPA's approval applies to area sources. However, Rhode Island did not request that the rule substitution be limited to area sources. In addition, nothing in the June 10, 2010 **Federal Register** preamble describes the rule substitution as being

Halogenated Solvent NESHAP continues to apply (*see* 75 FR 34647).

In a letter dated June 30, 2022, RI DEM requested approval of its amended rules pertaining to organic solvent cleaning in Rhode Island. Specifically, RI DEM requested approval of its amended rules in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning, effective June 13, 2022, excluding the provisions in Parts 36.2, 36.5.A.28, 36.6.D, and 36.17,[2] and in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 0 General Definitions Rule, effective January 4, 2022, excluding the provisions in Part 0.2.[3] In this **Federal Register** notice, the EPA is approving the amended Organic Solvent Cleaning Rule and General Definitions Rule under the rule substitution criteria in 40 CFR 63.93. No public comments were received on the NPRM.

## II. Final Action

EPA is approving RI DEM's amended rules in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning, effective as of June 13, 2022, excluding the provisions in Parts 36.2, 36.5.A.28, 36.6.D, and 36.17, and in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 0 General Definitions Regulation, effective as of January 4, 2022, excluding the provisions in Part 0.2, as a partial rule substitution for the Halogenated Solvent NESHAP, for all sources in Rhode Island, except for continuous web cleaning machines.

## III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Rhode Island's rules in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning, effective as of June 13, 2022, which limits emissions from organic solvent cleaning machines and industrial solvent cleaning operations, excluding the provisions in Parts 36.2, 36.5.A.28, 36.6.D, 36.17, and in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 0 General Definitions Regulation, effective as of January 4, 2022, which provides a consistent set of definitions and abbreviations for terms used in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, excluding the provisions in Part 0.2. The EPA has made, and will continue to make, these documents generally available through at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve CAA section 112(l) submissions that comply with the provisions of the Act and applicable Federal regulations. In reviewing section 112(l) submissions, the EPA's role is to approve state choices, provided that they meet the criteria and objectives of the CAA and of the EPA's implementing regulations. Accordingly, this action approves the State's request 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 13563 (76 FR 3821, January 21, 2011);
- 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).
- 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; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the 112(l) submission 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).

### List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 24, 2023.

**David Cash,**

*Regional Administrator, EPA Region 1.*

For the reasons stated in the preamble, EPA amends 40 CFR part 63 as follows:

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

### Subpart A—General Provisions

■ 2. Section 63.14 is amended by:
■ a. Revising paragraph (n)(10); and
■ b. Removing and reserving paragraph (n)(11).

limited to area sources. We believe the rule substitution was intended to apply to both major and area sources and that the term area source is erroneously included in the regulatory text in 63.99(a)(40)(ii). We proposed to remove the reference to area sources through this rulemaking and intend to finalize this regulatory change in our final action.

[2] The excluded provisions at Parts 36.A.5.28, 36.6.D, and 36.17 apply to industrial solvent cleaning not regulated by the Halogenated Solvent NESHAP. We are not proposing to approve these provisions.

[3] The excluded provisions at Parts 36.2 and 0.2 state that the State's regulation shall be liberally construed to permit RI DEM to effectuate the purposes of state laws, goals and policies. We are not approving these provisions.

The revision read as follows:

**§ 63.14 Incorporation by reference.**

* * * * *

(n) * * *

(10) Rhode Island Regulations at Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control:

(i) 250–RICR–120–05–0. Part 0 General Definitions Regulation, effective as of January 4, 2022, excluding 0.2 ''Application''; IBR approved for § 63.99(a).

(ii) 250–RICR–120–05–36. Part 36 Control of Emissions from Organic Solvent Cleaning, effective as of June 13, 2022, excluding 36.2 ''Application'', 36.5.A.28, ''Industrial solvent cleaning'', 36.6.D, and 36.17 ''Requirements for Industrial Cleaning Solvents''; IBR approved for § 63.99(a).

* * * * *

## Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 3. Section 63.99 is amended by revising paragraph (a)(40)(ii) to read as follows:

**§ 63.99 Delegated Federal authorities.**

* * * * *

(a) * * *

(40) * * *

(ii) Affected organic solvent cleaning sources within Rhode Island must comply with the Rhode Island regulations applicable to hazardous air pollutants, 250–RICR–120–05–0 and 250–RICR–120–05–36 (incorporated by reference as specified in § 63.14), as described in paragraph (a)(40)(ii)(A) of this section:

(A) 250–RICR–120–05–0 and 250–RICR–120–05–36 pertain to organic solvent cleaning facilities in the State of Rhode Island's jurisdiction, and have been approved under the procedures in § 63.93 to be implemented and enforced in place of the Federal Halogenated Solvent NESHAP found at 40 CFR part 63, subpart T (except for those provisions listed under paragraphs (a)(40)(ii)(A)(*1*)(*i*)).

(*1*) Authorities not delegated.

(*i*) Rhode Island is not delegated the Administrator's authority to implement and enforce Rhode Island regulations at 250–RICR–120–05–0 and 250–RICR–120–05–36 in lieu of those provisions of subpart T of this part which apply to continuous web cleaning machines as defined in 40 CFR. § 63.461.

(*ii*) [Reserved]

(*2*) [Reserved]

(B) [Reserved]

* * * * *

[FR Doc. 2023–18696 Filed 8–31–23; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Parts 405, 410, 411, 412, 413, 416, 419, 424, 485, and 489

**[CMS–1772–FC; CMS–1744–F; CMS–3419–F; CMS–5531–F; CMS–9912–F]**

**RIN 0938–AU82**

## Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Organ Acquisition; Rural Emergency Hospitals: Payment Policies, Conditions of Participation, Provider Enrollment, Physician Self-Referral; New Service Category for Hospital Outpatient Department Prior Authorization Process; Overall Hospital Quality Star Rating; COVID–19

C1–2022–23918, published at 88 FR 57901 on August 24, 2023, is withdrawn.

### Correction

In rule document 2022–23918 beginning on page 71748 in the issue of November 23, 2022, make the following correction:

**§ 413.404 Corrected**

■ On page 72288, starting in the first column, amendatory instruction twenty-three should read as follows:

■ 23. Section 413.404 is amended by revising paragraphs (a)(2), (b)(2), (b)(3) introductory text, (b)(3)(i) heading, (b)(3)(i)(A) through (C), (b)(3)(ii) heading, (b)(3)(ii)(A) and (B), (b)(3)(ii)(C) introductory text, (b)(3)(ii)(C)(*1*) through (*3*), (c)(1)(i) and (ii), (c)(2)(i) through (iv), and (c)(3) to read as follows:

On the same page, in the second column:

Paragraph designation ''(b)(3)(i)(C)(*1*)(i)'' should read ''(b)(3)(i)(C)(*1*)(*i*)''

Paragraph designation ''(b)(3)(i)(C)(*1*)(ii)'' should read ''(b)(3)(i)(C)(*1*)(*ii*) and in the second line of paragraph (b)(3)(i)(C)(*1*)(*ii*), ''(b)(3)(i)(C)(1)(i)'' should read ''(b)(3)(i)(C)(*1*)(*i*)''.

Paragraph designation ''(b)(3)(i)(C)(2)'' should read ''(b)(3)(i)(C)(*2*)''.

Paragraph designation ''(b)(3)(i)(C)(2)(i)'' should read ''(b)(3)(i)(C)(*2*)(*i*)''.

Paragraph designation ''(b)(3)(i)(C)(2)(ii)'' should read ''(b)(3)(i)(C)(*2*)(*ii*)'' and in the second line of paragraph (b)(3)(i)(C)(*2*)(*ii*), ''(b)(3)(i)(C)(2)(i)'' should read ''(b)(3)(i)(C)(*2*)(*i*)''.

In paragraph (b)(3)(ii) starting in the first line, ''Deceased donor SAC for TH/HOPOs—(A) Definition.'' should read ''*Deceased donor SAC for TH/HOPOs—*(A) *Definition.*''

On the same page, in the third column:

In paragraph (b)(3)(ii)(B), the heading ''Calculating the deceased donor SAC'' should read ''*Calculating the deceased donor SAC*''.

Paragraph designation ''(b)(3)(ii)(B)(1)'' should read ''(b)(3)(ii)(B)(*1*)'' and in paragraph (b)(3)(ii)(B), the heading ''Initial deceased donor SAC'' should read ''*Initial deceased donor SAC.*''

Paragraph designation ''(b)(3)(ii)(B)(1)(i)'' should read ''(b)(3)(ii)(B)(*1*)(*i*)''.

Paragraph designation ''(b)(3)(ii)(B)(1)(ii)'' should ''(b)(3)(ii)(B)(*1*)(*ii*)'' and in the second line of paragraph (b)(3)(ii)(B)(*1*)(*ii*), ''(b)(3)(ii)(B)(1)(i)'' should read ''(b)(3)(ii)(B)(*1*)(*i*)''.

Paragraph designation ''(b)(3)(ii)(B)(2)'' should read ''(b)(3)(ii)(B)(*2*)''.

Paragraph designation ''(b)(3)(ii)(B)(2)(i)'' should read ''(b)(3)(ii)(B)(*2*)(*i*)''.

Paragraph designation ''(b)(3)(ii)(B)(2)(ii)'' should read ''(b)(3)(ii)(B)(*2*)(*ii*)'' and in the second line of paragraph (b)(3)(ii)(B)(*2*)(*ii*), ''(b)(3)(ii)(B)(2)(i)'' should read ''(b)(3)(ii)(B)(*2*)(*i*)''

In paragraph (b)(3)(ii)(C), the heading ''Costs to develop the deceased donor SAC'' should read ''*Costs to develop the deceased donor SAC*''.

Paragraph designation ''(b)(3)(ii)(C)(1)'' should read ''(b)(3)(ii)(C)(*1*)''.

Paragraph designation ''(b)(3)(ii)(C)(2)'' should read ''(b)(3)(ii)(C)(*2*)''.

Paragraph designation ''(b)(3)(ii)(C)(3)'' should read ''(b)(3)(ii)(C)(*3*)''.

Paragraph heading ''(c)(2)(i) General.'' should read ''(c)(2)(i) *General.*''

On page 72289, in the first column:

Paragraph heading ''(c)(2)(ii) Initial year.'' should read ''(c)(2)(ii) *Initial year.*''

Paragraph heading ''(c)(2)(iii) *Subsequent years.*'' should read ''(c)(2)(iii) *Subsequent years.*''

Paragraph heading ''(c)(2)(iv) SAC adjustments.'' should read ''(c)(2)(iv) *SAC adjustments.*''

Paragraph heading ''(c)(3) Billing SACs for organs generally.'' Should read ''(c)(3) *Billing SACs for organs generally.*''

[FR Doc. C2–2022–23918 Filed 8–31–23; 8:45 am]

BILLING CODE 1505–01–D

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket No. 21–450; FCC 23–62; FR ID 167068]**

### Affordable Connectivity Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission) adopts rules to establish the enhanced discounts available for monthly broadband services provided in high-cost areas by participants in the Affordable Connectivity Program (ACP).

**DATES:** Effective October 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact, Travis Hahn, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, at *Travis.Hahn@fcc.gov* or 202–418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Sixth Report and Order (Order) in WC Docket No. 21–450; adopted on August 3, 2023 and released on August 4, 2023. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/fcc-acts-provide-subsidy-consumers-certain-high-cost-areas-0.*

## I. Introduction

1. In this final rule, as required by the Infrastructure Investment and Jobs Act (Infrastructure Act), the Commission adopts rules to establish the enhanced discounts available for monthly broadband services provided in high-cost areas by participants in the ACP. The Infrastructure Act recognizes that in certain high-cost areas of the country, offering broadband service to ACP eligible households at the standard up-to-$30 monthly benefit level could lead providers to experience particularized economic hardship such that the provider may not be able to maintain the operation of part or all of its broadband network. To address this, the Infrastructure Act allows for providers to provide an up-to-$75 monthly benefit to ACP eligible households in high-cost areas upon a showing of such particularized economic hardship in a given high-cost area. The steps the Commission takes to implement this provision will help narrow the digital divide by ensuring that more low-income households throughout the country, including households in rural and insular areas, have access to discounted broadband services. In particular, the high-cost area benefit will maximize provider participation in the ACP, by encouraging additional providers to participate in the ACP in high-cost areas and incentivizing existing ACP providers experiencing an economic hardship in high-cost areas to continue participating in the program. The high-cost area benefit also complements and supports other Federal initiatives, including those in the Infrastructure Act, to spur deployment and adoption in rural areas by strengthening the business case for providers to deploy broadband in rural and insular areas.

## II. Discussion

2. The Commission now establishes the requirements to implement the ACP high-cost area benefit as required by the Infrastructure Act. In this section, the Commission discusses determining high-cost areas that will be eligible for the high-cost area benefit, eligibility to receive the high-cost area benefit, requirements to make a showing of economic hardship, as well as other administrative aspects necessary to implement the high-cost area benefit.

3. Pursuant to the Infrastructure Act, for purposes of the ACP high-cost area benefit, the Commission must use the definition of high-cost areas established by the National Telecommunications and Information Administration (NTIA) for its Broadband Equity, Access, and Deployment (BEAD) grant program. The ACP statutory provisions specifically reference NTIA's determination of high-cost areas under the BEAD program in defining a high-cost area for the ACP high-cost area benefit. As such, the high-cost areas used by the Commission for the ACP high-cost area benefit will be the same as the high-cost areas used for the BEAD program as determined by NTIA.

4. The statute establishing the BEAD program requires NTIA, ''on or after the date on which the [Commission's] broadband DATA maps are made public,'' to allocate funding to eligible States for the high-cost areas within the State. By definition, a '' 'high-cost area' [as determined by NTIA in consultation with the Commission] means an unserved area in which the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in unserved areas in the United States.'' For purposes of defining ''high-cost area'', the term ''unserved area'' means an area in which not less than 80 percent of broadband-serviceable locations are unserved locations.

5. On June 26, 2023, NTIA announced the State allocations for the BEAD grant program. As part of BEAD, NTIA has made State allocations in part based on the determined ''high-cost areas'' within each State. Pursuant to the Infrastructure Act, the Commission therefore makes the ACP high-cost area benefit available in those high-cost areas identified by NTIA consistent with the Infrastructure Act's definition of ''high-cost area,'' and subject to the provider's demonstration of particularized economic hardship, as described in further detail in the following.

6. The Commission next addresses the requirements for participating providers seeking to offer a high-cost area benefit to eligible households located in designated high-cost areas served by the provider. Specifically, the Commission defines ''particularized economic hardship,'' to clarify that the benefit is limited to facilities-based providers, and address the specific showing that participating providers must make to demonstrate they are experiencing a particularized economic hardship in a given high-cost area. The Commission also prescribes the process for submitting, reviewing, and taking action on such showings, and for requests for review of adverse decisions. Lastly, the Commission clarifies the interplay between the qualifying Tribal land and high-cost area benefits by interpreting the Infrastructure Act to mean that participating providers can either offer one or the other, but not both simultaneously, to eligible households located on both a Tribal land and in a designated high-cost area.

7. *Particularized Economic Hardship.* First, consistent with the Infrastructure Act, the Commission will require a participating provider to demonstrate economic hardship to be eligible for the high-cost area benefit. The Infrastructure Act directs the Commission to establish a mechanism whereby a ''participating provider'' in a high-cost area ''may provide'' an enhanced monthly benefit up to $75 ''upon a showing that the applicability of the lower [$30] limit . . . would cause particularized economic hardship to the provider such that the provider may not be able to maintain the

operation of part or all of its broadband network.'' The Commission implements this directive by requiring a participating provider seeking application of the high-cost area benefit to demonstrate the economic hardship to which it would be subject if only the standard $30 monthly discount were applied to its provision of ACP service in a high-cost area(s). This approach to implementing the statute is consistent with the positions taken by several commenters in the record.

8. Next, the Commission defines particularized economic hardship by focusing on the provider's operating costs and revenues in the high-cost area(s) where the provider seeks approval to offer the high-cost area benefit. The Commission finds that a provider that demonstrates it is unable to cover the costs of maintaining the operation of all or part of its broadband network in a high-cost area where it seeks to offer the high-cost area benefit as described in the following meets the ''particularized economic hardship'' standard. Hereafter, the Commission describes such a provider as operating at a loss. To establish ''particularized economic hardship,'' the Commission will require providers to submit documentation, such as an income statement, showing that they are unable to cover the costs of maintaining the operation of all or part of their broadband network for each high-cost area for which the high-cost area benefit is being sought. Aside from required documentation, the Commission will also require each provider to certify to and explain how the up to $75 a month high-cost area benefit would materially improve the provider's ability to offer service through the ACP and maintain and operate its broadband network and how the economic hardship limits its ability to ''maintain the operation of all or part of its broadband network'' in each high-cost area for which it seeks to offer the high-cost area benefit.

9. The Commission finds this standard to be consistent with the language and intent of the statute, as well as the record. Congress did not provide details on the nature of the showing of economic hardship providers must make to obtain the high-cost area benefit. The statute provides that the provider must show that the applicability of the basic $30 benefit would cause ''particularized economic hardship . . . such that the provider may not be able to maintain the operation of part or all of its broadband network.'' The Commission sought comment on the mechanism by which providers can show particularized economic hardship. Because a provider operating at a loss in the high-cost area for which it seeks the high-cost area benefit may be unable to maintain broadband network operations in that area, the Commission finds this standard to be consistent with the language and intent of the statute. For purposes of this standard, the provider will need to factor in the standard monthly $30 ACP benefit as well as subsidies and other financial benefits the provider receives, including Universal Service Fund (USF) high-cost support, as they are directly relevant when evaluating the overall costs and revenues of the provider. No commenter opposed the Commission's proposal in the *Notice of Proposed Rulemaking (NPRM),* 87 FR 8385, February 14, 2022, of including subsidies and other financial benefits in the economic hardship analysis.

10. The Commission rejects ACA Connects' suggestion to interpret ''particularized economic hardship'' to mean those instances where the provider's administrative costs of participating in the ACP exceeds the benefits received, and where the provider shows that in the context of its overall financial position, that net loss would affect its ability to maintain part of its broadband network. A provider could be profitable overall and willing to maintain network operations even if the costs of voluntarily participating in the ACP exceeded the benefits received. Conversely, a provider could be unprofitable overall, but the administrative costs of ACP participation could be less than the benefits received. Accordingly, the Commission finds ACA Connects' suggested approach would not provide a meaningful indication of whether a provider can ''maintain the operation of part or all of its broadband network'' when just the standard $30 benefit is available to eligible households in the designated high-cost areas it serves.

11. The Commission also declines to define ''particularized economic hardship'' as the serving of less than a Commission-defined threshold of broadband subscribers across a smaller provider's entire service territory, as suggested by ACA Connects. The Commission did seek comment on this approach in the *NPRM* in response to earlier comments by NTCA—The Rural Broadband Association (NTCA) and Conexon. However, the Commission received no comments that would help them determine how to apply a standard under a threshold-based approach to determine whether a provider may not be able to maintain the operation of part or all of its broadband network without the high-cost area benefit. Furthermore, the Commission believes that a subscriber threshold-based approach would be at odds with Congress's directive to require a showing of ''particularized'' economic hardship. The Commission interprets the meaning of ''particularized'' in the context of the high-cost area benefit to mean that a provider must show that it is individually experiencing economic hardship. A subscriber-based threshold approach is inconsistent with this interpretation because it would necessarily assume that all providers that met the threshold were experiencing sufficiently similar circumstances to merit access to the high-cost area benefit, without regard to whether each provider's specific circumstances demonstrated that the provider would experience economic hardship absent the application of the high-cost area benefit. Accordingly, the Commission finds that the statute requires them to define particularized economic hardship based on an individualized showing so that each provider can account for its own particularized cost and revenue structure.

12. To the extent that NTCA suggests an approach that allows providers to qualify for the high-cost area benefit based solely on the receipt of USF high-cost support, the Commission declines to adopt such an approach. Recipients of USF high-cost support receive subsidies to provide reasonably comparable services at rates reasonably comparable to those in urban areas. Indeed, those subsidies are a way for providers to cover certain costs of operating and maintaining their networks, which may, if anything, make it less likely that a provider would be suffering a particularized economic hardship in the geographic area where it receives high-cost support. Therefore, receipt of USF high-cost support, in and of itself, does not show the provider is experiencing a ''particularized economic hardship'' in general, or as defined herein. To bolster its argument, NTCA attempts to tie the ACP high-cost area benefit to the role USF high-cost support plays in enabling '' 'affordable' broadband services for all rural consumers, regardless of income level.'' NTCA contends that the '' 'enhanced' ACP subsidy can make up for [the] 'gap' between 'reasonable comparability' and 'affordability' that the High-Cost USF program does not close on its own.'' However, this argument does not address the specific language of the statute, which focuses on a provider's inability to ''maintain the operation of part or all of [a provider's] broadband

network'' rather than on whether the service at issue is affordable to subscribers with the standard ACP benefit. Accordingly, the Commission rejects this proposal.

13. The Commission also disagrees with the Wireless Internet Service Providers Association's (WISPA) position that small Internet Service Providers ''lack the administrative resources to establish their specific costs to provide broadband service in an area,'' and that it is unnecessary to examine an individual operator's cost of doing business.'' Instead, WISPA asserts that all areas eligible for the Connect America Fund or Rural Digital Opportunity Fund, as well as any census block identified as a high-poverty area on the map created by the Department of Agriculture and NTIA, should be designated as high-cost areas eligible for the $75 subsidy. WISPA's suggested approach would seem to read the ''particularized economic hardship'' showing out of the statute entirely. As discussed in this document, the statute's particularized economic hardship requirement is separate from and in addition to the requirement that this enhanced support only be made available in ''high-cost areas,'' and the determination of those high-cost areas will be made by NTIA. Moreover, the Commission expects that any business, regardless of size, will have knowledge of the costs and revenues associated with its business operations, at least to the extent necessary to determine if the provider is experiencing particularized economic hardship in a high-cost area.

14. *Facilities-Based Provider Limitation.* Pursuant to the Infrastructure Act's direction that a provider show that particularized economic hardship may impair its ability ''to maintain the operation of part or all of *its broadband network,*'' the Commission clarifies that only facilities-based providers will be eligible for the high-cost benefit. The Commission finds that the Act directs them to prohibit non-facilities-based providers from receiving a high-cost area benefit as such providers would not experience an inability to maintain their network absent the application of the high-cost benefit. For purposes of this final rule, the Commission defines facilities-based provider consistent with its rules regarding the Form 477 collection, to include provider owned physical facilities, and wireless spectrum. The Commission directs the Universal Service Administrative Company (USAC) to validate and verify a provider's facilities-based status as part of the process of approving providers to offer the high-cost area benefit. Providers will additionally be required to certify to their status as a facilities-based provider as part of their application to offer the high-cost area benefit.

15. *Showing to Support Request for Approval to Offer the High-Cost Area Benefit.* The Commission's objective is to administer the high-cost area benefit consistent with the statutory language requiring, among other things, a showing of particularized economic hardship by the ACP provider balanced with ''a minimal burden on qualifying households and providers.'' In implementing this approach, the Commission seeks to safeguard program integrity while also minimizing the administrative burden for a provider seeking to demonstrate that it is unable to cover the costs of operating and maintaining all or part of its network operations in the high-cost area(s) absent the high-cost area benefit.

16. The Commission outlines the type of documentation that it expects would be sufficient for a provider to demonstrate that it is experiencing ''particularized economic hardship'' for purposes of the high-cost area benefit. Participating providers must demonstrate particularized economic hardship by submitting an affidavit supported by an income statement demonstrating the provider is currently operating at a loss in each high-cost area(s) for which the provider is seeking approval to offer the high-cost area benefit. To facilitate the administration of the benefit and minimize provider burdens, providers may submit a single application with supporting documentation for all of the high-cost areas where they are seeking approval to offer the high-cost area benefit.

17. To support its affidavit, the provider must include a copy of its most recent income statement(s), prepared in the ordinary course of business, consolidated and at the component level, as applicable, covering the previous fiscal year of operations or the last six quarters of operations, and separately identify, in the method determined by the Wireline Competition Bureau (the Bureau), the high-cost areas, as designated by NTIA, that the provider serves and in which it is seeking to provide the high-cost area benefit. An income statement, otherwise known as a profit and loss statement, showing the provider's revenue, expenses, gains, and losses during the required time period, strikes the appropriate balance between ensuring the high-cost area benefit is appropriately limited and minimizing the administrative burden on providers. An income statement is a routine financial statement prepared by companies, and thus most providers already prepare such statements in the normal course of business. The income statement must, at a minimum, include detailed information on the provider's net income, operating revenue and operating expenses, including, but not necessarily limited to, cost of goods sold or services, selling, general and administrative expenses and depreciation or amortization expenses. To protect program integrity providers that are publicly traded or that prepare audited income statements in the ordinary course of business shall be required to submit the audited income statement, rather than an unaudited income statement, to support their affidavit. The Commission delegates authority to the Bureau, in consultation with the Office of Economics and Analytics (OEA) as appropriate, and consistent with the standard established in this Order, to further specify or modify the types of documentation that providers must submit to show ''particularized economic hardship''.

18. To protect program integrity, and consistent with other submissions made to justify the receipt of a Federal benefit, such an affidavit shall be made under penalty of perjury from a company officer with knowledge of the provider company's costs and revenues. The affidavit must describe in sufficient detail the methodology used for determining that the annualized expenses of maintaining the operation of the provider's broadband network in a particular high-cost area exceeds the provider's expected total revenues in that high-cost area. This should include an allocation of provider broadband internet access service revenues and costs for the relevant high-cost area(s) if the income statement is too broad to demonstrate that the provider is operating at a loss relative to providing broadband internet access service in the high-cost area(s) in question. The affidavit should also factor in payments from customers for broadband internet access service as well as the up-to-$30 ACP benefit and additional subsidies and other financial benefits received, including USF high-cost support related to providing broadband internet access service. The affidavit must also include an explanation as to how the economic hardship resulting from the operating loss may limit the provider's ability to maintain the operation of all or part of its broadband network in the high-cost area(s) for which it seeks to offer the high-cost area benefit. Additionally, in the affidavit, each provider must explain when and why the provider originally began operating in the high-

cost area(s). In support of the affidavit a provider is also required to submit any Federal income tax returns relating to the submitted income statements. These tax returns could be used to identify anomalies or other potential issues in the financial data being provided as part of the application for the high-cost area benefit.

19. To demonstrate that a provider is operating at a loss, the income statement, and cost-allocation as applicable, must show that the provider's broadband revenue has been below broadband expenses in at least four of the last six fiscal quarters or for the last full fiscal year for each relevant high-cost area. If the income statement includes costs and revenues for broadband network operations outside of the high-cost areas for which the provider seeks approval to offer the high-cost area benefit, then the provider will need to allocate the costs and revenues associated with the relevant high-cost area(s) and provide the cost and revenue allocation for the high-cost area(s) in the supporting affidavit.

20. To determine the share of the provider's total operating costs that are associated with its broadband network operations in the relevant high-cost area(s), the provider must use a reasonable cost assignment and/or cost-allocation method. A provider should first attempt to directly assign or attribute costs to broadband internet access services and to the relevant high-cost area(s). Costs that are not directly assignable (*e.g.,* common or shared costs) should be allocated based on a cost-causative mechanism wherein the participating provider should identify a cost-causative link to an expense category (or group of categories) that has already been directly assigned or attributed. Finally, where none of the methods described in this document are possible, the participating provider should employ a reasonable cost-allocation of operating expenses, which may be based on factors, such as, for the relevant high-cost area(s), the share of a provider's total investments, total locations served, or in proportion to the share of directly assignable investments or expenses for the relevant high-cost area(s). Different cost allocators may be used to allocate different shared costs and must be sufficiently described in the supporting affidavit. For providers applying for multiple high-cost areas, the cost allocation methods should be consistent for all relevant high-cost areas to the extent feasible. To determine the share of the provider's total revenues associated with its broadband network operations in the relevant high-cost area(s), the provider must calculate and allocate revenue for the relevant time periods based on revenues for the applicable high-cost area(s), and account for any subsidies received by the provider or other financial benefits, including USF high-cost support. Regardless of which cost allocation methods is used, all company-wide financial data submitted in support of an application for the high-cost area benefit must comply with generally accepted accounting principles.

21. To maximize flexibility, the Commission will allow a provider to choose the reasonable cost and revenue allocation method(s) within the parameters described in this document, rather than prescribe one. To mitigate any program integrity issues that this discretion might introduce, however, the Commission requires providers to identify and justify their chosen allocation method(s). Allowing providers options for reasonable cost and revenue allocation method(s) will allow even those providers with limited financial expertise to submit a showing based on their records that meets the standards adopted herein. The Commission directs the Bureau to develop a more detailed process for determining, in consultation with OEA, whether the provider's allocation method and justification are reasonable.

22. Notwithstanding the Commission's recognition that the needs to minimize the burden on participating providers and to encourage provider participation in the ACP are paramount, the Commission requires the filing of documentation showing that a provider will experience particularized economic hardship, which shall include the filing of both an affidavit with the information outlined in this document, along with the required income statement, and tax filings. An income statement alone would not provide sufficient assurances that a provider has satisfied the standard for offering the high-cost area benefit in a given high-cost area. The affidavit is an important safeguard for ensuring that the high-cost area benefit is appropriately limited to providers that are facing ''particularized economic hardship'' such that they will be unable to maintain part or all of their broadband network if they can only offer the standard $30 ACP benefit. The Commission recognizes that providers may not routinely prepare cost-allocations specific to the relevant high-cost areas. However, for income statements that are not specific to the relevant high-cost areas, cost allocations are necessary to satisfy the statute's requirement that the high-cost area benefit only be made available in high-cost areas where the provider experiences economic hardship. As noted earlier, to minimize the burden associated with cost-allocations, the Commission allows providers some flexibility in determining which cost-allocation method to use where the provider is unable to directly assign or attribute costs to broadband internet access services and to the relevant high-cost area(s) or use a cost-causative mechanism. An affidavit accompanying an income statement strikes the appropriate balance between protecting program integrity while minimizing the burden on providers.

23. Commenters stressed the importance of the Commission choosing a means for ''qualification that imposes the least administrative burdens on providers, while protecting against waste, fraud, and abuse.'' The Commission agrees, although it also concludes that proposals that effectively eliminate the need for any showing altogether are at odds with the statute. Similarly, the Commission finds that a mere certification as to a provider's particularized economic hardship in the high-cost area(s) it serves, as suggested by ACA Connects, is insufficient to satisfy the express ''showing'' mandated by Congress and impedes the Commission's ability to ascertain whether the provider is, in fact, experiencing a particularized economic hardship.

24. The Commission declines to adopt the suggestion from the Mississippi Center for Justice that it requires service providers to submit additional speed and coverage tests before allowing a broadband service provider to receive the high-cost area benefit. While the Commission is sympathetic to concerns about whether a provider's asserted coverage and speed matches actual network performance, the Infrastructure Act is clear that the only criterion it may consider when deciding whether a provider can receive the high-cost area benefit, is whether the absence of a high-cost area benefit would cause a particularized economic hardship to the provider. Furthermore, the Commission has taken steps in other proceedings to address service quality concerns and the reporting of accurate coverage and speed data. Accordingly, the Commission declines to require participating providers to perform these additional tests.

25. Additional Information Required for High-Cost Area Benefit Application. To facilitate the evaluation of a provider request for approval to offer the high-cost area benefit and to help protect program integrity, the Commission directs USAC to communicate with the

provider about its request and collect information, as part of the application for approval to offer the high-cost area benefit, sufficient to identify the provider and the nature of the services it offers in the relevant high-cost areas, such as: contact information; FCC Registration Number; Unique Entity Identifier; Federal Tax ID Number; Service Provider ID Number; whether the provider is facilities-based in the relevant high-cost areas; and the nature of the provider's broadband network technology in the relevant high-cost area(s). Finally, a provider's submission must include certifications from a company officer with knowledge of the provider's cost and revenues under penalty of perjury that: (1) all information submitted is true and correct to the best of the filer's knowledge; (2) the provider will comply with all applicable statutes and the Commission's rules and orders; and (3) the provider will use any reimbursed funds received for its intended purpose of providing discounted broadband internet access services to eligible low-income households.

26. To help protect program integrity, a participating provider will also be required to indicate in its application seeking to offer the ACP high-cost area benefit whether it has previously applied for Federal financial assistance in the three fiscal years prior to the provider's application. Upon request, the participating provider must submit to USAC or the Commission applications for loans submitted to the U.S. Department of Agriculture Rural Utility Service (RUS), approvals or denials of such loans, the provider's RUS Operating Report for Telecommunications Borrowers filed with the RUS, and any financial reports filed with a state Public Utility Commission, as applicable. The requirement to submit these documents is an important safeguard against provider manipulation of the financial information in its application. This requirement will also assist USAC in ascertaining the validity of the financial information in the provider's application materials. Finally, in evaluating a provider's request for approval to offer the high-cost area benefit and to help protect program integrity the Commission or USAC must consider the extent to which other providers are operating in the high-cost area and not requesting this benefit.

27. *Submission and Review of Showings and Appeals.* The Commission directs USAC, under the oversight of the Bureau and the Office of the Managing Director, to develop a mechanism to enable participating providers to electronically submit the requisite particularized economic hardship showings. The Commission further directs USAC, under the oversight of the Bureau and OEA, to produce provider education and training materials concerning seeking approval to offer the high-cost area benefit and the Commission directs the Bureau to provide additional guidance to providers on the submission process. All provider submissions will be treated as presumptively confidential and will not be available for routine public inspection consistent with the Freedom of Information Act and the Commission's rules. While the actual content of the provider filings will remain confidential, the Commission directs USAC to publicly issue information identifying which providers are approved to offer the high-cost area benefit and the high-cost areas where they are approved to offer it. The Commission further directs the Bureau to release a Public Notice within 90 days after NTIA's determination of high-cost areas, announcing the date upon which providers can start to submit applications requesting authority to offer the high-cost area benefit. The Bureau shall have the discretion to determine whether to establish an initial deadline for provider requests or accept applications on a rolling basis.

28. The Commission directs USAC to review each economic hardship submission for completeness and then either approve or deny each submission pursuant to guidance and oversight by the Bureau and OEA. Each decision by USAC shall be made in writing, provide a written explanation of the basis for the decision, and provide the approval period for the high-cost area benefit as appropriate. Each USAC decision will be subject to the restrictions of § 54.702(c) of the Commission's rules which prohibits USAC from making policy, interpreting unclear provisions of the statute or rules, or from interpreting the intent of Congress. Any provider aggrieved by an action taken by USAC may seek review of that action, as set forth in Subpart I of the Commission's rules. While review of that action is pending, a provider will be able to submit claims for up to the $30 standard monthly benefit. Following a successful appeal, providers approved to offer the high-cost area benefit may submit revised claims for eligible households in the approved high-cost areas as set forth in 47 CFR 54.1808. The provider may only submit revised claims for up to $75 per month per eligible subscriber for the snapshot dates from the start of the period of approval, and the provider will be responsible for passing the full benefit amount on to subscribers as a discount off the price of their monthly bills before seeking reimbursement for the high-cost area benefit amount.

29. The Commission directs USAC to make updates to ACP systems, including to the National Lifeline Accountability Database, as appropriate, to allow providers that are approved to receive reimbursement for the high-cost area benefit to enroll households with the high-cost area benefit or to update existing ACP subscribers' records to reflect the designated high-cost areas associated with the participating provider's approved showing. The Commission also directs USAC to incorporate the high-cost area benefit into the ACP claims and enrollment tracker, with a separate column for households receiving the up to $75 high-cost area benefit. The Commission further directs USAC, with Bureau oversight, to develop provider training materials on how to enroll or update subscriber information to reflect the high-cost area benefit and to seek reimbursement for the enhanced benefit for eligible households in the relevant high-cost areas.

30. *Annual Resubmission Requirement.* To account for changing financial circumstances, participating providers approved to offer the high-cost area benefit must annually resubmit a showing of particularized economic hardship to demonstrate continued eligibility to offer the high-cost area benefit. The Commission directs the Bureau to determine any modifications providers should make to the financial showing for the resubmission, consistent with the statutory language and standard outlined in this Order, as well as the deadline for such resubmissions. The deadline shall allow sufficient time for review and a determination on the renewal submission, and provider notification to households of any benefit level changes as appropriate, before the expiration of the prior approval period. The Commission directs USAC to issue reminders to providers with current approvals of the renewal submission requirements within at least 30 days and at least 15 days of the deadline the Bureau announces for resubmissions. These reminders shall also inform providers that failure to make a resubmission will result in the loss of their approval to offer the high-cost area benefit and the date on which the provider must cease offering and can no longer claim the high-cost area benefit if it does not timely make a renewal submission. The Commission directs the

Bureau to ensure that the renewal resubmissions are reviewed and a determination is issued in a reasonable timeframe.

31. There may be instances where a provider fails to submit the renewal submission, or does not satisfy the criteria to offer the high-cost area benefit based on its renewal submission. The Commission recognizes that the loss of the high-cost area benefit may cause a financial burden to low-income households that would be transitioned to the standard discount rather than the higher subsidy. To mitigate financial hardship and to avoid an accrual of household debt related to the loss of the high-cost area benefit, the Commission adopts several protections for ACP households where the provider is no longer approved to offer the high-cost ACP benefit. If a provider fails to submit the renewal submission by the deadline, the provider shall provide written notice to its ACP households receiving the high-cost area benefit at least 30 days prior to the last date that the provider is approved to offer the high-cost area benefit and a second notice at least 15 days before the last date that the provider is approved to offer the high-cost area benefit. If USAC determines that a provider no longer qualifies for the high-cost area benefit based on its renewal submission, the provider shall also follow the same customer notification process and deadlines as providers that fail to submit the renewal submission by the deadline. Such notices shall include: (1) a statement that the provider will no longer be offering the high-cost benefit; (2) the effective date of the loss of the high-cost area benefit; (3) a statement that upon the effective date of the loss of the high-cost area benefit, the ACP-supported service purchased by the household will no longer be discounted at the higher subsidy amount; and (4) the amount the household will be expected to pay if it continues purchasing the service from the provider after the high-cost area benefit is no longer available.

32. The Commission finds that providers may transition a household to a lower-priced service plan once the provider is no longer eligible to offer the high-cost area benefit upon advance notice to the household and after offering a reasonable opportunity for the household to agree to retain its current service plan or switch to another service plan. If the provider offers to transition the eligible household to a lower-priced plan, the offer to transition must be included in the required 30-day and 15-day notices, and must: (1) provide details about the new plan and monthly price; (2) inform the subscribers they can opt out of the transition and retain their current service plan or change to a different service plan than the lower-priced plan the service provider identified; (3) provide instructions for opting out of the transition or switching plans; and (4) provide the deadline for opting out of the transition or switching plans. The Commission believes this approach minimizes the potential for bill shock by allowing providers to transition eligible subscribers to a lower-priced plan, while also giving them an opportunity to opt out of the transition and either remain on their current service plan or choose another service plan. The Commission clarifies that moving eligible subscribers to a lower-priced plan upon advance notice and reasonable opportunity for subscribers to opt out of such a transition where the high-cost area benefit is no longer available does not constitute inappropriate down-selling.

33. *Subscriber Initial Notice Concerning High-Cost Area Benefit.* The Commission requires providers to seek annual approval to continue offering the high-cost area benefit. Accordingly, there is a potential for ACP subscribers receiving the high-cost area benefit to experience financial difficulty if their provider ceases being eligible to offer the high-cost area benefit.

34. To promote transparency and avoid the potential for subscriber confusion, participating providers approved to offer the high-cost area benefit must provide written notice to the subscriber when the provider first applies the high-cost area benefit to the subscriber's bill, stating: (1) that the subscriber is receiving an high-cost area benefit and specifying the difference between the standard ACP benefit and the high-cost area benefit being applied to the subscriber's ACP service; (2) that the receipt of the high-cost area benefit is contingent on the provider's annual continued eligibility to offer the high-cost area benefit; (3) that the provider is required to provide the subscriber advance notice if the provider is no longer deemed eligible to offer the high-cost area benefit; and (4) that the provider is required to provide the subscriber advance notice of any changes to the subscriber's ACP service rate or service plan stemming from any loss of the provider's eligibility to offer the high-cost area benefit.

35. *Program Integrity.* To ensure that providers are only seeking reimbursement for households that are eligible to receive the ACP high-cost area benefit, the Commission directs USAC to conduct program integrity reviews of claims related to the high-cost area benefit on an annual basis, in addition to targeted reviews of providers approved to offer the high-cost area benefit as needed (*e.g.,* based on indicia of program integrity risks). The Commission recognizes that a risk exists where providers receiving the high-cost benefit could attempt to raise rates or push ACP subscribers to higher priced pans to maximize their reimbursement for the high-cost area benefit claims. The Commission reminds providers that they are required to offer the same services to ACP households on the same terms and conditions as non-ACP households and inappropriate upselling is a violation of the ACP rules. The Commission also clarifies that, as with the standard benefit and the enhanced Tribal benefit, providers are required to pass through the entire benefit to ACP eligible households. In addition to USAC's program integrity reviews, the Bureau, in coordination with OEA, shall also use available data from ACP providers to maximize program integrity with respect to the high-cost area benefit, including, but not limited to, inflating rates, or claiming the high-cost area benefit for a greater number of households than the number of the provider's broadband serviceable locations in a given high-cost area. The Commission reminds providers that it may suspend or remove a participating provider from the ACP for a variety of reasons, including violations of the rules or requirements of ACP or any action that indicates a lack of business integrity or business honesty that seriously and directly affects the provider's responsibilities under the ACP or undermines the integrity of the program. The Commission further directs the Bureau, in coordination with USAC, to provide additional details and procedures, as necessary, in conformance with this Order to ensure the efficient functioning of the high-cost area benefit.

36. Lastly, the Commission reminds providers that the Infrastructure Act allows eligible households to apply the ACP benefit to ''any internet service offering of the participating provider, at the same terms available to households that are not eligible households.'' The Commission has found this requirement will help ''ensure the marketplace will not be limited, and consumers can apply the affordable connectivity benefit to a plan of their choosing.'' This, in turn, will help minimize concerns that ''providers may introduce or alter plans solely to maximize the reimbursement amount.'' However, as the Commission clarified, providers are not precluded ''from making internet service offerings that are only available to ACP

subscribers provided that the terms are at least as good as plans that are available to non-eligible households. . . .''

37. *Clarification of the Scope of Both ACP Enhanced Benefits.* The statute is silent on whether a household that is both eligible for the ACP high-cost area benefit and the ACP enhanced qualifying Tribal land benefit may receive both benefits simultaneously However, nothing indicates that Congress intended for households in this scenario to be eligible to receive more than one ACP enhanced benefit. Further, allowing households to receive both enhanced ACP benefits at the same time would not be a fiscally responsible use of limited ACP funds. Absent Congressional intent to the contrary, the Commission clarifies that the ACP enhanced benefits are not cumulative and thus, a participating provider can only offer and seek reimbursement for one ACP enhanced benefit to eligible households in such situations. Accordingly, a participating provider is allowed to seek reimbursement for the enhanced qualifying Tribal land or the high-cost area benefit per eligible household up to the maximum benefit amount of $75 per month, not both.

## III. Procedural Matters

### *A. Paperwork Reduction Act*

38. Pursuant to 47 U.S.C. 1752(h)(2) the collection of information sponsored or conducted under the regulations promulgated in this Order is deemed not to constitute a collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501–3521.

### *B. Congressional Review Act*

39. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, 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 this final rule to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

40. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) released in March 2021. The Commission sought written public comment on the proposals in the *Notice,* including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

41. In the Infrastructure Act, Congress established the ACP, which is designed to promote access to broadband internet access services by households that meet specified eligibility criteria by providing funding for participating providers to offer certain services and connected devices to these households at discounted prices. The ACP funds an affordable connectivity benefit consisting of a per month discount up to $30 on the price of broadband internet access services that participating providers supply to eligible households in most parts of the country and a per month discount up to $75 on such prices for households on qualifying Tribal lands. The Commission established rules governing the affordable connectivity standard $30 benefit and the enhanced Tribal lands benefit in the *ACP Report and Order,* 87 FR 8346, February 14, 2022, adopted on January 14, 2022.

42. The Infrastructure Act also establishes a separate, enhanced affordable connectivity benefit for eligible households served by participating providers in certain high-cost areas. Specifically, the Infrastructure Act makes available a high-cost area benefit of up to $75 per month for broadband internet access service offered by participating providers in certain areas where the cost of building broadband facilities is relatively high, upon a showing that the lower $30 per month benefit ''would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network.'' In the earlier *NPRM* to which the IRFA applied, the Commission sought comment on the rules to implement this enhanced benefit.

43. In the Order, the Commission adopts the rules necessary to implement the enhanced benefit in high-cost areas the NTIA designated in consultation with the Commission. Specifically, the Commission addresses the rules and procedures for participating providers that are facilities-based to offer an high-cost area benefit to eligible households located in designated high-cost areas served by the provider. The Commission defines ''particularized economic hardship'' for purposes of determining eligibility for the high-cost area benefit. The Commission then addresses the specific showing that participating providers must make to demonstrate they are experiencing a particularized economic hardship. The Commission also prescribes the process for submitting, reviewing, taking action on such showings, and for requests for review of adverse decisions.

44. 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; (3) satisfies any additional criteria established by the Small Business Administration (SBA).

45. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. 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's 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 32.5 million businesses.

46. 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.

47. 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.''

48. Small entities potentially affected by the rules herein include Wireless Broadband internet Access Service Providers (Wireless ISPs or WISPs).

49. *High-Cost Area Benefit.* Providers of wireline or wireless broadband internet access services, including small businesses, that voluntarily seek to qualify for the enhanced benefit will need to report and retain certain data about their operations. The necessary data include the costs of deploying and maintaining broadband internet access networks in particular high-cost areas, including the cost of capital, depreciation expenses, operating costs, and other associated expenses. These costs may vary, in part, depending on the topological features, population distribution, and other conditions in such areas. Other relevant factors may include estimates of consumer demand and likely revenues from providing broadband internet access services. Importantly, no small entity will be required to report or retain such data as a general matter.

50. The recordkeeping or reporting requirements adopted in this proceeding will apply only to those providers that choose to participate in the ACP and that voluntarily seek to provide service that qualifies for the enhanced benefit in high-cost areas where the benefit may be available. Moreover, because participation is entirely optional, the Commission believes that providers that voluntarily avail themselves of the enhanced benefit component of the ACP will enjoy benefits that far exceed the reporting and recordkeeping costs.

51. The Commission therefore finds the cost of compliance for small entities will be minimal given the steps taken to minimize the administrative burden as discussed in this FRFA.

52. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities.''

53. The actions taken by the Commission in this final rule were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. As such, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. In the following, the Commission discusses actions it takes in this final rule to minimize any significant economic impact on small entities and some alternatives that were considered.

54. *High-Cost Area Benefit.* As discussed in this FRFA, the Commission is constrained by the plain language of the statute to require a participating provider to make a showing of ''particularized economic hardship'' to offer the high-cost area benefit. Such a showing inevitably involves a measure of a provider's costs and revenues. The Commission has, however, taken steps to minimize the burden on small entities. A provider will only need to submit an affidavit asserting it will incur a ''particularized economic hardship'' and supply an income statement, that businesses routinely keep in the normal course of business, to show the provider is operating at a loss. Only if the income statement includes costs and revenues for areas outside of the designated high-cost areas, would the provider need to submit information, in addition to the income statement and an affidavit, to allocate costs and revenues to the high-cost areas it intends to serve. These steps will greatly minimize the administrative burden on all providers that voluntarily seek to offer the high-cost area benefit, including small providers, by eliminating the need, in the first instance, to gather and submit specific cost and revenue information for review and analysis. The Commission did consider the proposal to define ''particularized economic hardship'' as the serving of less than a Commission-defined threshold of broadband subscribers across a smaller provider's entire service area, but determined this approach was inconsistent with the statutory language, as discussed in this final rule.

## IV. Ordering Clauses

55. Accordingly, *it is ordered* that, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, as amended by Section 60502 of the Infrastructure Investment and Jobs Act and codified at 47 U.S.C. 1752, this Sixth Report and Order, *is adopted* and shall be effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**.

56. *It is further ordered,* that Part 54 of the Commission's rules, 47 CFR part 54, is *amended* as set forth in this document, and such rule amendments shall be effective thirty (30) days following publication of the text or summary thereof in the **Federal Register**.

## List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, internet, Libraries, Puerto Rico, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone, Virgin Islands.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer.*

## Final Regulations

For the reasons discussed in the preamble, the Federal Communications Commission amends part 54 of title 47 of the Code of Federal Regulations 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, 1752, unless otherwise noted.

## Subpart R—Affordable Connectivity Program

■ 2. Amend § 54.1803 by revising paragraph (a) to read as follows:

### § 54.1803 Affordable Connectivity Program support amounts.

(a) The monthly affordable connectivity benefit support amount for all participating providers shall equal

the actual discount provided to an eligible household off of the actual amount charged to such household but not more than $30.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household, or not more than $75.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household on Tribal lands, as defined in § 54.1800(s), or not more than $75.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household in a high-cost area, as defined in § 54.1814(a), and is approved to offer the enhanced high-cost benefit in that high-cost area pursuant to the process in § 54.1814(b).

* * * * *

■ 3. Add § 54.1814 to read as follows:

**§ 54.1814 High-cost area benefit.**

(a) *Definitions*—(1) *Audited income statement.* For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, an ''audited income statement'' is an income statement that has been audited by an independent Certified Public Accountant (CPA).

(2) *Component-level income statement.* For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, a ''component-level income statement'' is an income statement that shows financial results for the subsidiary or business component that is operating and/or offering retail broadband internet access service for sale in the designated high-cost areas as defined by 47 U.S.C. 1702(a)(2)(G).

(3) *Consolidated income statement.* For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, a ''consolidated income statement'' is an income statement that shows aggregated financial results for multiple entities or subsidiaries connected with a single parent company.

(4) *High-cost area.* For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, the term ''high-cost area'' means an area as defined by 47 U.S.C. 1702(a)(2)(G) as determined by the National Telecommunications and Information Administration.

(5) *Particularized economic hardship.* A provider has a ''particularized economic hardship'' in a high-cost area only if:

(i) It is not possible for that provider to offer service in the high-cost area while covering the costs of maintaining the operation of all or part of its broadband network in that area at the standard up to $30 a month discount; and

(ii) The up to $75 a month high-cost area benefit would materially improve the provider's ability to offer service through the ACP and maintain and operate its broadband network in that area.

(b) *High-cost area benefit approval process.* A facilities-based ACP participating provider in a high-cost area (as defined in paragraph (a) of this section) may provide an affordable connectivity benefit in an amount up to $75.00 for a broadband internet access service offering in a high-cost area upon a showing that the applicability of the standard up to $30.00 benefit under § 54.1803(a) by the provider would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network in that high-cost area.

(1) A participating provider seeking approval to provide the high-cost area benefit must first electronically file a request with the Universal Service Administrative Company by the deadline established by the Wireline Competition Bureau.

(i) The electronic request shall require the participating provider to specify whether it has previously applied for Federal financial assistance, as defined in 2 CFR 25.406, in the three fiscal years prior to the provider's application. Upon request, the participating provider must submit to the Administrator or the Commission applications for loans submitted to the U.S. Department of Agriculture Rural Utility Service (RUS), approvals or denials of such loans, the provider's RUS Operating Report for Telecommunications Borrowers filed with the RUS, and any financial reports filed with a state Public Utility Commission, as applicable.

(ii) [Reserved]

(2) The participating provider's request shall include the documentation required to demonstrate particularized economic hardship. The request shall include an income statement, a supporting affidavit, any applicable Federal tax filings and/or returns, and any other relevant documentation as determined by the Bureau and OEA.

(i) The income statement(s) must:

(A) Be produced in the ordinary course of business;

(B) Include both consolidated and component-level income statements;

(C) Be audited by an independent public accountant, where such statements are produced in the ordinary course of business or are required by 17 U.S.C. 78m, 78o(d); and

(D) Include detailed information on the provider's net income, operating revenue, and operating expenses, including, but not necessarily limited to, cost of goods sold or services, selling, general and administrative expenses and depreciation or amortization expenses.

(ii) The supporting affidavit, must include revenue and cost allocations and a description of the methodology, demonstrating that the provider was operating at a loss related to providing broadband internet access service in the relevant high-cost area(s) for the last fiscal year or in at least four of the last six fiscal quarters, or other acceptable documentation determined by the Wireline Competition Bureau in consultation with the Office of Economics and Analytics.

(iii) The participating provider must first attempt to directly assign or attribute costs to broadband internet access services, and if that is not possible, must use a cost-causative mechanism to the extent possible. If neither is possible, the participating provider must employ a reasonable cost-allocation with a justification for its methodology.

(iv) The tax filing should include Form 1120, Form 1120–S or other applicable Federal Income Tax returns as required by 26 CFR part 1.

(2) The participating provider's application must also include certifications from a company officer with knowledge of the provider's cost and revenues under penalty of perjury that:

(i) All information submitted is true and correct to the best of the filer's knowledge;

(ii) The provider will comply with all applicable statutes and the Commission's rules and orders; and

(iii) The provider will use any reimbursed funds received for its intended purpose of providing discounted broadband internet access services to eligible low-income households.

(iv) The provider is a facilities-based provider as defined by 47 CFR 1.7001(a)(2)(i) through (v).

(v) The provider used cost allocation methodology consistent with the rules.

(c) *Review process.* The Administrator, under oversight of the Wireline Competition Bureau and the Office of Economics and Analytics, shall review each participating provider's request to offer the high-cost area benefit and determine whether the provider has demonstrated a particularized economic hardship in the

high-cost areas for which it is requesting to offer the high-cost area benefit. If the Administrator finds the particularized economic hardship showing is satisfied in accordance with the Commission's rules and orders, and any guidance from the Wireline Competition Bureau and the Office of Economics and Analytics, then the Administrator will approve the request and notify the participating provider. Otherwise, the Administrator will deny the request and provide the participating provider a written explanation of the basis for the denial.

(1) The Administrator will review applications within a timeline to be determined by the Bureau.

(2) Providers may appeal the Administrator's determination as set forth in subpart I in this part of the Commission's rules.

(3) Providers may only submit claims for up to the $30.00 standard benefit amount while an appeal of an Administrator's determination is underway. Following a successful appeal, providers approved to offer the high-cost area benefit may submit revised claims for eligible households in the approved high-cost areas as set forth in § 54.1808. The provider many submit revised claims for up to $75.00 only from the start of the approval period indicated in the appeal determination letter.

(d) *Annual renewal process.* A participating provider that has been approved to provide the high-cost area benefit must request approval annually thereafter to continue to provide the enhanced benefit to eligible households in a subsequent year. The participating provider will need to demonstrate particularized economic hardship in the renewal submission, through the documentation specified by the Wireline Competition Bureau. The deadline for submitting the renewal request shall be determined by the Wireline Competition Bureau.

(e) *Notice to eligible households.* (1) Participating providers approved to offer the high-cost area benefit shall provide Affordable Connectivity Program subscribers written notice when the provider begins applying the high-cost area benefit to the subscriber's bill. The written notice must state:

(i) That the subscriber is receiving a high-cost area benefit and the difference between the standard benefit amount and the enhanced high-cost benefit being applied to the subscriber's supported service;

(ii) That the receipt of the high-cost area benefit is contingent on the provider's annual continued eligibility to offer the enhanced high-cost area benefit;

(iii) That the provider is required to provide the subscriber advance notice if the provider is no longer deemed eligible to offer the high-cost area benefit; and

(iv) That the provider is required to provide the subscriber advance notice of any changes to the subscriber's supported service rate or service plan stemming from any loss of the provider's eligibility to offer the high-cost area benefit.

(2) If a participating provider fails to timely submit the renewal submission by the deadline or no longer qualifies to offer the high-cost area benefit based on its annual resubmission, then the participating provider shall provide written notice to its Affordable Connectivity Program customers receiving the high-cost area benefit at least 30 days and at least 15 days before the expiration of its approval to offer the high-cost area benefit. Such subscriber notices shall include:

(i) A statement that the provider will no longer be offering the high-cost area benefit in the relevant high-cost area;

(ii) The effective date of the end of the high-cost area benefit;

(iii) A statement that upon the effective date of the loss of the high-cost area benefit, the Affordable Connectivity Program supported service purchased by the household will no longer be discounted at the higher subsidy amount; and

(iv) The amount the household will be expected to pay if it continues purchasing the service from the provider after the high-cost area benefit is no longer available.

(3) If a participating provider is no longer authorized to offer the high-cost area benefit, the provider may transition an eligible household to a lower-priced ACP service plan once the high-cost area benefit is no longer available, upon advance notice to the household and an opportunity for the household to opt out of the change and remain on its current service plan or select another service plan. Participating providers must include the advance transition notice in the required written notice about the end of the provider's approval to offer the high-cost area benefit. The advanced notice must:

(i) Provide details about the new plan and monthly price;

(ii) State that the subscriber may remain on its current plan or choose another plan;

(iii) Provide instructions on how the subscriber can opt out of the transition or change its service plan;

(iv) Provide the deadline for the subscriber to notify the provider that the subscriber would like to remain on its current plan or choose another plan.

[FR Doc. 2023–18621 Filed 8–31–23; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### 49 CFR Part 172

**[Docket No. PHMSA–2021–0058 (HM–264A)]**

**RIN 2137–AF55**

## Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** PHMSA, in coordination with the Federal Railroad Administration (FRA), is amending the Hazardous Materials Regulations to suspend authorization of liquefied natural gas (LNG) transportation in rail tank cars pursuant to a final rule published on July 24, 2020, pending the earlier of either completion of a companion rulemaking evaluating potential modifications to requirements governing rail tank car transportation of LNG, or June 30, 2025.

**DATES:** This final rule is effective on October 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Alexander Wolcott, Transportation Specialist, Standards and Rulemaking Division, Office of Hazardous Materials Safety, (202) 366–8553, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

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## I. Overview

PHMSA, in coordination with FRA, is suspending recent amendments to the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) authorizing transportation of ''Methane, refrigerated liquid,'' commonly known as liquefied natural gas (LNG) in DOT–113C120W9 specification rail tank cars while it conducts a thorough evaluation of the HMR's regulatory framework for rail transportation of LNG in a companion rulemaking under Regulatory Identification Number (RIN) 2137–AF54, and determines whether any modifications are necessary. Transportation of LNG by rail tank car has not occurred since the July 24, 2020, publication of a final rule authorizing transportation of LNG in rail tank cars [1] and there is considerable uncertainty regarding whether any would occur in the time it takes for PHMSA to consider potential modifications to existing, pertinent HMR requirements. However, this temporary suspension of the HMR provisions authorizing transportation of LNG in rail tank cars guarantees no such transportation will occur before its companion rulemaking has concluded or June 30, 2025, whichever is earlier, thereby: (1) avoiding potential risks to public health and safety or environmental consequences (to include direct and indirect greenhouse gas (GHG) emissions) [2] that are being evaluated in the companion rulemaking under RIN 2137–AF54; (2) allowing for the completion of ongoing testing and evaluation efforts undertaken in collaboration with FRA, as well as further consideration of the recommendations from external technical experts of the National Academy of Sciences, Engineering, and Medicine (NASEM); (3) assuring an opportunity for the potential development of any mitigation measures and operational controls for rail tank car transportation of LNG; (4) reducing the potential for economic burdens by ensuring that entities avoid ordering rail tank cars for transporting LNG compliant with current HMR requirements when the companion rulemaking may adopt alternative requirements; and (5) enabling potential opportunities for stakeholders and the public to be apprised of, and comment on, the results of ongoing testing and evaluation efforts.

Towards that end, PHMSA is adding a new special provision 439 that prohibits LNG transportation in rail tank cars until issuance of a final rule concluding the rulemaking proceeding under a companion rulemaking under RIN 2137–AF54, or June 30, 2025, whichever is earlier. Rail transport of LNG may still be permitted as authorized by the conditions of a PHMSA special permit (SP) under § 107.105, or in a portable International Organization for Standardization (ISO) tank secured to a rail car pursuant to the conditions of an FRA approval under § 174.63. PHMSA is also adopting a modest extension (until June 30, 2025, at the latest) of the sunset for the temporary suspension period identified in its November 2021 notice of proposed rulemaking in this proceeding,[3] consistent with comments received on the NPRM and information obtained after its publication evincing greater uncertainty regarding the near-term commercial viability and potential environmental and safety risks associated with rail tank car transportation of LNG as authorized by the July 2020 Final Rule.

## II. Background

### *A. Historical Regulation of LNG by Rail*

LNG is a natural gas that has been cooled and converted to a liquid form for easier and more efficient transportation. In the United States, pipelines have historically delivered most natural gas, although other modes of transportation—such as rail and highway—have accounted for a relatively minor portion of natural gas transportation, typically in the form of LNG. Before PHMSA published the July 2020 Final Rule, rail transportation of LNG would have been limited to UN portable tank shipments (commonly referred to as ISO tank shipments) under an FRA approval and shipments made under SPs issued by PHMSA. This approach reflected the unique safety risks presented by rail transportation of large volumes of LNG and the historically low demand to transport LNG by rail.

### *B. A New Regulatory Approach and Enabling Research*

Executive Order 13868 (''Promoting Energy Infrastructure and Economic Growth'') [4] was signed in April 2019 and required PHMSA to treat LNG the same as other cryogenic liquids, authorize LNG to be transported in approved rail tank cars, and to finalize that rulemaking within 13 months.[5] In response, PHMSA published a notice of proposed rulemaking titled ''Hazardous Materials: Liquefied Natural Gas by Rail'' [6] in which it proposed to authorize the transportation of LNG in existing DOT–113C120W specification tank cars. The initial comment period for the NPRM closed on December 23, 2019, and was subsequently extended until January 13, 2020, following PHMSA's issuance to Energy Transport Solutions, LLC (ETS) in early December 2019 of

[1] PHMSA final rule ''Hazardous Materials: Liquefied Natural Gas by Rail,'' 85 FR 44994 (Jul. 24, 2020) (July 2020 Final Rule). References within to ''this Final Rule'' or ''the Final Rule'' without qualification by reference to ''July 2020'' are meant to refer to this notice rather than its July 2020 Final Rule.

[2] PHMSA distinguishes between ''direct'' and ''indirect'' GHG emissions herein consistent with Council on Environmental Quality (CEQ) guidance. *See* CEQ, ''National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change,'' 88 FR 1196 (Jan. 9, 2023), which builds upon and updates CEQ's 2016 ''Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews,'' 81 FR 51866 (Aug. 8, 2016).

[3] PHMSA, ''Notice of Proposed Rulemaking—Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail'' 86 FR 61731 (Nov. 8, 2021) (NPRM).

[4] 84 FR 15495 (Apr. 15, 2019).

[5] The Secretary has delegated such rulemaking duties to the PHMSA Administrator. *See* 49 CFR 1.97.

[6] 84 FR 56977 (Oct. 24, 2019).

DOT–SP 20534 for the transportation of LNG by rail tank car.[7]

DOT–SP 20534 allowed the transportation of LNG in existing DOT–113 tank cars from Wyalusing, PA, to Gibbstown, NJ, with no intermediate stops. This SP contained safety controls including a requirement to conduct remote sensing for detecting and reporting internal pressure, location, leakage, and (prior to the initial shipment of a tank car under the SP) a requirement to provide training to emergency response agencies that could be affected on the route. DOT–SP 20534 expired by its terms on November 30, 2021, after ETS had not filed an application for renewal until November 29, 2021. After careful consideration, PHMSA denied ETS' application for renewal on March 31, 2023.[8]

In January 2020, PHMSA established a joint LNG Task Force with FRA to undertake testing and evaluation activity on the transportation of LNG that could inform potential future regulatory actions, as appropriate. In order to identify tasks within that effort, the LNG Task Force utilized a risk-based framework focused on knowing the risk, predicting the risk, reducing the risk, and preparing for the risk. Using that framework, the LNG Task Force identified and undertook 15 tasks to synthesize ongoing research and outreach activities. Those tasks included empirical review of international LNG transportation, safety and security route risk assessments, a re-evaluation of the costs and benefits of electronically controlled pneumatic (ECP) brakes, and the validation of emergency responders' opinions and needs. Although the LNG Task Force initially projected completion of its tasks by late 2021, much of its work was interrupted or delayed because of the coronavirus disease 2019 (COVID–19) public health emergency and because of subsequent modification of the scope of its activities. The ongoing efforts of the LNG Task Force are discussed further below.

In parallel with its work under the LNG Task Force, and pursuant to a mandate in the ''Further Consolidated Appropriations Act, 2020'' (Pub. L. 116–94), PHMSA and FRA partnered with NASEM to conduct a study on the transportation of LNG in rail tank cars through a committee of the Transportation Research Board (TRB).[9] The TRB commenced work in mid-July 2020. Roughly contemporaneous with the TRB beginning its work, PHMSA published the July 2020 Final Rule authorizing the shipment of LNG in new DOT–113C120W9 specification rail tank cars with enhanced outer tank requirements, subject to all applicable requirements and certain new operational controls. The July 2020 Final Rule became effective on August 24, 2020 and was swiftly followed by several petitions for judicial review. Specifically, six environmental groups, a coalition of attorneys general for 14 States and the District of Columbia, and the Puyallup Tribe of Indians filed separate petitions for review challenging the July 2020 Final Rule. All the petitioners asked the court to vacate the July 2020 Final Rule, alleging violations of the Hazardous Materials Transportation Act (HMTA; 49 U.S.C. 510 2012;5127), the Administrative Procedure Act (APA; 5 U.S.C. 553 *et seq.*), and the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The Puyallup Tribe also alleged violations of the Tribal consultation protocols under the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*) and Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''),[10] as well as disparate impacts on the Tribe in violation of Executive Order 12898 (''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') [11] and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*). The petitions were subsequently consolidated within a single proceeding in the U.S. Court of Appeals for the District of Columbia Circuit [12] with the court granting PHMSA's motion to place the petitions in abeyance while PHMSA reviewed the July 2020 Final Rule. PHMSA submitted the latest status report in that proceeding in early June 2023. The Court lifted the abeyance on July 18, 2023.[13]

### *C. Another Hard Look Incorporating NASEM Recommendations and Ongoing Research Efforts*

Immediately after taking office, the Biden-Harris Administration issued Executive Order 13990 (''Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis'') [14] on January 20, 2021. Executive Order 13990 required the review of agency regulations and other actions promulgated or adopted between January 20, 2017, and January 20, 2021, that are candidates for suspension, modification, or rescission because of inconsistency with Biden-Harris Administration policies to improve public health, protect the environment, prioritize environmental justice, and reduce GHG emissions. The Biden-Harris Administration identified the July 2020 Final Rule in a non-exclusive list [15] of agency actions that would be reviewed in accordance with Executive Order 13990. Additionally, section 7 of Executive Order 13990 revoked Executive Order 13868, along with several other executive orders and executive actions, and directed agencies to promptly take steps, consistent with applicable law, to rescind any rules or regulations that had been issued ''implementing or enforcing'' those executive orders and executive actions.

In response to Executive Order 13990, DOT published a notice on May 5, 2021, soliciting comment on potential candidates for review under Executive Order 13990 from among existing rules and other DOT actions.[16] DOT received one comment pertaining to the July 2020 Final Rule from the Transportation Trades Department of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO). The commenter requested a reexamination of the July 2020 Final Rule as it believed that rulemaking ''neglected to include meaningful safety measures to adequately address the

[7] 84 FR 70492 (Dec. 23, 2019) (DOT–SP 20534).

[8] 88 FR 24844, 2846 (Apr. 24, 2023). PHMSA formally informed ETS of the denial of its renewal application by email on March 31, 2023, noting that (1) ETS's renewal application had made no attempt to address the concerns raised in the NPRM in this proceeding, (2) nearly three and a half years after issuance of DOT–SP 20534, ETS had yet to provide evidence that it had procured either new DOT–113C120W9 tank cars or existing DOT–113C120W tank cars, and (3) the origin and destination facilities specified in DOT–SP 20534 had not been built and would need additional authorizations before construction could begin. ETS did not seek judicial review of the denial.

[9] In that legislation, Congress earmarked funds for the NASEM study for the express purpose of ''inform[ing] rulemaking.'' NASEM maintains a website dedicated to the TRB committee's work that contains the TRB committee's charter, work product, meeting agendas, and other supporting material. *See* NASEM, ''Safe Transportation of Liquefied Natural Gas by Railroad Tank Car,'' *https://www.nationalacademies.org/our-work/safe-transportation-of-liquefied-natural-gas-by-railroad-tank-car (last visited May 15, 2023).*

[10] 65 FR 67249 (Nov. 9, 2000).

[11] 59 FR 7629 (Feb. 16, 1994).

[12] Under docket no. 20–1317 (consolidated with docket nos. 20–1318, 20–1431, & 21–1009).

[13] On May 17, 2023, Petitioners filed a Joint Motion to Lift Abeyance and requested the D.C. Circuit Court to direct the parties to submit a proposed briefing schedule. PHMSA, through the Department of Justice, filed a response opposing the motion to lift the abeyance on June 6, 2023. The Petitioners filed a reply on June 13, 2023.

[14] 86 FR 7037 (Jan. 25, 2021).

[15] U.S. White House, ''Fact Sheet: List of Agency Actions for Review,'' *https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/* (last visited May 16, 2023).

[16] 85 FR 23876 (May 5, 2021).

inherent risks to this type of operation.'' [17]

The TRB issued its Phase I Report on June 15, 2021,[18] which reviewed the plans and progress of the LNG Task Force and evaluated the relevance, completeness, and quality of those efforts. The Phase I Report generally praised the LNG Task Force's ''comprehensive as planned'' program for making effective use of a ''number of long standing and high-quality research and testing programs.'' However, the TRB noted that the COVID–19 public health emergency resulted in delays in initiation and completion of several tasks. The TRB also noted that the interdependency of many of those outstanding tasks complicated its and the LNG Task Force's work in developing a complete understanding of the risks associated with the transportation of LNG in rail tank cars. Specifically, it expressed concern on the incomplete status of tasks pertaining to full-scale impact testing, portable tank pool fire testing, worst-case scenario analysis, and quantitative risk assessment. The Phase I Report made several recommendations including proposing that PHMSA and FRA make changes to the planned portable fire tank testing, assess the potential for cryogenic damage cascading to adjacent tanks, enhance the modeling for worst-case scenarios, evaluate explosion hazards from a spill of LNG resulting in vapor dispersion in an environment with confined or congested spaces, and add loading and unloading operations to the risk assessment. PHMSA subsequently modified its LNG Task Force testing activity in response to the Phase I Report recommendations by, among other things, undertaking each of the following: enhanced impact testing directed toward evaluating post-weld, heat-treated seams from a DOT–113C120W9–specification tank car; enhanced worst-case scenario modeling; performing an enhanced quantitative risk assessment; modification of ISO tank pool fire testing protocols to better simulate release conditions; and enhanced train dynamic simulations to better capture effects from use of distributed power and buffer car placement within a train consist transporting LNG.

On November 8, 2021, PHMSA published the NPRM in this rulemaking proceeding. In that NPRM, PHMSA reviewed pertinent economic data, TRB's Phase I Report recommendations, and the status of ongoing work of the LNG Task Force en route to proposing a temporary suspension of the transportation of LNG by rail tank car until the earlier of either June 30, 2024, or the publication of a companion rulemaking under RIN 2137–AF54. PHMSA's proposal reflected its understanding that uncertainties acknowledged in the July 2020 Final Rule—*e.g.,* regarding the near-term commercial viability of rail tank car transportation of LNG, as well as potential safety and environmental benefits and risks of rail tank car transportation—had only increased since issuance, thereby ''casti[ng] doubt on the continued validity of the balance between potential benefits and public safety and environmental risks underpinning the [July 2020 Final Rule].'' [19] PHMSA therefore proposed a temporary suspension of the July 2020 Final Rule to allow time for PHMSA to review the results of the (then-forthcoming) TRB Phase II Report, complete ongoing LNG Task Force testing and evaluation activities, and (based on the results of those efforts) modify HMR requirements as appropriate within the companion rulemaking under RIN2137–AF54. The comment period closed on December 23, 2021. PHMSA received over 10,500 comments from private individuals, environmental groups, government officials, the rail industry, and other stakeholders. See Section III for further details.

The TRB issued its Phase II Report on September 9, 2022.[20] The Phase II Report involved a more comprehensive assessment than that undertaken in connection with the Phase I Report regarding topics relevant to the safe movement of LNG by rail tank car pursuant to both SPs and the HMR following issuance of the July 2020 Final Rule. Specifically, it examined bulk shipments of LNG by other modes of transportation (including vessel and highway) to identify the basic principles used in those modes for safety assurance. It also examined the effectiveness of regulatory requirements and industry practices (*e.g.,* pertaining to speed and routing, as well as other operational controls applicable to high-hazard flammable trains) intended to assure the safe transportation of bulk rail shipments of other hazardous materials.

The Phase II Report also made recommendations on necessary near- and long-term actions to improve the understanding of the risks associated with transporting LNG by rail tank car, mitigate those risks, and prevent and prepare for potential incidents. The first recommendation suggested launching an LNG safety assurance initiative before LNG tank cars are put in service. The safety assurance initiative would actively monitor initial plans for and early patterns of LNG traffic activity, including the locations and routes of shipments, the number and configuration of tank cars in trains, and reports of incidents involving a tank car or train carrying LNG. The second and final recommendation suggested that PHMSA and FRA should review the DOT–113C120W9 tank car specification to ensure that it adequately accounts for the cryogenic and thermal properties of LNG that could contribute to a tank release in the event of a rail incident and potential cascading impacts therefrom. The TRB's elaboration on its second recommendation emphasized the value in assessing each of the following: the capacity of the pressure relief devices on the new DOT–113C120W9-specification tank cars to vent a sufficient amount of LNG when the tank car is engulfed in an LNG fire in derailment conditions, including a rollover event; the effects of adding more and different types of insulation in the annular space to ensure sufficient performance of the multilayer insulation system when the tank car is exposed to heat flux and direct flame impingement from an LNG fire; and the potential for the outer tank of the DOT–113C120W9 tank car to experience cryogenic brittle failure and loss of vacuum insulation when exposed to an LNG pool fire. PHMSA subsequently adjusted its LNG Task Force testing activity in response to the Phase II Report recommendations by modifying its ongoing worst-case analysis modeling and quantitative risk assessment efforts to address the DOT–113C120W9-specification design element concerns raised by the TRB. In light of the new information received from the TRB reports and PHMSA's completed research and ongoing tests, PHMSA suspends the regulations adopted in the July 2020 Final Rule to allow PHMSA sufficient time to complete its analysis to reconsider the determinations made in the July 2020 Final Rule.

The LNG Task Force has completed most of its testing and evaluation activities (as modified in response to the TRB Phases I and II Reports). Of those remaining activities, PHMSA expects to

[17] Docket No. DOT–OST–2021–0036–0025.

[18] NASEM, ''Preparing for LNG by Rail Tank Car: A Review of a U.S. DOT Safety Research, Testing, and Analysis Initiative'' (Jun. 2021) (Phase I Report), *https://www.nap.edu/read/26221/chapter/1.*

[19] 86 FR at 61735–36.

[20] NASEM, ''Preparing for LNG by Rail Tank Car: A Readiness Review'' (Sep. 2022) (Phase II Report), *https://www.nap.edu/read/26719/chapter/1.*

complete its enhanced quantitative risk analysis and worse case analysis modeling no later than Q3–2023. This analysis has taken longer than expected because it was modified first to address concerns in the TRB Phase I Report in June 2021 and then again in response to the TRB Phase II Report issued in September 2022. PHMSA is in the process of contracting for performance of each of the following remaining tasks: (1) enhanced impact testing directed toward evaluating post-weld, heat-treated seams from a DOT–113C120W9-specification tank car in response to the TRB Phase I Report; and (2) enhanced train dynamic simulations to better capture effects from use of distributed power and buffer car placement within a train consist transporting LNG in response to the TRB Phase I Report.

*D. East Palestine, OH Derailment*

On February 3, 2023, a mixed-consist freight train operated by Norfolk Southern Railway—comprised of two head-end locomotives, 149 railcars, and 1 distributed power locomotive—derailed in East Palestine, Ohio. Thirty-eight railcars derailed, including 11 tank cars carrying combustible liquid and flammable gas hazardous materials, though none of the railcars were carrying LNG. The derailment resulted in a fire impacting the derailed tank cars and damaging 12 additional railcars that had not derailed. Included in the derailment and fire were five DOT–105 specification tank cars containing vinyl chloride—a hazardous material classified as a Division 2.1 flammable gas. These DOT–105 specification tank cars were not punctured in the derailment. PHMSA is working with the National Transportation Safety Board to learn all it can from this incident and determine whether the lessons learned should inform rail transportation of other hazardous commodities such as LNG.

## III. Discussion of Comments to the NPRM and Adoption of a Temporary Suspension of the July 2020 Final Rule

The comment period for the NPRM in this proceeding closed on December 23, 2021. PHMSA received over 10,500 sets of comments to the rulemaking docket through and after the formal comment period; consistent with § 106.70, PHMSA considers late-filed comments to the extent possible. PHMSA considered all comments received in the development of this Final Rule. The comments submitted to this docket may be accessed via *http://www.regulations.gov.* The following table categorizes the commenters. Please note that some commentors submitted multiple comments.

| Commenter | Count | Description and examples of category |
|---|---|---|
| Non-Government Organizations | 18 | Environmental Groups; Emergency Response Organizations; Other. |
| Government Officials | 8 | Local; State; Federal; Tribal. |
| Private Individuals | 10,126 | |
| Industry Stakeholders | 3 | Trade Associations; Shippers. |

Table of Commenters to the NPRM

Comments received could generally be summarized as advancing one or more of the following positions:

- Comments requesting an immediate, permanent ban of LNG by rail;
- Comments requesting the removal of the June 30, 2024, sunset date;
- Comments of general support for the NPRM;
- Comments alleging chilling of near-term demand for LNG transportation by rail tank car pursuant to the July 2020 Final Rule;
- Comments alleging that LNG by rail improves safety;
- Comments alleging environmental benefits from LNG by rail;
- Comments alleging PHMSA is overstepping its authority by attempting to regulate oil and gas production;
- Comments alleging PHMSA did not meet its evidentiary burden under the APA for temporary suspension of the July 2020 Final Rule;
- Comments alleging that PHMSA's proposal will have miscellaneous adverse consequences for regulated entities, the U.S. economy, and national security; and
- Comments beyond the scope of this rulemaking.

Based on the comments received in response to the NPRM, the recommendations in the TRB Phases I and II Reports, the ongoing LNG Task Force testing and evaluation activities, and pertinent information regarding the near-term commercial prospects for rail tank car transportation of LNG, PHMSA has concluded that a temporary suspension of the July 2020 Final Rule's authorization for rail tank car transportation of LNG in new DOT–113C120W9-specification tank cars is appropriate. PHMSA finds that, consistent with the analysis in the NPRM, these resources indicate that the uncertainties described in the July 2020 Final Rule (*e.g.,* regarding whether, when and how LNG by rail tank car transportation will occur, and the safety and environmental risks and benefits of such transportation) have only increased since its issuance, calling into question the balance between potential benefits and public safety and environmental risks PHMSA understood itself to be striking in that rulemaking. In contrast (and as explained at greater length below in this Section III responding to comments received on the NPRM) a temporary suspension will ensure each of the following: (1) avoidance of potential safety risks to public and worker safety and the environment while PHMSA completes its companion rulemaking under RIN 2137–AF54; (2) HMR authorization of rail tank car transportation of LNG pursuant to that companion rulemaking reflects the best science by accounting for ongoing LNG Task Force testing and evaluation activities as informed by the TRB Phases I and II Report recommendations; (3) consideration of additional public comment from diverse stakeholders in that companion proceeding; and (4) minimizing the potential for economic burdens by ensuring that entities avoid ordering rail tank cars for LNG service compliant with the requirements of the July 2020 Final Rule when the companion rulemaking may alter those requirements.[21] *See* 86 FR at 61732, 67135–36. As noted in the NPRM, stakeholders seeking to transport LNG by rail during the suspension period may seek (on an ad hoc basis) either SPs from PHMSA or approvals from FRA.

Lastly, the Final Rule extends the duration of the temporary suspension an

[21] The temporary suspension provided for in this Final Rule applies only to rail transportation of LNG tank cars—it does not prohibit use of the new DOT–113C120W9 tank car in connection with other hazardous, cryogenic liquids.

additional year (until June 30, 2025, at the latest) beyond the sunset date (June 30, 2024) proposed in the NPRM. This extension—which is consistent with comments received from stakeholders [22] on the NPRM discussed in section III.B below—is warranted due to delays in completion of the LNG Task Force activity (discussed in section III.C below) that will inform the companion rulemaking under RIN 2137–AF54. Also, economic information discussed in section III.D below shows that the commercial prospects for rail tank car transportation pursuant to the July 2020 Final Rule have become even more uncertain than they were when the NPRM issued in November 2021.

*A. Comments Requesting an Immediate, Permanent Ban of LNG by Rail*

PHMSA received numerous comments requesting the immediate, permanent ban of all LNG by rail in lieu of the temporary suspension as proposed in the NPRM. Many of these comments were part of write-in campaigns comprising approximately 6,650 comments in an initial campaign during the formal comment period, and an additional 3,500 comments in a second campaign coordinated by the National Resource Defense Council (NRDC) after the East Palestine derailment in early 2023 (NRDC Coordinated Write-in Campaign Comments). Other comments were stand-alone comments submitted by non-governmental organizations (*e.g.,* environmental advocacy organizations); Federal, State, and local government officials; and private citizens.

Many of these comments attributed the need for an immediate, permanent ban on the risk to public safety and the environment from LNG's material properties—specifically, pointing to its flammability, explosive potential, and GHG contributions—in the event of a release. Of particular concern for many commenters were the risks of a boiling liquid expanding vapor explosions (BLEVEs) or asphyxiation in the event of a release of LNG during an accident or incident. Some commenters elaborated on their safety concerns by highlighting the potential limitations (*e.g.,* of personnel and equipment resources and training) of emergency response personnel to respond to an incident involving rail transportation of LNG in their jurisdictions. Other commenters alleged that the new DOT–113C120W9 tank car specification was inadequate or untested for rail transportation of LNG and that a more robust safety history—coupled with more robust, mandatory operational controls (such as limits on train length, tank car weight, and maximum allowable speed) than required in the July 2020 Final Rule—would be necessary to ensure safety. Other commenters cited safety and environmental justice concerns for those who live along rail lines that would carry LNG, stating that ''bomb trains'' would threaten the safety of those who live in these communities—many of which communities may be densely-populated or historically disadvantaged. Other commenters called for an immediate ban of LNG transportation by rail given methane's status as a potent GHG and the Biden-Harris Administration's commitments to reducing GHG emissions. And commenters from the NRDC campaign called for a ban on LNG by rail in the ''in the wake of the devastating train derailment in East Palestine, Ohio.'' [23] Lastly, some commenters contended that if the ''. . . rule was already bad enough to reconsider, it should be repealed outright.'' [24]

PHMSA Response

PHMSA acknowledges the concerns raised by these stakeholders and agrees that any risks related to the transportation of LNG by rail should be examined closely and properly mitigated to ensure safety for the public and the environment. Accordingly PHMSA is suspending LNG transportation by rail tank car pursuant to the July 2020 Final Rule until the conclusion of the companion rulemaking under RIN 2137–AF54 or June 30, 2025, whichever is earlier. This will provide PHMSA an opportunity to conduct a thorough evaluation of the HMR's regulatory framework for rail transportation of LNG based on the information received from the LNG Task Force testing and evaluation efforts, TRB Phases I and II Reports, and stakeholders' written comments. PHMSA also encourages those stakeholders to consider submitting comments in response to any future notice of proposed rulemaking issued by PHMSA in the companion rulemaking under RIN 2137–AF54.

*B. Comments Requesting the Removal of the June 30, 2024, Sunset Date*

PHMSA received comments requesting removal of the sunset date of June 30, 2024, proposed in the NPRM so that the proposed suspension would be in effect until the companion rulemaking under RIN 2137–AF54 has concluded. Delaware Riverkeeper Network (DRN) commented that in the NPRM, PHMSA justified the sunset date by indicating that the TRB Phase II Report was expected in mid-2022 and that PHMSA needed time to incorporate those results and publish a rule. DRN argued that ''this rationale begs the question—why not wait until PHMSA *actually* incorporates the results of the Phase II Report and concludes the rulemaking process?'' They further stated that ''the unpredictability of the COVID–19 pandemic indicates that timelines are not as predictable as they were pre-2019.'' [25]

The International Association of Fire Fighters (IAFF) suggested an objective-based approach whereby the suspension would only be lifted if certain criteria have been met. IAFF further urged ''. . . the FRA to establish specific criteria to be attained prior to the lifting of the proposed suspension.'' [26] Similarly, comments from the AFL–CIO and others supported suspending LNG by rail tank car until LNG Task Force testing and evaluation efforts are complete, stating they ''. . . support PHMSA's suspension of the implementation of the rule until a time when the agencies have completed a more thorough safety review.'' [27] Other commenters proposed longer suspension periods than had been proposed in the NPRM.

PHMSA Response

PHMSA in the NPRM specifically sought comments on the proposed suspension date, including the sunset date, and whether PHMSA should modify the proposed expiration of the suspension period.[28] PHMSA appreciates and acknowledges the points made by commenters and, consistent with the discussion in the introduction to section III above, is extending the sunset date for the suspension period an additional year such that rail tank car transportation of LNG pursuant to the July 2020 Final Rule will be suspended until the earlier of either (1) a final rule concluding the companion rulemaking under RIN 2137–AF54, or (2) June 30, 2025. This one-year extension beyond the sunset date (June 30, 2024) proposed in the NPRM will give PHMSA adequate time to complete LNG Task Force testing and evaluation activities (and delays in

[22] PHMSA received no comments that specifically requested the June 2024 sunset date for the suspension; commenters either sought no suspension or a permanent suspension.

[23] NRDC Coordinated Write-in Campaign Comments.

[24] Beyond Extreme Energy with 198 methods Comment at 1.

[25] DRN Comment at 2.

[26] IAFF Comment at 2.

[27] TDD Comment at 1.

[28] 86 FR at 61737.

receipt of the TRB Phases I and II Reports) that had been delayed because of the COVID–19 public health emergency and additional scoping and contracting issues, and thereafter integrate those results into each of a notice of proposed rulemaking and final rulemaking in the companion rulemaking under RIN 2137–AF54.

*C. Comments of General Support for the NPRM*

PHMSA received numerous comments in support of the NPRM's proposed suspension, including comments from Governor Jay Inslee of Washington State; the Attorneys General of Maryland, New York, Connecticut, Delaware, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia; and the Puyallup Tribe of Indians. Many commenters who supported the temporary suspension proposed in the NPRM also urged PHMSA to subsequently ban LNG in the companion rulemaking under RIN 2137–AF54. Commenters supporting the NPRM's proposed suspension of the July 2020 Final Rule generally articulated the same safety and environmental concerns as those calling for an immediate, permanent bans of rail tank car transportation of LNG discussed in section III.A above.

PHMSA Response

PHMSA acknowledges the thousands of comments submitted in support of the NPRM. Although some of those commenters also urged PHMSA to permanently ban rail tank car transportation of LNG in the companion rulemaking under RIN 2137–AF54, PHMSA submits that it will need to complete (and review the results of) the LNG Task Force testing and evaluation efforts before it will be in a position to speak to the contents of a forthcoming notice of proposed rulemaking in that companion rulemaking. PHMSA encourages stakeholders to consider submitting comments in response to any future notice of proposed rulemaking issued by PHMSA in the companion rulemaking under RIN 2137–AF54.

*D. Comments Alleging Chilling of Near-Term Demand for LNG Transportation by Rail Tank Car Pursuant to the July 2020 Final Rule*

PHMSA received several comments [29] on the NPRM's observations of increased uncertainty regarding whether there will be near-term demand for rail tank car transportation of LNG pursuant to the July 2020 Final Rule. Specifically, CSX noted in its comments that it had several projects in development to transport LNG by rail in or before 2024, and that ''[t]he continued investment in and pursuit of those projects, which require design, permitting, and construction with long lead times, would be impaired if the July 2020 Final Rule were suspended *indefinitely,* delaying them potentially for years and harming CSX's reliance interests and imposing costs and lost business opportunities on CSX and its partners'' (emphasis added). CSX subsequently met with PHMSA on February 17, 2022, and elaborated on their written comments by noting that those projects had been shelved and that the issuance of the NPRM was the occasion for those decisions. The Attorney General for the State of Louisiana, Jeff Landry, joined by State Attorneys General from Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kentucky, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Ohio, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, and Wyoming (Landry, et. al.) similarly contend that ''the proposed rule itself *is* the cause of the regulatory uncertainty of which it complains'' (emphasis in original) in that it ''discourages companies from making any capital investment in LNG by rail, specifically the DOT–113C120W9 specification tank cars that the 2020 Rule authorized.''

PHMSA Response

PHMSA finds these comments unconvincing statements of the near-term commercial viability of rail tank car transportation of LNG pursuant to the July 2020 Final Rule. The suspension proposed in the NPRM and adopted in this Final Rule is not ''indefinite'' as characterized by CSX; rather, it is time-limited to the earlier of a date certain (June 2025) or to the completion of the milestone of issuing a final rule in the companion rulemaking under RIN 2137–AF54. Even if the NPRM affected one or more of CSX's nascent projects exploring rail tank car transportation of LNG, CSX or other entities could have applied for, and may still apply for, an alternative regulatory vehicle (*e.g.,* an SP under § 107.105,[30] or an FRA approval for rail transportation via portable tank) to allow work to proceed on those projects during the suspension period. PHMSA is unaware of CSX, its collaborators in those projects, or any other entities having pursued alternatives. Indeed, in its written comments and again during its February 17, 2022, meeting with PHMSA, CSX personnel acknowledged that the choice of package (*i.e.,* the particular DOT-specification rail tank car or ISO tank) employed in rail transportation of LNG is merely one decision within a multi-step, multi-year project development and execution chain involving, among other things, the construction of origin facilities and off-loading facilities, and the acquisition of one or more enabling Federal and State permits. The projects CSX and others may have been pursuing were prolonged, highly contingent processes in which there are multiple potential bases for material delay or cessation of a project throughout the development cycle. That said, PHMSA understands the shelving of CSX's or any other entities' projects following the proposal of a time-limited, temporary suspension for which there could be alternative rail transportation methods evinces less an alleged ''chilling'' of investment than the significant uncertainty discussed in the NPRM regarding whether there would be any commercially viable projects for rail transportation of LNG in the near-term.

And PHMSA understands that a variety of forces have created—and will continue to create throughout the suspension period—headwinds for the near-term commercial viability of any project for rail transportation of LNG. The NPRM explained that the near-term commercial prospects for LNG by rail (which the July 2020 Final Rule had acknowledged were uncertain at its issuance) had grown even more uncertain due to near-term structural changes in international markets including (1) massive investment in greatly increased export capacity by competing providers such as Qatar, and (2) reduced demand for LNG customers seeking to reduce their GHG emissions.[31] The comments submitted by CSX, other industry stakeholders, and Landry, et. al. did not attempt to rebut this evidence, or PHMSA's finding that the near-term commercial uncertainty for rail transportation of LNG had increased. Further, the structural headwinds for rail transportation of LNG are likely to accelerate in the near future, as the U.S. Energy Information Administration (EIA) predicts that the capacity of

[29] CSX Comments at 1; PHMSA, Doc. No. PHMSA–2021–0058–7064, ''Summary of CSX Listening Session'' (Feb. 17, 2022); Landry, et al. Comments at 1, 4.

[30] Applications for a Special Permit submitted under § 107.105 must demonstrate that such Special Permit will achieve at least an equivalent level of safety as to what is provided under the HMR, and in particular, should address any outstanding safety questions or concerns including those raised in this rulemaking.

[31] 86 FR at 61735–36.

pipeline-supplied U.S. LNG export terminals are expected to increase significantly beginning around 2025 which some analysts note could depress the offtake prices for LNG in the international export market—which could divert demand for LNG exports that could have been serviced by LNG by rail.[32] Further, the supply shocks of the conflict in Ukraine have highlighted both in the United States and abroad the volatility of natural gas prices and fragility of international LNG market supply, accelerating movement among historical consumers of natural gas toward renewable energy and reduced reliance on LNG exports.[33] Meanwhile, domestic consumption of natural gas in the United States is expected to fall in the next decade due to increasing electrification driven by consumer preferences and Federal and State policy initiatives to reduce GHG emissions.[34] Durably high commodity (*e.g.,* steel) prices and interest rates [35] would also tend to discourage capital investment in the manufacture of a new fleet of DOT–113C120W9-specification tank cars for dedicated commercial LNG service.

PHMSA finds this recent evidence, coupled with the evidence discussed in the NPRM, augurs uncertainty regarding the commercial prospects for rail transportation of LNG that will continue beyond the originally proposed suspension period and into the longer suspension period adopted in this final rule.[36] Following the conclusion of the (temporary) suspension period, stakeholders would be able to evaluate whether the commercial prospects for rail tank car transportation of LNG pursuant to the July 2020 Final Rule merit pursuing.

*E. Comments Contending That the LNG by Rail Improves Safety*

PHMSA received several comments arguing temporary suspension of the July 2020 Final Rule would forfeit safety benefits.[37] Some of those comments pointed to the physical properties (*e.g.,* auto-ignition temperatures) of LNG they assert make its rail transportation inherently safer than transportation of natural gas in other physical states. Others contended that, absent the July 2020 Final Rule, industry would be forced to utilize other modes of transportation of natural gas—in particular, highway transportation via MC–338 cargo tanks—which would entail more frequent accidents and incidents than rail transportation. Some comments generally praised the DOT–113C120W9-specification tank car approved for use in transporting LNG in the July 2020 Final Rule because it was an improvement on the proven, existing DOT–113C120W-specification tank cars that PHMSA had approved for use in rail tank car transportation of LNG via SP. Lastly, RSI asserted that by discouraging investment in DOT–113C120W9 tank cars for LNG service, PHMSA was discouraging construction of those enhanced tank cars for use in transporting other cryogenic liquid hazardous materials.

PHMSA Response

PHMSA finds these contentions unconvincing. As presented, each of those arguments suggest that any potential benefits of rail tank car transportation of LNG will be lost if PHMSA suspends the July 2020 Final Rule as proposed in the NPRM. But that binary understanding confuses the *temporary, time-limited* suspension proposed in the NPRM and adopted in this final rule with a *permanent* or *indefinite* ban on rail tank car transportation of LNG. A temporary suspension would mean that any safety benefits would only be unavailable for the suspension period—*i.e.,* until the end of June 2025 (at the latest). *See* 86 FR at 61737–38. Further, any such potential, time-limited comparative advantage turns on whether any rail transportation of LNG pursuant to the July 2020 Final Rule would in fact have occurred during the suspension period, but, as explained above, market conditions now and in the near future do not support demand to transport LNG in rail tank cars. That demand, which was uncertain at issuance of the July 2020 Final Rule has become only more uncertain since given the commercial headwinds facing the development of that market.[38] Further, any time-limited comparative advantage from leaving the July 2020 Final Rule undisturbed would also be mitigated by the availability of other regulatory vehicles (FRA approvals and PHMSA SPs) that entities can pursue during the suspension period.

Uncertainty regarding whether the July 2020 Final Rule's authorization of rail transportation in DOT–113C120W9-specification tank cars ensures adequate protection of public safety has only increased since the time of issuance of each of the July 2020 Final Rule and the NPRM proposing its suspension. The July 2020 Final Rule itself acknowledged that its authorization of rail transportation of LNG in the new DOT–113C120W9 tank car did not turn only on the tank car itself; rather, a number of other factors (including, but not limited to, the material properties of LNG and natural gas, the quantity of LNG that will be moved by rail, the routes involved, the availability of emergency response planning resources, etc.) affected the risks involved in rail tank car transportation of LNG. *See* 86 FR at 61734.[39] Subsequently, the TRB Phase I Report highlighted gaps (discussed in section II.C above) within the LNG Task Force testing efforts undertaken to improve confidence in

[32] EIA, ''U.S. LNG Export Capacity to Grow as Three Additional Projects Begin Construction,'' (Sept. 6, 2022), *https://www.eia.gov/todayinenergy/detail.php?id=53719* (last visited May 12, 2023). *See also* A. Shiryaevskaya et al., *Bloomberg,* ''World Gas Supply Shifts from Shortage to Glut with Demand Muted'' (Apr. 16, 2023); L. Hampton, *Reuters,* ''Wave of New LNG Export Plants Threatens to Knock Gas Prices'' (Mar. 14, 2023).

[33] *See* Intl. Energy Agency (IEA), *World Energy Outlook: 2022* at 3, 25–26 (Oct. 2022); *The Economist* ''War and Subsidies Have Turbocharged the Green Transition'' (Feb. 13, 2023); Inst. for Energy Economics and Financial Analysis, *Global LNG Outlook: 2023–2027* at 4–5 (Feb. 15, 2023).

[34] *See* EIA, *Annual Energy Outlook 2023* at 25 (Mar. 2023).

[35] N. Ruggiero, *S&P Global Commodity Insights,* U.S. Steel Sentiments Hit New High for 2023 As Mills Increase Finished Prices'' (Mar. 13, 2023); R. Druzin, *Argus Media,* ''U.S. Steel Price Driven Up by Multiple Factors'' (Mar. 14, 2023); M. Derby, *Reuters,* ''Premature for Fed to Call End to Rate Hikes with Inflation Still High, Williams Says (May 9, 2023).

[36] Amidst the limited domestic and international commercial prospects discussed here, it is hardly surprising that rail transportation of LNG has occurred by neither (1) existing DOT–113C120W tank cars pursuant to DOT–SP 20534 issued by PHMSA to ETS in 2019, nor (2) ISO tanks pursuant to an FRA approval issued to the Alaska Railroad Company in 2015.

[37] CSX Comments at 1; Landry, et al. Comments at 1, 4, 5; RSI Comments at 2, 4; ''Comments of U.S. House of Representatives Committee on Transportation and Infrastructure—Republican Minority Members'' at 2–3 (Dec. 22, 2021) (House T&I Minority Comments).

[38] The NPRM also explains there is also significant uncertainty regarding the commercial prospects of mode-switching (from rail tank car to MC–338 cargo tanks carried by truck) given that such mode-switching would sacrifice (potentially significant) economies of scale offered by rail tank car transportation of LNG. *See* 86 FR at 61737. This observation was not addressed by any of the comments submitted by the House T&I Minority, Landry, et al., RSI, or CSX.

[39] PHMSA disagrees with Landry, et al. that PHMSA's authorization of rail transportation of LNG in existing, less robust DOT–113C120W tank cars pursuant to DOT–SP 20534 reveals PHMSA's concerns regarding safety of the DOT–113C120W9 tank car as pretextual. Landry, et al. Comments at 4. The conditions it imposed—a defined, limited duration, a single route, and various operational controls—facilitate understanding and bounding of safety and environmental risks notwithstanding transportation within a legacy DOT–113C120W tank car. In contrast, the July 2020 Final Rule's nationwide, perpetual authorization of rail tank car transportation of LNG in a new tank car specification could entail a fundamentally different risk profile than DOT–SP 20534 or any other special permits that PHMSA may issue authorizing (on an ad hoc basis) rail tank car transportation of LNG. In addition, no LNG was ever shipped under DOT–SP 20534, which has now expired and which PHMSA has declined to renew.

the safety benefits of rail transportation of LNG. TRB's subsequent Phase II Report identified additional areas warranting additional research and evaluation to ensure the safety of rail transportation of LNG in the DOT–113C120W9-specification tank car. Although PHMSA has revised the LNG Task Force's testing and evaluation activities in response to the TRB Phases I and II Report recommendations, that work continues; and even after completing the activities PHMSA must evaluate the results and determine whether and how to make permanent modifications to the HMR governing rail transportation of LNG. Further, the comments submitted in response to the NPRM proposing suspension of the July 2020 Final Rule show a lack of consensus among stakeholders regarding whether some of the critical safety challenges known when PHMSA issued the July 2020 Final Rule have been addressed. For example, a comment submitted by IAFF on the NPRM noted that ''the capabilities of fire fighters and emergency medical responders to safely and effectively respond to hazmat incidents involving LNG rail cars has not improved since our 2019 comments'' notwithstanding any PHMSA and FRA outreach and engagement efforts in the interim.[40]

Additionally, comments touting the inherent safety advantages of rail tank car transportation of liquefied natural gas miss the larger safety issue toward which much of the LNG Task Force testing evaluation activity is directed. Natural gas in liquid form, undisturbed within a DOT–113C120W9 tank car is a very stable material that will not combust unless it vaporizes which only happens if the material warms. Further, any vapor present in the outage of the tank car will be of a concentration that is too high to combust. Rather, the principal safety concern—highlighted by PHMSA in the July 2020 Final Rule, in the NPRM and comments thereon, and in TRB's evaluation of safety risks associated with rail transportation of LNG—pertains to consequences should either there be a release of LNG to atmosphere, or a tank car be exposed to harsh conditions during an incident or accident. LNG releases can expose personnel and materials to extreme cold (as low as −120 °C or −260 °F) and can be an asphyxiant within a confined space. When released to the atmosphere (as a result of a puncture of the inner and outer tanks during an accident or incident), liquid methane will convert to a gas that has a relatively low auto-ignition point (about 540 °C or 1000 °F) in addition to being highly combustible when exposed to an ignition source such as fire or electrical sparking. When methane ignites, it burns at very high temperatures (about 1330 °C, or 2426 °F), potentially resulting in exposure of personnel and materials—including (potentially) undisturbed DOT–113C120W9 tank cars adjacent to an LNG pool fire to significant radiant heat hazards. Although PHMSA had undertaken (via the LNG Task Force) a robust testing regime to develop a fulsome understanding of those potential, significant hazards of LNG when transported by rail tank car in parallel with the development and issuance of the July 2020 Final Rule, the subject matter expert recommendations within each of the TRB's Phases I and II Reports underscore the value in obtaining that understanding from completing enhanced testing and evaluation activities *before* LNG begins moving in DOT–113C120W9 rail tank cars pursuant to the July 2020 Final Rule. A temporary suspension gives the LNG Task Force and PHMSA an opportunity to complete that critical work.

PHMSA also disagrees that suspension of the July 2020 Final Rule would discourage investment in enhanced, DOT–113C120W9-specification tank cars for use in rail transportation of any cryogenic liquid hazardous materials—not just LNG. PHMSA acknowledges that the HMR (at 49 CFR part 179 Subpart F) contemplates use of DOT–113C120W9-specification tank cars for transportation of other materials authorized for transportation in the DOT–113 series tank cars in that DOT–113C120W9 tank cars will also meet and exceed the minimum DOT–113C120W standard. However, factors influencing whether to invest in new DOT–113C120W9-specification tank cars for use in transporting those other cryogenic liquids are very different from the factors driving decision making on investing in those tank cars for LNG service. For example, those other cryogenic liquid hazardous materials would likely be destined for more mature domestic and international markets than the (currently) speculative domestic and international market for LNG transported by rail tank car. Perhaps for this reason, PHMSA is aware of at least one entity having submitted an order for construction of new DOT–113C120W9-specification tank cars for cryogenic ethylene service—even as, over three years after the July 2020 Final Rule issued, PHMSA is unaware of a single order from a commercial entity for a new DOT–113C120W9 specification tank car for LNG service.[41]

For the reasons discussed above and in section III.D, PHMSA concludes that uncertainty on critical issues regarding the safety profile of rail tank car transportation of LNG pursuant to the July 2020 Final Rule has increased since its issuance—and will persist through the suspension period adopted in this final rule until PHMSA and FRA have had an opportunity to complete and review the results of the LNG Task Force's testing and evaluation activities and implement any necessary regulatory amendments in the companion rulemaking under RIN2137–AF54.

### *F. Comments Alleging Environmental Benefits From LNG by Rail*

PHMSA received several comments arguing temporary suspension of the July 2020 Final Rule would forfeit important environmental benefits. Comments describe several mechanisms for such environmental benefits including potential reduction in flaring from oil and gas production activities and reduced GHG emissions compared to highway transportation of the same volume of LNG in MC–338 cargo tanks.[42]

PHMSA Response

For largely the same reasons discussed in section III.E above, PHMSA finds these arguments unconvincing. The statements in those comments regarding the environmental benefits of the July 2020 Final Rule were offered without any evidentiary support and little analysis, frustrating evaluation against the comments submitted in response to the NPRM attributing potential environmental harms (including those pertaining to commodity releases and lifecycle and indirect GHG emissions) to rail tank car

[40] IAFF, Doc. No. PHMSA–2021–0058–6442, ''Comments Regarding Suspension of Hazardous Materials Regulations Amendments Authorizing Transportation of Liquefied Natural Gas (LNG) by Rail'' at 1–2 (Dec. 23, 2021).

[41] In addition, DOT–113C120W9-specification tank cars constructed for cryogenic ethylene (or other cryogenic liquid) service could not be converted for LNG service easily or immediately: each tank car would have to be cleaned and purged; the physical configuration of critical, installed components of each tank car (*e.g.,* pressure relief valve piping, valves, and other service equipment) would have to be changed; and the re-configured tank car would have to obtain a design certification from the American Association of Railroads Tank Car Committee. Mechanically converting one car—separate from the approval process for the Tank Car Committee—could take several months to over a year.

[42] House T&I Minority Comments at 2–3; Landry, et al. Comments at 5–7; CSX Comments at 1–2; RSI Comments at 2, 5.

transportation of LNG. As explained in the NPRM, both environmental benefits and risks of rail tank car transportation of LNG are a function of whether, when, and where viable market opportunities for such transportation develops. The July 2020 Final Rule acknowledged considerable uncertainty regarding those questions—and as explained in the section III.D above, the commercial prospects for rail tank car transportation of LNG are more speculative now than in July 2020 or even when the NPRM in this proceeding issued in November 2021.

These considerations are particularly relevant to the mechanisms for environmental benefits identified in those comments charactering the environmental benefits of the July 2020 Final Rule. Whether a market will emerge during the suspension period (or for that matter, may ever emerge) for capture of methane that would be otherwise be flared from oil and gas production operations and transported by rail tank car is not a straightforward proposition. In addition to the non-trivial capital investment for rail tank cars, such an approach would require, among other things, liquefaction equipment at the production site and gasification equipment at the destination and enabling Federal or state regulatory authorizations—and each of those elements may need to be procured sooner at break-even or lower cost than alternatives such as capture and transportation via pipeline or MC–338 cargo tank carried by truck (or, by extension, by rail tank car via FRA approval or PHMSA SP). And even if such a market opportunity would have arisen, meaningful evaluation of the GHG emissions benefits would inevitably involve myriad assumptions (*e.g.,* accident/incident rates for rail and highway transportation; lifecycle emissions from construction and operation of the tank cars and related equipment; potential indirect effects such as emissions associated with upstream production induced by newly-available takeaway capacity) that increase uncertainty regarding GHG impacts. Similarly, modal shifting between highway transportation of LNG via MC–338 cargo tank and rail tank car may not be as easy or as desirable as those comments assume. As discussed above in section III.D, highway transportation sacrifices economies of scale that is among the principal advantages of rail tank car transportation of LNG.

For the reasons discussed above, PHMSA concludes that uncertainty regarding the potential environmental benefits and harms from rail tank car transportation of LNG pursuant to the July 2020 Final Rule will continue throughout the suspension period adopted in this Final Rule. This persistent uncertainty on a critical potential benefit identified for the July 2020 Final Rule militates in favor of its temporary suspension as the LNG Task Force completes its testing and evaluation activity and PHMSA implements any necessary regulatory amendments in the companion rulemaking under RIN 2137–AF54.

### *G. Comments Alleging PHMSA Is Overstepping Its Authority by Attempting To Regulate Oil and Gas Production*

PHMSA received comments alleging that PHMSA's proposed suspension of the July 2020 Final Rule overstepped its statutory authority under the HMTA by attempting to discourage oil and gas production activity.[43]

PHMSA Response

Those arguments mischaracterize PHMSA's intentions and misapprehend pertinent law.[44] Indeed, PHMSA nowhere in either the NPRM or in this Final Rule identifies decreasing oil and gas production activity as an explicit goal of its suspension of the July 2020 Final Rule. Instead, Landry, et al. divines that intention from a reference to ''[induced] natural gas extraction'' within a list of several considerations in the NPRM that are probative to the safety and environmental risks attendant to rail tank car transportation of LNG.[45] But PHMSA's acknowledgement in the NPRM of the common-sense proposition that new oil and gas production activity—and any attendant environmental benefits as well as risks (including release to atmosphere of methane lost during extraction and transportation) associated with those activities—could be a reasonably foreseeable consequence of authorizing new takeaway capacity is consistent with its obligations under NEPA. *See* 86 FR 61735–36 & n. 35. It is also consistent with the reasoning supporting the July 2020 Final Rule, which (along with its supporting documentation) explicitly identified potential indirect effects on each of upstream production activity and downstream fuel switching from coal as justifications for that rulemaking.[46]

Nor, moreover, would any indirect effect on production activity from PHMSA's exercise of its authority under the HMTA to regulate interstate rail transportation of hazardous material implicate, as suggested by Landry, et al., the ''major questions'' concerns articulated in *Utility Air Regulatory Group* v. *EPA* (573 U.S. 302 (2014)), and in *West Virginia* v. *EPA* (597 U.S. (2022)). Neither case disturbed the longstanding tolerance of minor, incidental, or accidental effects when an agency takes actions within the core of its statutory responsibilities. And here, PHMSA is doing just that: imposing a temporary suspension of a recent (July 2020) exercise of its authority under the HMTA to prescribe regulations governing interstate transportation by rail of hazardous materials to temporarily restore the status quo ex ante preceding the July 2020 Final Rule. Lastly, given that (as explained in section III.D above) there is considerable uncertainty regarding the commercial viability of rail tank car transportation of LNG, the limited-duration suspension adopted in this Final Rule hardly resembles the fact sets before the Supreme Court in either of the above decisions in which EPA was said to have ''discover[ed] . . . an unheralded power to regulate 'a significant portion of the American economy.' ''

### *H. Comments Alleging PHMSA Did Not Meet Its Evidentiary Burden Under the APA for Temporary Suspension of the July 2020 Final Rule*

PHMSA also received comments claiming that the NPRM did not make the required showing under the APA for suspension of currently-effective regulations.[47] Landry, et al. in particular characterizes controlling precedent as establishing a uniquely high burden for temporary suspension of existing regulations. PHMSA must, in their view, provide ''a detailed justification of new facts that contradict facts underlying . . . prior policy'', as well as ''a more 'reasoned explanation' to justify suspension of a regulation'' than merely the ''inauguration of a new President.'' PHMSA must also demonstrate an

[43] Landry, et al. Comments at 1, 4.

[44] This argument is also in tension with exhortations elsewhere in the Landry, et al. comments for PHMSA to consider policy issues (pertaining to U.S national security and consumers' home heating bills) that are arguably more ''attenuated'' and less ''tethered'' to PHMSA's authority under the HMTA. *See* Landry, et al. Comments at 1, 7–10. Indeed, Landry, et al. also urges PHMSA to consider the indirect relationship between the rulemaking and production activity by claiming that rail tank car transportation could yield reductions in flaring from oil and gas production activities. *Id.* at 7.

[45] Landry, et al. Comments at 4 (*citing* 86 FR at 61736).

[46] *See* 85 FR at 44995. *See also* Final Regulatory Impact Assessment, Doc. No. PHMSA–2018–0025–0479, at 4, 32–33 & n. 48; Final Environmental Assessment, Doc. No. PHMSA–2018–0025–0478 at 35–36, 52.

[47] House T&I Minority Comments at 2 & n.8; Landry, et al. Comments at 3–4.

''awareness that it is changing position.'' Landry, et al. ultimately concluded that PHMSA ''had not provided any . . . explanations'' demonstrating compliance with those purported requirements.

PHMSA Response

These criticisms misapprehend controlling precedent. Indeed, PHMSA does not understand the cited decisions to stand for the proposition suggested in those comments that ''reasoned decision-making'' in the context of suspension of currently effective regulations necessarily entails a heightened evidentiary burden. Rather, the Supreme Court explicitly stated that the evidentiary burden for agency action is not heightened when that action is a change. *F.C.C.* v. *Fox Studios,* 556 U.S. at 502, 514–15 (2009). And although agencies suspending currently effective regulations must acknowledge a change in their position, address any tensions between conflicting factual findings, and confront any serious reliance interests on the old policy, those common-sense expectations do not constitute a different, uniquely higher evidentiary standard for suspending a currently-effective regulation; rather, those are the sort of issues an agency may need to address (as applicable) when adopting *any* change in its regulations. *See Motor Veh. Mfrs. Ass'n* v. *State Farm Ins.,* 463 U.S. 29, 51–52 (1983).

Nor did Landry, et al.'s comments provide any analysis explaining how PHMSA had run afoul of judicial guardrails for suspending currently-effective regulations. They simply asserted that PHMSA had failed to ''explain[ ]'' its compliance with pertinent APA requirements. But the NPRM acknowledged that it proposed a change in position from the July 2020 Final Rule: it stated in multiple places that rail tank car transportation of LNG authorized by the July 2020 Final Rule would be temporarily suspended. *See, e.g.,* 86 FR at 61731–32. Further, PHMSA described at length its rationale and the evidence relied on in making that change. Specifically, information (including the TRB Phase 1 Report, COVID-related delays in the execution of LNG Task Force testing and evaluation efforts that had been expected to corroborate the conclusions in the July 2020 Final Rule, and potential fundamental shifts in the domestic and international market dynamics) that had emerged following issuance of the July 2020 LNG Final Rule cast doubt on the validity of PHMSA's understanding of the potential benefits and risks on which that rulemaking's policy decisions rested. *See* 86 FR at 61735–36. And (as explained in section III.D above) because uncertainty on these considerations has only increased since the NPRM's issuance in November 2021, PHMSA has now decided to impose that suspension with a marginally longer (but still time-limited) duration. Lastly, this decision does not rest, as Landry, et al. suggests, on specious reasoning that ''no policy is better than the old policy solely because a new policy might be put in place . . .''; rather, temporary suspension ensures that no rail car transportation of LNG pursuant to the July 2020 Final Rule will occur during the time needed for PHMSA to develop confidence regarding its potential risks and benefits within the companion rulemaking under RIN 2137–AF54.

*I. Comments Alleging That PHMSA's Proposal Will Have Miscellaneous Adverse Consequences for Regulated Entities, the U.S. Economy, and National Security*

PHMSA also received a handful of comments warning of miscellaneous adverse effects from the NPRM's proposed suspension of the July 2020 Final Rule.[48] Certain members of the U.S. House Transportation and Infrastructure Committee and Landry, et al. caution suspension of the July 2020 Final Rule could increase household energy expenses and compromise U.S. energy independence and geopolitical influence. Meanwhile RSI warns that the NPRM's invocation of economic uncertainty and ''hypothetical concerns'' as considerations when tailoring HMR requirements could portend shifting regulatory requirements for the transportation of other hazardous materials. RSI also contends that a more appropriate tool for addressing PHMSA's concerns with the July 2020 Final Rule would be to exercise its authority under § 107.339 to obtain emergency orders from a U.S. District Court to address ''imminent hazards.''

*PHMSA Response*

PHMSA finds these comments unconvincing. The claim that temporary suspension of the July 2020 Final Rule could affect U.S. household energy prices or the geopolitical balance of power strains credulity given that no DOT–113C120W9 tank cars intended for commercial LNG service have been sold and the commercial viability of such rail tank car transportation is increasingly uncertain. Additionally, RSI's concern that PHMSA could invoke changing market dynamics to modify longstanding HMR requirements for other hazardous materials is misplaced. Unlike other hazardous materials, the rail tank car transportation of LNG is not a mature market—in fact, as discussed elsewhere in this Final Rule, no such market has emerged in over three years since the July 2020 Final Rule issued and a market may not emerge at all. Nor does PHMSA's decision to temporarily suspend the July 2020 Final Rule hardly address merely ''hypothetical concerns''; rather, (as discussed in sections III.E and F above) the potential safety and environmental hazards associated with LNG could be significant, and it is PHMSA's responsibility under the HMTA to evaluate and adjust the HMR to ensure its transportation by rail tank car is conducted in a manner that protects public safety and the environment. Additionally, PHMSA's decision in this Final Rule to adjust pertinent HMR requirements on a time-limited basis and before any rail tank car transportation of LNG commences (or is likely to commence), minimizes the risk of stranded investments or lost business opportunities for regulated entities should PHMSA's ongoing evaluation of the safety and environmental risks and benefits merit imposing additional or conflicting safety requirements in the companion rulemaking under RIN 2137–AF54.

In addition, the final rule addresses any potential public safety and environmental risks from rail tank car transportation of LNG via a generic, nationwide, time-limited suspension following notice-and-comment rulemaking is a more appropriate approach than utilizing the emergency order authority recommended by RSI. The July 2020 Final Rule was a legislative rule that itself was the product of notice-and-comment rulemaking, and the APA establishes a presumption that a subsequent legislative rule providing for its modification (to include its temporary suspension) should similarly involve notice-and comment rulemaking. *See* 5 U.S.C. 553. In addition, PHMSA's emergency order authority may be difficult to assert on a time-limited, precautionary, nationwide basis like the temporary suspension adopted in this Final Rule. Each of PHMSA's § 107.339 emergency order authority and the Secretary's authority to address imminent hazards under 49 U.S.C. 5122(b) are seldom exercised. A finding of ''imminent harm'' may make it more difficult for any controls addressing that harm to be removed later based on

[48] House T&I Minority Comments at 1, 3; Landry, et al. Comments at 7–8; RSI Comments at 3.

PHMSA's evaluation of whether and how to amend pertinent HMR requirements in a companion rulemaking under RIN 2137–AF54.

*J. Comments Beyond the Scope of This Rulemaking*

PHMSA received miscellaneous comments beyond the scope of this rulemaking. These comments pertained to concerns regarding PHMSA's process in developing, and reasoning in adopting, the July 2020 Final Rule; concerns with the adequacy of conditions imposed by PHMSA within DOT–SP 20534 issued to ETS in 2019; a requested ban on fracking (the process of hydraulic fracturing to extract oil or gas) and all fossil fuels; and additional miscellaneous comments unrelated to this rulemaking or rail tank car transportation of LNG. A number of commentors requested repeal of any existing regulatory approvals or regulatory provisions—whether by FRA or PHMSA—authorizing rail transportation of LNG.

*PHMSA Response*

Although PHMSA appreciates the concerns raised by the commenters that the NPRM's proposal to suspend the transportation of LNG by rail tank car authorized by the July 2020 Final Rule did not go far enough to protect public safety and the environment, PHMSA declines to adopt their far-reaching recommendations in this proceeding. However, PHMSA encourages those stakeholders to consider submitting comments in response to any future notice of proposed rulemaking in PHMSA's companion rulemaking under RIN 2137–AF54, as well as to engage other Federal and State regulatory authorities with jurisdictional responsibilities for the issues they asked PHMSA to address.

## IV. Regulatory Analyses and Notices

*A. Statutory/Legal Authority*

Statutory authority for this final rule is provided by the HMTA. Section 5103(b) of the HMTA authorizes the Secretary of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' The Secretary has delegated the authority granted in the HMTA to the PHMSA Administrator at § 1.97(b).

*B. Executive Orders 12866 and 14094, and DOT Regulatory Policies and Procedures*

Executive Order 12866 (''Regulatory Planning and Review''),[49] as amended by Executive Order 14094 (''Modernizing Regulatory Review''),[50] requires that agencies ''should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.'' Agencies should consider quantifiable measures and qualitative measures of costs and benefits that are difficult to quantify. Further, Executive Order 12866 requires that ''agencies should select those [regulatory] approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.'' Similarly, DOT Order 2100.6A (''Rulemaking and Guidance Procedures'') requires that regulations issued by PHMSA and other DOT Operating Administrations should consider an assessment of the potential benefits, costs, and other important impacts of the proposed action and should quantify (to the extent practicable) the benefits, costs, and any significant distributional impacts, including any environmental impacts.

Executive Order 12866 and DOT Order 2100.6A require that PHMSA submit ''significant regulatory actions'' to the Office of Management and Budget (OMB) for review. Executive Order 14094 amended Executive Order 12866, which defines significant regulatory actions. This rulemaking is considered a significant regulatory action under section 3(f) of Executive Order 12866 as amended by Executive Order 14094. This final rule has, therefore, been reviewed by OMB.

PHMSA concludes that the temporary suspension of transporting LNG by rail tank car is not expected to have an economic impact because LNG transport by rail tank car is not expected to occur during the suspension period. As explained in section III.D above, since issuance of the July 2020 Final Rule, the commercial prospects for rail tank car transportation of LNG have become increasingly unlikely. LNG has not been transported in any rail tank cars (whether pursuant to the July 2020 Final Rule, SP issued by PHMSA, or FRA approval), and PHMSA is unaware of any planned movements in the near future. Indeed, the development of the necessary infrastructure—including construction of DOT–113C120W9 tank cars, loading and unloading facilities, vessel handling facilities if sea transport is required, liquification facilities, and regasification facilities—to transport LNG by rail as authorized by the July 2020 Final Rule demands significant financial investment, long-term commitment, and considerable planning associated with constructing a new LNG tank car fleet (which construction may itself be subject to delays because of limited capacity in the rail car manufacturing industry). PHMSA is unaware of any orders having been placed for the manufacture of new DOT–113C120W9 tank cars for commercial LNG service. This absence of commercial demand occurred despite the highest prices for domestic U.S. natural gas markets and LNG export markets in nearly a decade.[51] Additionally, it appears LNG export prices have risen faster than the domestic price which has resulted in a substantial increase in US LNG exports over the last decade. However, the increase in export capacity does not appear to have translated into increased demand for tank cars, possibly due to the majority of the increase in liquefication capacity occurring at waterfront LNG facilities.[52]

PHMSA expects no economic impact due to the temporary suspension. Indeed, PHMSA's temporary suspension may in fact reduce economic burden by discouraging a shipper from ordering rail tank cars compliant with the July 2020 Final Rule when the companion rulemaking (under RIN 2137–AF54) may adopt different requirements. Additionally, should any potential shippers need to transport LNG by rail tank car during the suspension period, they could avail themselves of the PHMSA SP or FRA approval processes for such transport.[53] Further, temporary

[49] 58 FR 51735 (Oct. 4, 1993).

[50] 88 FR 21879 (April 11, 2023).

[51] *See* EIA, ''Price of U.S. Liquefied Natural Gas Exports'', *https://www.eia.gov/dnav/ng/hist/n9133us3m.htm* (last accessed May 24, 2023); EIA, ''Average Cost of Wholesale U.S. Natural Gas in 2022 Highest Since 2008'', *https://www.eia.gov/todayinenergy/detail.php?id=55119#:~:text=In%202022%2C%20the%20wholesale%20U.S.,on%20data%20from%20Refinitiv%20Eikon* (last accessed May 24, 2023).

[52] For approved and under construction U.S. LNG projects see EIA, ''U.S. LNG export capacity to grow as three additional projects begin construction'', *https://www.eia.gov/todayinenergy/detail.php?id=53719* (last accessed June 28, 2023).

[53] As noted earlier in this final rule, PHMSA previously denied an application for renewal of a special permit, in part, on the basis that the application for renewal did not discuss any of the concerns raised in the NPRM in this proceeding. PHMSA will consider all applications for a special permit that meet the requirements set forth in 49

Continued

suspension guarantees avoidance of potential adverse public safety and environmental impacts (including, but not limited to, contribution of direct and indirect GHG emissions) that could have arisen from rail tank car transportation of LNG under the HMR. Lastly, the limited duration of the suspension will also mitigate any potential adverse economic, public safety, or environmental impacts that could arise in the unlikely event that demand for rail tank car transportation under the July 2020 Final Rule would have materialized during the suspension period in the absence of this final rule.

In addition to the PHMSA SP and FRA approval alternatives, shippers could transport LNG by highway via MC–338 insulated cargo tanks. All of these alternatives for LNG shippers would involve higher costs than rail transportation, but they are available in the unlikely case that market conditions evolve to warrant LNG transportation prior to June 30, 2025, or the completion of the companion rulemaking.[54]

*C. Executive Order 13132*

PHMSA analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'')[55] and its implementing Presidential Memorandum (''Preemption'').[56] Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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.''

This rulemaking may preempt State, local, and Native American Tribe requirements, but does not contain any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

The HMTA contains an express preemption provision at 49 U.S.C.5125(b) that preempts State, local, and Tribal requirements on certain covered subjects, unless the non-Federal requirements are ''substantively the same'' as the Federal requirements, including the following:

(1) the designation, description, and classification of hazardous material;

(2) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) the design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule addresses subject items (2) and (5) above, which are covered subjects, and therefore, non-Federal requirements that fail to meet the ''substantively the same'' standard are vulnerable to preemption under the Federal hazmat law. Moreover, PHMSA will continue to make preemption determinations applicable to specific non-Federal requirements on a case-by-case basis, using the obstacle, dual compliance, and covered subjects tests provided in Federal hazmat law.

*D. Executive Order 13175*

PHMSA analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13175 and DOT Order 5301.1 (''Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes''). Executive Order 13175 and DOT Order 5301.1 require DOT Operating Administrations to assure meaningful and timely input from Native American Tribal government representatives in the development of rules that significantly or uniquely affect Tribal communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities or the relationship and distribution of power between the Federal government and Tribes.

In addition to the petitions filed by the environmental groups and State attorneys general mentioned above, the Puyallup Tribe also challenged the July 2020 Final Rule and alleged violations of the Tribal consultation protocols under the National Historic Preservation Act and Executive Order 13175 and disparate impacts on the Tribe in violation of Executive Order 12898 and Title VI of the Civil Rights Act of 1964.

PHMSA assessed the impact of this final rule and concluded that it will not significantly or uniquely affect Tribal communities or Tribal governments. This rulemaking does not impose substantial compliance costs on Tribal governments or communities, nor does it mandate Tribal action. Insofar as PHMSA expects the final rule will not adversely affect the safe transportation of hazardous materials generally, PHMSA does not expect it will entail disproportionately high adverse risks for Tribal communities. This final rule could in fact reduce risks to Tribal communities, as it could avoid the release of hazardous materials (in particular, LNG) by railroad in the vicinity of Tribal communities. For these reasons, PHMSA has concluded that the funding and consultation requirements of Executive Order 13175 and DOT Order 5301.1 do not apply.

*E. Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to consider whether a rulemaking would have a ''significant economic impact on a substantial number of small entities'' to include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where possible to do so and still meet the objectives of applicable regulatory statutes. Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'')[57] requires agencies to establish procedures and policies to promote compliance with the Regulatory Flexibility Act and to ''thoroughly review draft rules to assess and take appropriate account of the potential impact'' of the rules on small businesses, governmental jurisdictions, and small organizations. The DOT posts its implementing guidance on a dedicated web page.[58]

This rulemaking has been developed in accordance with Executive Order 13272 and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act and ensure that potential impacts of draft rules on

CFR 107, Subpart B and notes that each special permit application is considered on its own merits.

[54] *Id.* at 33–34, 56 (discussing higher direct GHG emissions from highway transportation) *and* 37–38 (discussing higher risk of crashes from highway transportation).

[55] 64 FR 43255 (Aug. 10, 1999).

[56] 74 FR 24693 (May 22, 2009).

[57] 67 FR 53461 (Aug. 16, 2002).

[58] DOT, ''Rulemaking Requirements Related to Small Entities,'' *https://www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities* (last visited Jun. 17, 2021).

small entities are properly considered. Consistent with the analysis above, PHMSA certifies that the temporary suspension of the July 2020 Final Rule will not have a significant economic impact on a substantial number of small entities.

*F. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), no person is required to respond to any information collection unless it has been approved by OMB and displays a valid OMB control number. Pursuant to 44 U.S.C. 3506(c)(2)(B) and 5 CFR 1320.8(d), PHMSA must provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests.

PHMSA has analyzed this rulemaking in accordance with the Paperwork Reduction Act. PHMSA currently accounts for security plan burdens under OMB Control Number 2137–0612, ''Hazardous Materials Security Plans.'' In the July 2020 Final Rule, PHMSA required any rail carrier transporting a tank car quantity of UN1972 (Methane, refrigerated liquid (cryogenic liquid) or Natural gas, refrigerated liquid (cryogenic liquid)) to comply with the additional rail transportation safety and security planning requirements. Following publication of the July 2020 Final Rule, PHMSA published both a 60-day [59] and 30-day [60] notice and comment period to provide an opportunity for public comment on the estimated increase in burden. PHMSA did not receive comments to either notice. Subsequently, PHMSA submitted the revision to OMB and received approval for the increased burden. As PHMSA implements a temporary suspension of the authorization to ship LNG by rail tank car pursuant to July 2020 Final Rule, PHMSA estimates this rulemaking would result in a decrease in the burden associated with additional rail transportation safety and security planning requirements imposed by the July 2020 Final Rule. Because this final rule contains revisions to an information collection approved under OMB control number 2137–0612 that are subject to review by OMB under the PRA Act, PHMSA has submitted the revised information collection to OMB and will publish a subsequent **Federal Register** notice to advise the public when OMB has approved the revisions. The following reflects this estimated decrease in burden:

| Decrease in primary route analysis | Change in number of railroads | Decrease in number of routes | Burden hours per route | Decrease in total burden hours | Salary cost per hour [61] | Decrease in total salary cost | Decrease in total burden cost |
|---|---|---|---|---|---|---|---|
| Class I Railroads | 0 | (2) | 80 | (160) | $75.88 | ($12,141) | $0 |
| Class II Railroads | 0 | (1) | 80 | (80) | 75.88 | (6,071) | 0 |
| Class III Railroads | 0 | (1) | 40 | (40) | 75.88 | (3,035) | 0 |
| Total | 0 | (4) | ..... | (280) | ..... | (21,248) | 0 |
| **Decrease in alternate route analysis** | **Change in number of railroads** | **Decrease in number of routes** | **Burden hours per route** | **Decrease in total burden hours** | **Salary cost per hour [62]** | **Decrease in total salary cost** | **Decrease in total burden cost** |
| Class I Railroads | 0 | (2) | 120 | (240) | $75.88 | ($18,212) | $0 |
| Class II Railroads | 0 | (1) | 120 | (120) | 75.88 | (9,106) | 0 |
| Class III Railroads | 0 | (1) | 40 | (40) | 75.88 | (3,035) | 0 |
| Total | 0 | (4) | ..... | (400) | ..... | (30,354) | 0 |

*Total Annual Decrease in Number of Respondents:* 0.

*Total Annual Decrease in Number of Response:* 8.

*Total Annual Decrease in Burden Hours:* 680.

*Total Annual Decrease in Salary Costs:* $51,598.

*Total Annual Decrease in Burden Costs:* $0.

*G. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. For any notice of proposed rulemaking or final rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, or by the private sector of $100 million or more in 1996 dollars in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate.

This rulemaking does not impose unfunded mandates under the UMRA. As explained above, it is not expected to result in costs of $100 million or more in 1996 dollars on either State, local, or Tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule.

*H. Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*),[63] requires federal agencies to consider the environmental impacts of their actions in the decision-making process. NEPA requires Federal agencies to assess the environmental effects of proposed Federal actions prior to making decisions and involve the public in the decision-making process. Agencies must prepare an environmental assessment (EA) for an action for which a categorical exclusion is not applicable and is either unlikely to have significant effects or when significance of the action is unknown. In accordance with these requirements, an EA must briefly discuss: (1) the need for the action; (2) the alternatives considered; (3) the environmental impacts of the action and alternatives; and (4) a listing of the agencies and persons consulted. If, after reviewing the EA and public comments if

[59] 85 FR 46220 (Jul. 31, 2020).

[60] 85 FR 73128 (Nov. 16, 2020).

[61] Occupation labor rates based on 2022 Occupational and Employment Statistics Survey (OES) for ''Transportation, Storage, and Distribution Managers (11–3071)'' in the Transportation and Warehousing industry. *See https://www.bls.gov/oes/current/oes113071.htm.* The hourly mean wage for this occupation ($52.36) is adjusted to reflect the total costs of employee compensation based on the BLS Employer Costs for Employee Compensation Summary, which indicates that wages for civilian workers are 69.0 percent of total compensation (total wage = wage rate/wage % of total compensation).

[62] Ibid.

[63] See also 40 CFR parts 1501 to 1508.

applicable, in response to a draft EA (DEA), an agency determines that a proposed action will not have a significant impact on the human or natural environment, it can conclude the NEPA analysis with a finding of no significant impact (FONSI).

(1) The Need for the Action

PHMSA has determined that the recommendations from the TRB, its ongoing research, and recent events stemming from the COVID–19 public health emergency predicate the need to re-evaluate the amendments authorized in the July 2020 Final Rule. Research activity that PHMSA had expected would enhance its understanding of the risks attendant in rail transportation of LNG has been delayed, and uncertainties have increased in whether there will be any potential benefits, and in the underlying economic dynamics bounding those risks (*e.g.,* the quantity of LNG that will move by rail, and the routes involved). Therefore, PHMSA is amending the HMR to suspend authorization of LNG transportation in a rail tank car pending further analysis and completion of a companion rulemaking that will consider changes to the conditions under which LNG could be moved by rail, to potentially include additional safety, environmental, and environmental justice protections. This action will provide PHMSA an opportunity to review recent actions that could be obstacles to Administration policies promoting public health and safety, the environment, and climate change mitigation; and to evaluate the results of ongoing and delayed research efforts to ensure the safe transportation of LNG by rail tank car.

(2) Alternatives to the Action

In this rulemaking, PHMSA considered the following alternatives:

No Action Alternative

If PHMSA were to select the No Action Alternative, current regulations authorizing the transport of LNG in rail tank cars would remain in effect and no provisions would be amended or added. Therefore, the HMR would continue to authorize the transportation of LNG in DOT–113C120W9 tank cars with a 9/16-inch outer tank composed of TC–128B normalized steel. The following operational controls and safety measures would also remain in effect:

- Each tank car must be operated in accordance with § 173.319, which includes:
  - testing of relief valves every 5 years
  - annual replacement of rupture discs
  - thermal integrity tests following an average daily pressure rise during any shipment exceeding 3 psig per day
  - other requirements specific to liquids in cryogenic tank cars.
- 49 CFR part 179, subpart F contains detailed design, construction, and operational requirements for DOT–113C120W tank cars with the specification suffix ''9'' to be used in rail transportation of LNG.
- Trains transporting 20 or more tank cars of LNG in a block, or 35 such tank cars throughout the train, must be equipped and operated with a two-way EOT device, pursuant to the requirements in 49 CFR part 232, subpart E, or a distributed-power (DP) locomotive as defined in 49 CFR 229.5.
- The offeror must remotely monitor each tank car while in transportation for pressure and location.
- The offeror must notify the carrier if the tank pressure rise exceeds 3 psig over any 24-hour period.
- Trains transporting any quantity of LNG must comply with the route planning requirements in § 172.820, which requires rail carriers transporting LNG by rail tank car to conduct an annual route analysis considering, at a minimum, 27 risk factors listed in appendix D to part 172.
- Each LNG tank car must have:
  - a reclosing pressure relief device with a start-to-discharge pressure of 75 psig;
  - a non-reclosing pressure relief device set to discharge at the tank test pressure;
  - a maximum permitted filling density (percent by weight) of 37.3 percent;
  - a design service temperature of −162 °C (−260 °F);
  - a maximum pressure when offered for transportation not to exceed 15 psig;
  - a minimum steel thickness, after forming, on the outer tank shell and tank heads of 9/16 inch, which is thicker than the requirement for other DOT–113C120W tank cars; and
  - an outer tank shell constructed of AAR TC–128, Grade B normalized steel plate as specified in § 179.100–7(a), which has a higher tensile strength of 81,000 psi which makes it stronger than that used for the existing DOT–113 outer shell.

The final environmental analysis (FEA), which—except for the finding of no significant impact therein—is incorporated by reference into this final rule, examined how the above requirements were imposed to reduce risks to human safety and the environment from the transportation of LNG in rail tank cars and incidents occurring as a result of this transportation.[64] The No Action Alternative would allow the shipment of LNG in rail tank cars, and PHMSA could continue to consider whether additional mitigations are necessary based on the expert recommendations from the TRB Phase I and Phase II Reports and results from ongoing, delayed testing and evaluation activity by the LNG Task Force.

Selected Action Alternative

This Selected Action Alternative as it appears in this final rule, adding a new special provision to the HMR that would suspend the transportation of LNG in rail tank cars while PHMSA undergoes a comprehensive review to ensure the safe transportation of LNG by rail in accordance with ongoing research and incorporation of recommendations from the TRB, as well as the best available economic analysis and science. Rail transport of LNG would be permitted only as authorized by the conditions of a PHMSA special permit (49 CFR 107.105) that would apply only to the railroad(s) operating under such a permit or in a portable tank secured to a rail car pursuant to the conditions of an FRA approval (49 CFR 174.63). The amendments included in this alternative are more fully discussed in the preamble and regulatory text sections of this final rule.

(3) Probable Environmental Impacts of the Action and Alternatives

No Action Alternative

If PHMSA selected the No Action Alternative, current regulations would remain in place without suspension. As described in the FEA, the No Action Alternative could pose risks to public safety and the environment because the authorization under the HMR to offer shipments of LNG by rail tank car would remain in place. LNG poses potential hazards as a cryogenic liquefied flammable gas, including cryogenic temperature exposure, fire, and asphyxiation hazards. Transportation of any hazardous material introduces risk to safety and the environment, and each additional tank car increases the overall risk of an incident occurring and the quantity that could be released in the event of a derailment. While this is true for all hazardous materials transportation, PHMSA seeks to better understand the risks inherent to LNG transportation in the DOT–113C120W9, especially given that the July 2020 Final Rule authorized large quantities to be transported in rail cars. The July 2020 Final Rule FEA

[64] *See* Docket No. PHMSA–2018–0025–0478.

explained that transporting LNG in rail tank cars is expected to be safer than transporting LNG by truck on highways—however, it is possible that allowing LNG to be transported in rail tank cars would increase the amount of LNG transported, and therefore a direct comparison of the risks by rail and highway may be misleading. PHMSA will also consider, based on existing rail infrastructure locations and anticipated routes, whether transportation of LNG in rail tank cars could pose disproportionate harm or risk to communities of color or low-income communities. As described in the preamble to this final rule, various market and other uncertainties exist regarding specific routes that may be used for the transport of LNG by rail tank car.

No release of LNG vapor to the environment is allowed during the normal transportation of LNG in tank cars whether by roadway or railway. However, methane is odorless, and LNG contains no odorant, making detection of a release resulting from an incident difficult without a detection device. Releases of LNG due to venting or to accidents/incidents, without immediate ignition, involving either an MC–338 cargo tank, a portable tank, or a DOT–113C120W9 rail tank car have the potential to create flammable vapor clouds of natural gas because recently gasified LNG does not dissipate in the atmosphere as quickly as ambient-temperature natural gas. Large releases of LNG due to the breach of the inner tank of these transport vessels could result in a pool fire, vapor fire, and explosion hazards if methane vapors become confined. These flammability hazards pose a risk of higher potential impacts than localized cryogenic hazards.

Some commenters on the July 2020 Final Rule argued that the authorization of LNG by rail would further incentivize the production of natural gas, which is a fossil fuel. Methane has much greater heat trapping potential in the atmosphere than carbon dioxide in the short term. Thus, methane is considered a potent GHG, and comprises a significant portion of the United States' GHG emissions. While methane leaks are highly unlikely during transportation in the DOT–113C120W9 due to tank car design, increased natural gas production could lead to indirect environmental impacts of increased methane emissions released during production, loading and unloading, or at other times during its life cycle. In considering whether the authorization could further incentivize the production of natural gas, PHMSA will consider the scope of existing natural gas production and transportation via natural gas pipeline and other modes of transportation.

The FEA for the July 2020 Final Rule discussed potential environmental benefits that could be associated with the authorization to transport LNG by rail tank car. First, PHMSA discussed that the authorization could allow for the delivery of natural gas to locations dependent on more polluting energy forms, such as coal, diesel, heating oil, or firewood.[65] Use of natural gas in such areas, whether foreign or domestic, could allow for a reduction in polluting and climate-warming emissions. Additionally, the authorization to transport LNG by rail tank car could potentially replace some shipments of LNG by highway. As discussed in the FEA for the July 2020 Final Rule, highway transportation is less efficient in comparison to rail transportation when considering fuel use, combustion emissions, and climate change impacts. However, in order to supplement, reduce, or replace highway transportation, rail infrastructure would need to exist between the origin and destination locations or be developed. Finally, the FEA explored industry claims that the authorization could incentivize the capture, storage, and liquefaction of natural gas over venting and flaring of natural gas during oil production and other industrial activities, in areas where natural gas pipeline capacity is unavailable. Facilitating the productive end use of by-product methane could reduce the venting and flaring of natural gas, which causes methane and carbon dioxide emissions. Similar to other above-described benefits, it is difficult to predict the extent to which industries would invest in the equipment, technology, and expertise necessary to pursue natural gas capture, storage, and liquefaction necessary to pursue LNG transportation by rail. A suspension of the authorization to transport LNG by rail could curtail these potential benefits in the near term.

[65] *See, e.g.,* EPA, Press Release, ''State of Alaska and Fairbanks North Star Borough receive $14.7 Million EPA grant to improve air quality,'' (Nov. 2020), *https://www.epa.gov/newsreleases/state-alaska-and-fairbanks-north-star-borough-receive-147-million-epa-grant-improve-air* (''The Borough will use the grant funds to continue a woodstove changeout and conversion program focused on converting more wood burning appliances to cleaner burning liquid or gas-fueled heating appliances, which have a very low output of particulate pollution and higher fuel efficiency. Wood smoke contributes up to 60 to 80 percent of fine particle pollution levels measured in the Fairbanks North Star Borough.'').

Selected Action Alternative

Under this Selected Action Alternative, PHMSA will amend the HMR to suspend authorization of LNG transportation in rail tank cars pending further analysis and completion of a companion rulemaking or June 30, 2025, whichever is earlier. Therefore, the HMR will not authorize shippers to transport bulk quantities of LNG by rail tank car. Instead, LNG by rail will only be permitted pursuant to a DOT SP or in portable tanks subject to FRA approval. The Selected Action Alternative will avoid the risks that transportation of LNG in rail tank cars, and particularly potential derailments of rail cars transporting LNG, could pose to public safety and the environment. PHMSA will be able to further consider whether the transportation of LNG could pose disproportionately high or adverse effects on minority and low income communities, which have historically borne the brunt of deleterious Federal policy decisions. PHMSA will also be able to further consider whether shipping LNG in rail tank cars is consistent with public health and safety, environmental protection, including climate change mitigation; and to evaluate the results of ongoing and delayed research efforts and collaboration as part of an accompanying rulemaking under RIN 2137–AF54.

However, as noted above and in the FEA for the July 2020 Final Rule, the authorization to transport LNG in DOT–113C120W9 specification tank cars could have yielded some environmental benefits or improvements, which will not be realized during the suspension period. The scope of potential environmental effects of suspending the July 2020 Final Rule depend on whether use of MC–338 for transportation of LNG increases as a result of the suspension of the DOT–113C120W9 or whether environmental benefits of the authorization have been realized that would not occur during the suspension. PHMSA is unaware of any order from a commercial entity for a new DOT–113C120W9-specification tank car for LNG service. Thus, no increased use of MC–338 tank cars for LNG service is expected as a result of this suspension.

In the unlikely event that the use of MC–338 cargo tank cars for LNG transportation increases due to the inability to transport LNG in rail tank cars, a few environmental effects could result. First, highway transportation of LNG requires more diesel engine vehicles and would result in more emissions, including volatile organic compounds, carbon dioxide, nitrogen

oxides, sulfur oxides, and particulate matter of 10 microns or less. Next, increased highway congestion also increases the potential for a highway incident involving LNG, depending on the extent of the increase. In the event highway transportation increases as a result of this rule, these environmental effects would be speculative and minor, and PHMSA finds that they are warranted during the suspension period while PHMSA undertakes a full analysis of risks inherent in transporting LNG in rail tank cars.

The July 2020 Final Rule FEA noted that the transportation of LNG could allow natural gas to reach markets that lack this access and could potentially reduce and replace the burning of more polluting and carbon-intensive sources of energy such as coal, wood, and diesel. As noted above, the July 2020 Final Rule has not resulted in these replacements or emissions reductions, such that the suspension would not reverse any such benefits. The July 2020 Final Rule FEA also explained that authorization to transport LNG in rail tank cars had the potential to reduce the wasteful and carbon-intensive practice of natural gas flaring because it could provide a market for by-product natural gas in areas where natural gas pipeline transportation is not available. The July 2020 Final Rule has not resulted in this benefit, and there is no indication that this benefit would have occurred anytime in the foreseeable future in the event that it remained available. Thus, PHMSA does not anticipate negative environmental effects from the suspension of the July 2020 Final Rule.

(4) Agencies and Persons Consulted During the Consideration Process

PHMSA has coordinated with FRA, the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, and the U.S. Coast Guard in the development of this rule. The final rule has also been made available to other Federal agencies within the interagency review process contemplated under Executive Order 12866.

(5) Environmental Justice

Executive Order 12898 (''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''),[66] directs Federal agencies to take appropriate and necessary steps to identify and address disproportionately high and adverse effects of Federal actions on the health or environment of minority and low-income populations to the greatest extent practicable and permitted by law. DOT Order 5610.2C (''U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') establishes departmental procedures for effectuating Executive Order 12898 promoting the principles of environmental justice through full consideration of environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities—including PHMSA rulemaking.

PHMSA has evaluated this final rule under DOT Order 5610.2C and Executive Order 12898 and has determined it will not cause disproportionately high and adverse human health and environmental effects on minority and low-income populations. The final rule is national in scope; it is neither directed toward a particular population, region, or community, nor is it expected to result in any adverse environmental or health impact to any particular population, region, or community.

This final rule could reduce risks to minority populations, low-income populations, or other underserved and disadvantaged communities. Insofar as these HMR amendments could avoid the release of hazardous materials, the final rule could reduce risks to populations and communities—including any minority, low-income, underserved, and disadvantaged populations and communities—in the vicinity of railroad lines. However, as noted in the FEA for the July 2020 Final Rule, access to LNG may result in potential economic benefits for underserved communities because of the efficiencies of transporting LNG by rail, and thereby domestic production, distribution, and consumption of natural gas could increase. These potential economic benefits that could result from the transportation of bulk quantities of LNG by rail car would not be realized by underserved communities in the short term. In addition, to the extent that suspending shipment of LNG by rail tank car could increase demand for shipping LNG by truck on highways, these HMR amendments could increase risks to environmental justice communities in the vicinity of those highways.

Further, this rule advances the policy goals of the most recent environmental justice Executive Order 14096—*Revitalizing Our Nation's Commitment to Environmental Justice for All*,[67] which deepens the Administration's whole-of-government approach to environmental justice to better protect communities from pollution and other environmental justice concerns.

(6) Finding of No Significant Impact

The adoption of the Selected Action Alternative's suspension will prohibit the transportation of LNG in rail tank cars while PHMSA and FRA undertake a comprehensive analysis of safety and environmental issues associated with the transportation of LNG by rail. As such, the HMR amendments in this final rule will have no significant impact on the human environment. The Selected Action Alternative will allow PHMSA to review new information to evaluate the potential impact on safety, environmental justice, and GHG emissions. Further, based on PHMSA's analysis of these provisions described above and insofar as there has been no significant progress toward the movement of LNG by rail tank car, PHMSA finds that codification and implementation of this rule will not result in a significant impact to the human environment.

*I. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed on DOT's website at *http://www.dot.gov/privacy* or DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000.[68]

*J. Executive Order 13609 and International Trade Analysis*

Executive Order 13609 (''Promoting International Regulatory Cooperation'')[69] requires that agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those

[66] 59 FR 7629 (Feb. 11, 1994).

[67] 88 FR 25251 (Apr. 21, 2023). Executive Order 14096 supplemented the efforts of Executive Order 12898.

[68] 65 FR 19475 (Apr. 11, 2000).

[69] 77 FR 26413 (May 4, 2012).

that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

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

PHMSA participates in the establishment of international standards in order to protect the safety of the American public. PHMSA has assessed the effects of this rulemaking to ensure that it does not cause unnecessary obstacles to foreign trade. While the suspension the transport of LNG by rail tank car has potential to impact the United States' export of bulk LNG internationally, there has been no significant reliance interest or progress toward the near-term movement of LNG by rail tank cars. As such, PHMSA expects the amendments herein to pose a minimal impact to international trade if adopted. Therefore, PHMSA is amending the HMR to suspend authorization of LNG transportation in a rail tank car pending further analysis to ensure potential future regulatory actions to allow bulk transport of LNG by rail promote public health and safety, the environment, and climate change mitigation. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

*K. Executive Order 13211*

Executive Order 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'') [70] requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' Executive Order 13211 defines a ''significant energy action'' as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy (including a shortfall in supply, price increases, and increased use of foreign supplies); or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant action.

Although this rule is a significant action under Executive Order 12866, PHMSA expects it to have an annual effect on the economy of less than $200 million. Further, this action is not likely to have a significant adverse effect on the supply, distribution, or use of energy in the United States. While the amendment to suspend the transport of LNG by rail tank car has potential to impact the supply, distribution, or use of energy in the United States, PHMSA does not anticipate any near-term movement of LNG by rail tank cars. For additional discussion of the anticipated economic impact of this rulemaking, please see section IV.B above.

*L. Cybersecurity and Executive Order 14028*

Executive Order 14028 (''Improving the Nation's Cybersecurity'') [71] directed the Federal government to improve its efforts to identify, deter, and respond to ''persistent and increasingly sophisticated malicious cyber campaigns.'' Consistent with Executive Order 14028, the Transportation Security Administration (TSA) in October 2022 issued a Security Directive to reduce the risk that cybersecurity threats pose to critical railroad operations and facilities through implementation of layered cybersecurity measures that provide defense-in-depth.[72] PHMSA has considered the effects of the final rule and determined that its regulatory amendments will not materially affect the cybersecurity risk profile for rail transportation of hazardous materials.

**List of Subjects in 49 CFR Part 172**

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA is amending 49 CFR chapter I as follows:

## PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 1. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 2. In § 172.101, amend the § 172.101 Hazardous Materials Table, by revising the entry for ''Methane, refrigerated liquid *(cryogenic liquid) or* Natural gas, refrigerated liquid *(cryogenic liquid), with high methane content)*'' to read as follows:

**§ 172.101 Purpose and use of the hazardous materials table.**

* * * * *

[70] 66 FR 28355 (May 22, 2001).

[71] 86 FR 26633 (May 17, 2021).

[72] TSA, Security Directive No. 1580/82–2022–01, ''Rail Cybersecurity Mitigation Actions and Testing'' (Oct. 24, 2022).

## § 172.101 HAZARDOUS MATERIALS TABLE

| Symbols | Hazardous materials descriptions and proper shipping names | Hazard class or division | Identification Nos. | PG | Label codes | Special provisions (§ 172.102) | (8) Packaging (§ 173.***) | | | (9) Quantity limitations (*see* §§ 173.27 and 175.75) | | (10) Vessel stowage | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Exceptions | Non-bulk | Bulk | Passenger aircraft/rail | Cargo aircraft only | Location | Other |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8A) | (8B) | (8C) | (9A) | (9B) | (10A) | (10B) |
| | * | | * | | * | * | * | | * | * | | | |
| | Methane, refrigerated liquid *(cryogenic liquid) or* Natural gas, refrigerated liquid *(cryogenic liquid, with high methane content).* | 2.1 | UN1972 | ..... | 2.1 .... | T75, TP5, 439, 440 | None ..... | None ..... | 318, 319 ..... | Forbidden ... | Forbidden ... | D | 40 |
| | * | | * | | * | * | * | | * | * | | | |

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■ 3. In § 172.102, amend paragraph (c)(1) by adding special provision 439 in numerical order to read as follows:

**§ 172.102 Special provisions.**

* * * * *

(c) * * *

(1) * * *

439 UN1972 is not authorized for transportation by rail tank car until either issuance of a final rule concluding the rulemaking action proceeding under RIN 2137–AF54, or June 30, 2025, whichever occurs first. For information and the status of RIN 2137–AF54, please refer to the Office of Management and Budget's Office of Information and Regulatory Affairs at *www.reginfo.gov*.

* * * * *

Issued in Washington, DC, on August 23, 2023, under authority delegated in 49 CFR 1.97.

**Tristan H. Brown,**

*Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2023–18569 Filed 8–31–23; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 20

**[Docket No. FWS–HQ–MB–2022–0090; FF09M32000–234–FXMB1231099BPP0]**

**RIN 1018–BF64**

## Migratory Bird Hunting; Migratory Game Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** As part of the rulemaking process for the 2023–2024 season for migratory game bird hunting, the U.S. Fish and Wildlife Service (hereinafter, Service or we) has revised the process for establishing regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. The Service recognizes Tribal treaty rights and the reserved hunting rights and management authority of Indian Tribes and seeks to strengthen Tribal sovereignty. We will no longer require that Tribes annually submit a proposal to the Service for our review and approval and no longer publish in the **Federal Register** the annual Tribal migratory bird hunting regulations. Instead, the regulations now include elements of our current guidelines for establishing migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. Since 1985, Tribal migratory bird harvest has been small with negligible impact to bird population status, and we anticipate that Tribal hunting of migratory birds will continue to have similar negligible impacts to bird populations in the future. This rule will reduce administrative burdens on both the Tribes and the Service while continuing to sustain healthy migratory game bird populations for future generations.

**DATES:** This rule takes effect September 1, 2023.

**ADDRESSES:** You may inspect comments received on the migratory bird hunting regulations at *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2022–0090. You may obtain copies of referenced reports from the Division of Migratory Bird Management's website at *https://www.fws.gov/program/migratory-birds* or at *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2022–0090.

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

**SUPPLEMENTARY INFORMATION:**

### Background

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when ''hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg'' of migratory game birds can take place and to adopt regulations for this purpose. These regulations must give due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds (16 U.S.C. 704(a)). The Secretary of the Interior has delegated to the Service the lead Federal responsibility for managing and conserving migratory birds in the United States; however, migratory bird management is a cooperative effort of Federal, Tribal, and State governments. Federal regulations pertaining to migratory bird hunting are located in title 50 of the Code of Federal Regulations in part 20.

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

The Service annually develops migratory game bird hunting outside limits (hereinafter, Federal outside limits or Federal limits) for season dates, season lengths, shooting hours, bag and possession limits, and areas where migratory game bird hunting may occur. Hunting seasons selected by the States and Tribes within these Federal limits are set forth in regulations at 50 CFR part 20, subpart K. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes several surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, Tribes, and State and Provincial wildlife management agencies. For each annual regulatory cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information through a series of published status reports and presentations to the Flyway Councils and other interested parties. The August 6, 2015, **Federal Register** at 80 FR 47388 provides a detailed overview of this process.

The Federal outside limits are necessary to allow harvest at levels compatible with migratory game bird population status and habitat conditions. To determine the appropriate outside limits for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, condition of breeding and wintering

habitat, number of hunters, and anticipated harvest. After Federal limits are established, States may select migratory game bird hunting seasons within these limits. States may always be more conservative in their selections than the Federal limits, but never more liberal.

**Previous Tribal Rulemaking Process**

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23459 at 23467) to establish special (independent from the State or States where the reservation is located) migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to Tribal requests for our recognition of their reserved hunting rights, and for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members throughout their reservations. The guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while also ensuring that the migratory game bird resource receives necessary protection. The Service adopted the 1985 guidelines as final in 1988 (53 FR 31612, August 18, 1988).

From the 1985 through 2022 hunting seasons, as part of our preliminary proposed rule to annually promulgate Federal migratory bird hunting regulations, we asked Tribes to submit their proposed migratory bird hunting regulations. Proposals were to include season dates and other regulations, methods to monitor harvest, anticipated harvest, steps taken to limit harvest levels, and capabilities to establish and enforce migratory bird hunting regulations. Then, upon receipt of information provided by the Tribes each year on the status of migratory bird populations and expected migratory bird harvest, we evaluated the potential impact of special Tribal hunting regulations on the migratory bird resource. Annually, we published in the **Federal Register** the special Tribal migratory bird hunting regulations as a proposed rule and, following review and consideration of any public comments, published a final rule setting forth the regulations. We have always concluded that this harvest, when conducted within our guidelines, is small and, therefore, would have a negligible impact to the bird population status.

For the 2023–24 hunting season, we published proposed regulations for certain migratory game birds on November 3, 2022 (87 FR 66247). In that proposed rule, we stated that we would handle Tribal regulations for the 2023–24 hunting season via a separate rulemaking process in later **Federal Register** documents. Accordingly, on March 23, 2023, we proposed a revised process for establishing special regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for migratory bird hunting seasons (88 FR 17511). That proposed rule initiated a process for developing special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands for the 2023–24 hunting season and beyond.

**New Process for Managing Tribal Migratory Bird Hunting**

Under the regulations in this final rule, we anticipate that Tribal hunting will continue to have similar minimal impact to the migratory bird resource in the future due to declining trends in active hunters for some Tribes and also increasing population trends for many migratory game birds (as identified in the 2022 State of the Birds Report; see *state-of-the-birds-2022-spreads.pdf* at *stateofthebirds.org*.). Based on the demonstrated successful implementation of our Tribal guidelines since 1985 and the historical and future expected minimal impacts to migratory game bird resources, we have simplified the process for establishing special Tribal migratory game bird hunting regulations for the upcoming hunting season (2023–2024) and afterwards. We have removed the requirement that Tribes annually submit their proposed migratory game bird hunting regulations (and associated monitoring, anticipated harvest, and capabilities for regulation development and enforcement) for our review and approval. We also will no longer publish special Tribal migratory game bird hunting regulations in the **Federal Register** (*i.e.,* a proposed and final rule). The regulations set forth in this rule adopt elements of our guidelines for establishing special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. Tribes that comply with these regulations will be authorized to independently establish special Tribal migratory bird hunting regulations. However, if circumstances change and data indicates migratory game bird populations are substantially declining or Tribal hunting increases significantly, we will reevaluate this regulation.

By allowing Tribes to independently establish special migratory bird hunting regulations, the Service recognizes Tribal sovereignty to exercise reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members on their reservation. This rule will extend to Tribes with reserved hunting rights the same autonomy as the States to independently establish migratory game bird hunting seasons for nontribal members within annually established, biologically appropriate Federal outside limits. As an alternative to promulgating special Tribal migratory game bird hunting regulations, Tribes may choose to observe the hunting regulations established by the State or States in which the reservation is located. We coordinated with Tribes over the past 2 years via letters and four webinars as we developed this new regulatory approach for Tribal self-management of the harvest, and we have received positive feedback. The new system will reduce the annual administrative burden on both the Tribes and the Service to propose, review, and publish special migratory game bird hunting regulations while continuing to sustain healthy migratory game bird populations for future generations.

As with the prior process, the new regulations will be applicable to those Tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. These regulations also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the reservations where Tribes have full wildlife-management authority over such hunting, or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands within the reservation. Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory game bird hunting by non-Indians on these lands. In those cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with Tribal and State officials in the affected States

where Tribes may wish to establish special migratory game bird hunting regulations for Tribal members on ceded lands. It is incumbent upon the Tribe and/or the State to request consultation. We will not presume to make a determination, without being advised by either a Tribe or a State, that any issue is or is not worthy of formal consultation. Tribal and State requests for consultation with the Service should be sent to the Service's Assistant Director for the Migratory Bird Program; see **FOR FURTHER INFORMATION CONTACT**. We note that our guidance on resolving issues of concern between Tribes and States on reservations and ceded lands is the same guidance we provided under the previous Tribal regulation process.

The rule portion of this document includes requirements for Tribes to follow if they establish special Tribal migratory game bird hunting regulations, which are based on elements from the 1985 guidelines. The regulations provide that all Federal hunting regulations in this part apply to hunting by Tribal and nontribal members. We note that migratory game birds are defined in 50 CFR 20.11(a) as those birds included in the terms of conventions between the United States and any foreign country for the protection of migratory birds, belonging to certain families (Anatidae, Columbidae, Gruidae, Rallidae, and Scolopacidae), and for which open seasons are prescribed in this part. Open seasons for certain migratory game bird species are established by the Service annually as appropriate based on the biological status of these populations and published in the **Federal Register** as Federal outside limits. Tribes are encouraged to review each year the Federal outside limits to determine the list of migratory game bird species and species groups with authorized open seasons, and any special concerns regarding population status. Furthermore, annual review of the Federal outside limits for migratory game bird hunting seasons ensures that Tribal regulations for nontribal members on reservation lands comply (as required by regulations) with opening and closing dates, season length, and daily bag and possession limits established by the Service.

In addition, we encourage Tribes wanting to establish special migratory game bird hunting regulations to consider the elements we previously required in their proposals:

(1) Season dates and other regulations;

(2) anticipated harvest;

(3) methods that will be employed to measure or monitor harvest;

(4) steps that will be taken to limit the level of harvest, where it could be shown that failure to limit such harvest would have serious impacts on the migratory bird resource; and

(5) Tribal capabilities to establish and enforce migratory bird hunting regulations.

We recommend that Tribes that allow swan hunting require that all swan hunters successfully complete a course on swan identification and conservation to minimize take of trumpeter swans during the swan season.

These regulations provide for the continuation of Tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We are supportive of this harvest provided it does not take place during the closed season (March 11 to August 31) mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of the 1985 guidelines, we have reached annual agreement with Tribes for migratory game bird hunting by Tribal members on their lands or on lands where they have reserved hunting rights.

We will continue to consult with Tribes that wish to reach a mutual agreement (memorandum of understanding (MOU) or similar type of formal agreement) on conducting short-term (possibly several years) experimental hunting seasons using methods outside of the Federal hunting methods at § 20.21 for on-reservation and ceded lands hunting by Tribal members. The Tribal-member-only experimental hunting season would provide data and evaluation criteria specified in an agreement for consideration if a Tribe would like to make the additional hunting method operational. Tribes should send such requests for consultation to the Service's Assistant Director for the Migratory Bird Program at least 9 months before the season or ceremony regarding hunting methods outside of the Federal regulations (see **FOR FURTHER INFORMATION CONTACT**). While we intend to make proposed MOUs or other agreements available for public comment through a notice of availability, we might not use the public process for very minor or nonsignificant MOUs or agreements. The Service will make all signed agreements publicly available. If any individual Tribe wishes to make these additional experimental hunting methods operational and the Service agrees, the Service will conduct rulemaking (using any data from the experimental hunting season) to amend 50 CFR part 20 to allow Tribal members to use these additional hunting methods.

Starting with the 2023–2024 hunting season, annual Tribal hunting season regulations will no longer be published in the **Federal Register**, alleviating the administrative burden to both the Service and the Tribes of developing special Tribal migratory bird hunting regulation proposals, reviewing proposals, and publishing Tribal regulations as Federal regulations. This process would not apply to seasons for subsistence take of migratory birds in Alaska.

**Review of Public Comments for Tribal Proposed Rule**

For the 2023–24 migratory bird hunting season and beyond, we proposed regulations (88 FR 17511, March 23, 2023) that followed the revised 1985 guidelines. The comment period for the March 23, 2023, proposed rule closed on May 8, 2023.

We received a total of 10 written responses from 5 individuals, 3 Tribes, 1 State, and 1 organization. Five commenters supported the proposed new process, and two commenters did not support the proposed process. Three commenters were opposed to migratory bird hunting in general. We grouped written comments of a similar nature and discuss them below. We have incorporated, as appropriate, into the final rule information obtained through the public comment period.

We also note that, in addition to the written comments, we received substantial support for the new process via verbal comments (21 supporting, none opposed) during the 4 Tribal webinars during 2022 and 2023 where we explained the proposed new Federal process for establishing Tribal hunting regulations. We also received five emails or telephone calls in support of the new process, and none that were opposed.

*Comment 1:* There is a potential conflict between harvesting wild rice and hunting during September teal seasons, and this issue was not adequately addressed by the Service in the proposed rule. Tribal autonomy is needed to coordinate with Tribal farmers to ensure safety as well as hunting success. A convention between States and Tribes may be needed to find common ground in addressing this potential conflict.

*Service response:* We have since facilitated meetings with the applicable Tribe and State to understand the potential conflict between harvesting

wild rice and teal hunting. These activities are not mutually exclusive. Based on the facilitated meetings held, we remain optimistic that those discussions will result in local solutions that minimize potential conflicts into the future. For the specific area referred to in the comment, an agreement has been reached and area restrictions will be identified in State and Tribal regulations.

*Comment 2:* The Service should consider environmental impacts from new hunting methods on the fish population, water quality, and streambank preservation. For example, lead shot (which is currently illegal) has a high potential to contaminate local waterways creating dangerous drinking water and decimated fish populations.

*Service response:* We share the commenter's concern and do take into consideration and address environmental impacts on a case-by-case basis during the National Environmental Policy Act (NEPA) process for migratory game bird hunting regulations. The Service would analyze these possible environmental impacts as part of any short-term experimental hunting season; and if a Tribe would like to make an additional hunting method operational, the Service would also analyze these possible environmental impacts when conducting rulemaking to amend the regulations.

*Comment 3:* Several commenters oppose the entire migratory game bird hunting regulations process and the killing of migratory birds and questions the status and habitat data on which the migratory bird hunting regulations are based.

*Service response:* As we indicate in the annual population status and harvest reports, our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Sustaining migratory bird populations and ensuring a variety of sustainable uses, including harvest, is consistent with the guiding principles by which migratory birds are to be managed under the conventions between the United States and several foreign nations for the protection and management of these birds. We have taken into account available information and considered public comments and continue to conclude that the hunting seasons provided for herein are compatible with the current status of migratory bird populations and long-term population goals. In regard to the regulations process, the Flyway Council system of migratory bird management has been a longstanding example of State–Federal cooperative management since its establishment in 1952 in the regulation development process and bird population and habitat monitoring. However, as always, we continue to seek new ways to streamline and improve the process and ensure adequate conservation of the resource.

*Comment 4:* Both Indigenous and non-Indigenous hunters need to be addressed on reservations and ceded lands. The proposed rule mentions the importance of this issue but does not address the various cases.

*Service response:* We have concluded that the regulatory framework authorizing the establishment of Tribal hunting regulations does allow Tribes to establish combined or separate regulations within certain limits, and as appropriate for both Tribal and non-Tribal hunters on reservations and ceded lands. This rule does address the various cases. On reservations, nontribal members are subject to the Federal outside limits for season dates, season length, and daily bag and possession limits; Tribal members can have the same regulations as nontribal members, or the Tribe can choose different regulations for Tribal members only that may be outside of the Federal limits, subject to the annual March 11 to August 31 closed season mandated by the 1916 Convention. On ceded lands, Tribes may establish regulations for Tribal members with hunting seasons that may be outside of Federal limits, subject to the closed season mandate.

*Comment 5:* Highly pathogenic avian influenza (HPAI) is causing avian mortality and may decimate bird populations. The most important aspect for these hunting regulations is not only preventing extinction for these species, but maintaining healthy population numbers to ensure sustainable ecosystems.

*Service response:* We are working with partners to monitor HPAI mortality of migratory birds, and we anticipate that our current monitoring programs will detect any significant changes to migratory game bird populations. The Service currently chairs the Interagency Steering Committee for Avian Influenza Surveillance in Wild Migratory Birds, which has increased avian influenza surveillance of wild birds across the country. To ensure effective surveillance, we are coordinating with partners so that there can be early detection; rapid communications; quick and accurate laboratory diagnosis; efficient relay of diagnostic findings back to the field, decision-makers, and the public; and implementation of prevention and management actions where necessary.

*Comment 6:* The Service is also considering changes to the current hunting regulation promulgation process for States, and advancing the two proposals on a similar timeline could be beneficial for commenters as it is challenging to evaluate the full effect of the proposed rule without being able to place it in a more complete context.

*Service response:* To better serve State partners and the hunting public, we are working to develop a more efficient process for promulgating and publishing annual migratory game bird hunting regulations, while continuing to meet the legal requirements and conservation purpose of the Migratory Bird Treaty Act. We are working to make these improvements as soon as practicable, but this effort will take some time and involves extensive coordination with the Service's Office of Law Enforcement, the Department's Solicitor's Office, and the Flyway Councils. Also, we note that any such changes are expected to change only the Federal internal process for hunting regulation promulgation and does not otherwise change the long-established effective process of annually working with the Tribes, Flyway Councils, and States to monitor the status of migratory game bird populations, make informed regulatory decisions from established frameworks, or change the process for Flyway Councils to make recommendations on Federal outside limits.

*Comment 7:* The Service should add recognition of Tribal treaty rights to migratory bird hunting regulations to ensure that impacts on Tribal treaty rights are considered and protected.

*Service response:* We added a statement above in the preamble of this final rule regarding recognition of Tribal treaty rights.

*Comment 8:* The rule should clarify that, for on-reservation lands, hunting methods outside of the Federal hunting methods at § 20.21 remain available for ceded lands and add this clarification to § 20.110.

*Service response:* We agree that clarification is needed in the rule in regard to hunting by Tribal members and also note that the proposed regulations allowed for this change. For clarification, we have added ''and ceded lands'' to the preamble of this final rule under the section ''New Process for Managing Tribal Migratory Bird Hunting'' and to the final regulations that are set forth in this final rule (§ 20.110).

*Comment 9:* The Service should continue to publish proposed Tribal

regulations in the **Federal Register**. This process should not be mutually exclusive with advances in recognition of Tribal sovereignty and pursuit of administrative efficiency. Further, should the Service determine that changes or efficiencies are needed in the existing process, we would recommend that States, Tribes, and Flyway Councils be engaged collectively to determine the best path forward for any modifications.

*Service response:* Similar to this rulemaking, we will publish any subsequent proposed changes to Tribal migratory bird hunting regulations in the **Federal Register** for public review and comment.

Regarding the regulations set forth in this final rule, we have determined that annual publication of Tribal regulations is not necessary so long as Tribal hunting seasons are consistent with our guidelines. As described above, beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23459 at 23467) to establish special migratory game bird hunting regulations (independent from the State or States where the reservation is located) on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to Tribal requests for our recognition of their reserved hunting rights, and for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members throughout their reservations. The guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while also ensuring that the migratory game bird resource receives necessary protection. The Service adopted the 1985 guidelines as final in 1988 (53 FR 31612, August 18, 1988).

The regulations set forth in this final rule include elements of our current guidelines successfully employed since 1985 for establishing special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. By incorporating these guidelines into regulations, Tribes are authorized to independently establish hunting seasons for migratory game birds, so long as they are within certain limits as specified in these regulations. This rule will extend to Tribes with reserved hunting rights the same autonomy as the States to independently establish migratory game bird hunting seasons for nontribal members within annually established, biologically appropriate Federal limits. This approach results in a more efficient promulgation process for both the Tribes and the Service. Resultant Tribal regulations for migratory game bird hunting are unchanged as a result of the new process. This rule does provide some flexibility for hunting by Tribal members on reservations and ceded lands to deviate from Federal regulations that apply in this part where such harvest is a customary practice, but these deviations are subject to an MOU between the Service and the Tribe or Federal rulemaking, both of which will be published in the **Federal Register** and subject to public review and comment. However, we may not use the public process for very minor or nonsignificant MOUs or agreements.

Furthermore, each year from the 1985–86 hunting season through the 2022–2023 hunting season, the Service received game bird harvest data from the Tribes. Using information on the status of migratory bird populations, the Service evaluated the potential impact of special Tribal hunting regulations on migratory game bird populations. Throughout that time, the Service concluded that annual Tribal harvest is small and, therefore, would have negligible impacts on the population status of migratory game birds. For each species/species group reported, Tribal harvest was less than one-half a percent of the total U.S. harvest, and for several species/species groups was less than one-tenth a percent as indicated in the NEPA review process.

*Comment 10:* The Service should include a presumption that Tribes have reserved hunting rights on Federal Indian reservations and trust lands. Unless a treaty or Federal statute clearly revokes a Tribe's rights to hunt or fish, those rights are reserved to the Tribe. *See, e.g., United States* v. *Winans,* 198 U.S. 371 (1905). The Service should make the following clarification to paragraph (b) of the regulatory text regarding applicability: Unless a Tribe's hunting rights have been expressly revoked by Congress, special Tribal migratory game bird hunting regulations may be established by Tribes that have reserved hunting rights on Federal Indian reservations.

*Service response:* We conclude that the proposed regulation authorizing, within limits, certain Tribes to establish hunting seasons for migratory game birds on Federal Indian reservations, off-reservation trust lands, and ceded lands give Tribes more flexibility, consistent with Tribal sovereignty and in recognition of Tribal treaty rights. Further, the Service has been charged by Congress to manage migratory birds and given authority over associated migratory bird hunting regulations. We also conclude that Congress' process to revoke the hunting rights for Tribal migratory bird hunting is outside the scope of these regulations. In this final rule, we have retained the language from the proposed rule for paragraph (b).

*Comment 11:* The United States Code (16 U.S.C. 704(a)) requires the Service to consider certain factors in authorizing and regulating migratory bird harvest, including: zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of migratory birds. Under the proposed rule, it is not clear how the Service will continue to assess these factors with respect to Tribal migratory bird regulations moving forward.

*Service response:* The new process for authorizing, within limits, Tribal regulations for migratory game bird hunting seasons will not change resultant Tribal regulations or cooperative monitoring programs to evaluate migratory game bird population status. Also, it will not change the established decision frameworks for informing Federal outside limits or the Tribal, State, and Federal collaborative process for establishing these Federal limits. The Federal limits allow Tribal and State selections of hunting seasons and limits and the opportunity for harvest at levels compatible with population status and habitat conditions.

*Comment 12:* The proposed rule is predicated on the Service's anticipation that Tribal harvest will always have minimal impacts on migratory bird resources in the future due to declining trends in Tribal hunting participation and increasing trends for many migratory bird populations. The potential exists that circumstances, which underlie the Service's conclusion, may change. The proposed rule does not clarify what steps the Service may take if such change in circumstances occurs.

*Service response:* To address this issue, we have stated above in the preamble of this final rule that, if circumstances change and data indicates that migratory game bird populations are substantially declining or Tribal hunting increases significantly, we intend to reevaluate this regulation. Also, we note that the regulations as set forth in this final rule provide that regulations for nontribal members on reservations must be within the annual outside limits for migratory bird hunting seasons established by the Service, and all Federal hunting regulations in this part also apply to nontribal hunters. The

annual establishment of Federal limits for migratory game bird hunting seasons ensures harvest each year is at levels compatible with game bird population status and habitat conditions (see the response to the previous comment for more details).

*Comment 13:* Due to the unique shared nature of migratory bird resources, there is benefit in Tribes continuing to share information (including proposed regulations, anticipated harvest, harvest monitoring methods, steps that will be taken to limit harvest if necessary to avoid harm to migratory bird resources, and enforcement capabilities) with the Service but the commenter recognized that there may be other ways of facilitating this information exchange compared to what is currently required. Additionally, it would add clarity if all expectations related to data gathering and consideration are relocated from the nonbinding explanatory text to the rule itself.

*Service response:* We conclude that the Tribal information sharing pertaining to migratory game bird hunter activity and harvest is not necessary to ensure harvest is sustainable within the limits specified within our authorizing regulations set forth in this final rule. Our conclusion on annual information sharing is based on Tribal harvests having negligible impacts on the population status of migratory game birds as noted in this final rule. However, any new proposed experimental hunting would require an agreement with specific evaluation criteria, and any new Federal regulations would require rulemaking. Both of these proposals would be published in the **Federal Register** and be subject to public review and comment prior to any final agreement or regulations. Regarding experimental hunting, the requirement for a formal agreement has been incorporated into 50 CFR 20.110 for certain Federal Indian reservations and ceded lands. Also, we note that, in accordance with 50 CFR 20.20(c), Migratory Bird Harvest Information Program—Tribal exemptions, the regulations' general provisions for information collection and sharing does not apply to Tribal members on Federal Indian reservations or to Tribal members hunting on ceded lands. However, our regulations do not preclude the Tribes from sharing hunter activity and harvest information. Tribes may voluntarily share information with the Service and/or States or post this information on Tribal websites for public review.

Finally, we continue to work with the Tribes, Flyway Councils, and States to annually monitor the status of migratory game bird populations and habitat conditions and to make informed regulatory decisions on appropriate Federal outside limits. This monitoring data is the most informative information available on the status of these managed populations, and significant reductions in population status should first be identified in these long-term monitoring data sets. Further, this rule will not change the established decision frameworks for informing Federal outside limits from monitoring data or the Tribal, State, and Federal collaborative process for establishing these Federal limits.

*Comment 14:* Formal consultation between States and Tribes may be appropriate in certain circumstances, and the rule is silent on this topic. It is unclear when consultation may be requested and what process would be applied. Additionally, because advanced notice of proposed Tribal regulations may not be required, there is potential that States may not have timely or sufficient information to make a consultation request.

*Service response:* We agree that Tribes should notify the associated State as soon as reasonably possible before hunting seasons begin regarding regulations for Tribal members on ceded lands to maximize the opportunity to coordinate with State law enforcement and minimize the time needed for hunter checks in the field. We clarified the regulation in this regard (see § 20.110(d)). Further, we encourage Tribes to consult with States on any significant changes in hunting regulations for Tribal members on ceded lands before adopting such regulations. Also, States may request formal consultation directly with the Tribe, and vice versa, at any time there is concern regarding appropriate hunting regulations for Tribal members on ceded lands, or Tribal members on reservations, with the aim of facilitating an accord. We may consult with a Tribe and State at the request of either party to help resolve any relevant migratory game bird hunting regulation issues. Regarding hunting regulations for nontribal members on reservations, we have noted throughout this final rule that regulations for nontribal members on reservations must be within the annually established, biologically appropriate Federal limits for migratory bird hunting seasons, and all Federal hunting regulations in this part also apply to nontribal hunters. The annual establishment of outside limits for migratory game bird hunting seasons allows harvest at levels compatible with game bird population status and habitat conditions.

**Effective Date**

We are making this substantive rule effective immediately upon its publication because this rule: (1) Relieves a restriction that Tribes annually submit a proposal to the Service for our review and approval to establish annual regulations for hunting migratory game birds; (2) reduces the administrative burden on Tribes and the Service; and (3) is necessary to allow hunting seasons to begin as soon as September 1, 2023. For the reasons cited above, we find that ''good cause'' exists, within the terms of the Administrative Procedure Act at 5 U.S.C. 553(d)(3), for these regulations to take effect immediately upon publication.

**Required Determinations**

*National Environmental Policy Act (NEPA) Consideration*

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual outside limits for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting outside limits through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2023–24,'' with its corresponding finding of no significant impact. Both of these documents are available at *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2022–0090.

We completed a Biological Review and NEPA Categorical Exclusion Analysis in 2023 for this final rule available at *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2022–0090. We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8. In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the person listed above

under **FOR FURTHER INFORMATION CONTACT**.

*Endangered Species Act Consideration*

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that the Secretary shall insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat.

After we published the March 23, 2023, proposed rule, we conducted formal consultations to ensure that actions resulting from this regulation, and other Federal fall-winter hunting regulations, would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that this regulation, and other Federal fall-winter hunting regulations, are not likely to jeopardize the continued existence of any endangered or threatened species. The biological opinion resulting from this section 7 consultation is available for public inspection at the address indicated under **ADDRESSES**.

*Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094*

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. We have developed this final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. The annual migratory bird hunting regulations are considered a ''significant regulatory action,'' as defined under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023).

An economic analysis was prepared for the 2023–24 migratory bird hunting season. This analysis was based on data from the 2011 and 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (National Survey), the most recent year for which data are available. See discussion under Required Determinations, *Regulatory Flexibility Act,* below. This analysis estimated consumer surplus for four alternatives for duck hunting regulations. As defined by OMB in Circular A–4, consumers' surplus is the difference between what a consumer pays for a unit of a good or service and the maximum amount the consumer would be willing to pay for that unit. The duck hunting regulatory alternatives are (1) not opening a hunting season, (2) issuing restrictive regulations that allow fewer days than the 2022–23 season, (3) issuing moderate regulations that allow more days than those in Alternative 2 but fewer days than the 2022–23 season, and (4) issuing liberal regulations that allow days similar to the 2022–23 season. For the 2023–24 season, we chose Alternative 4, with an estimated consumer surplus across all flyways of $356 million. We also chose Alternative 4 for the 2009–10 through 2022–2023 seasons. The 2023–24 analysis is part of the record for this rulemaking action and is available at *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2022–0090.

*Regulatory Flexibility Act*

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis was prepared to analyze the economic impacts of the annual hunting regulations on small business entities. This analysis is updated annually. The primary source of information about hunter expenditures for migratory game bird hunting is the National Survey, which is generally conducted at 5-year intervals. The 2023–24 analysis is based on the 2011 and 2016 National Survey and the U.S. Department of Commerce's County Business Patterns, from which it is estimated that migratory bird hunters would spend approximately $2.5 billion (2022$) at small businesses during the 2023–24 migratory bird hunting season. Copies of the analysis are available upon request from the person listed above under **FOR FURTHER INFORMATION CONTACT** or from *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2022–0090.

*Congressional Review Act*

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

*Paperwork Reduction Act*

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

- 1018–0019, ''North American Woodcock Singing Ground Survey'' (expires 02/29/2024).
- 1018–0023, ''Migratory Bird Surveys, 50 CFR 20.20'' (expires 05/31/2026). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.
- 1018–0171, ''Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20'' (expires 10/31/2024).

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

*Unfunded Mandates Reform Act*

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

*Civil Justice Reform—Executive Order 12988*

The Department, in promulgating this final rule, has determined that this rule

will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

*Takings Implication Assessment—Executive Order 12630*

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

*Energy Effects—Executive Order 13211*

E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy and is not a significant energy action. Therefore, no statement of energy effects is required.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are de minimis effects on Indian trust resources. Through the process to establish annual hunting regulations, we regularly coordinate with Tribes, and we coordinated with Tribes on the development of this new regulatory process.

*Federalism Effects—Executive Order 13132*

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

**Signing Authority**

Shannon Estenoz, Assistant Secretary for Fish and Wildlife and Parks, approved this action on August 7, 2023, for publication. On August 24, 2023, Shannon Estenoz authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of the Interior.

**List of Subjects in 50 CFR Part 20**

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

**Regulation Promulgation**

Accordingly, for the reasons described in the preamble, we hereby amend title 50, chapter I, subchapter B, part 20, of the Code of Federal Regulations as set forth below:

## PART 20—MIGRATORY BIRD HUNTING

■ 1. The authority citation for part 20 continues to read as follows:

**Authority:** 16 U.S.C. 703 et seq., and 16 U.S.C. 742a–j.

■ 2. Revise § 20.110 to read as follows:

### § 20.110 Regulations for certain Federal Indian reservations and ceded lands.

(a) *Tribal sovereignty.* The Service recognizes Tribal sovereignty to exercise reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members on their reservation. Accordingly, Tribes may independently establish special (separate from the State or States in which the reservation is located) migratory game bird hunting regulations. Migratory birds may be taken if the take is consistent with the regulations in this section and applicable Tribal hunting regulations.

(b) *Applicability.* Special Tribal migratory game bird hunting regulations may be established by Tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. These regulations also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the reservations where Tribes have full wildlife-management authority over such hunting, or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands within the reservation.

(c) *Special regulations.* Special Tribal migratory game bird hunting regulations must be consistent with the annual March 11 to August 31 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds, as amended by the Protocol Between the Government of Canada and the Government of the United States of America Amending the 1916 Convention Between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States, and with these provisions:

(1) Tribes may establish on-reservation hunting regulations, for both Tribal and nontribal members, with hunting seasons that may differ from those in the State(s) in which the reservations are located.

(i) *Regulations for both Tribal and nontribal members:* Opening and closing dates, season length, and daily bag and possession limits for nontribal members on the reservations must be within the Federal limits for migratory bird hunting seasons established by the Service, and all Federal hunting regulations in this part also apply to nontribal hunters. Tribes may choose to set the same opening and closing dates, season length, and daily bag and possession limits for hunting by Tribal members and nontribal members on their reservations, or, in accordance with the provisions in paragraph (c)(1)(ii) of this section, Tribes may choose to establish regulations for Tribal members only.

(ii) *Regulations for Tribal members only:* Tribes may establish on-reservation hunting regulations by Tribal members only, with hunting seasons that may be outside of Federal limits for season dates, season length, and daily bag and possession limits. All Federal hunting regulations in this part apply.

(A) For a short-term experimental hunting season, a Tribe and the Service may formally agree on allowed methods of take, notwithstanding the regulations in § 20.21 for on-reservation and ceded lands hunting by Tribal members. The Service will make public any such formal agreement.

(B) A Tribe that would like to make an additional hunting method operational would need to provide data to the Service for consideration. If the Service agrees with the Tribe's proposal, the Service will conduct rulemaking to amend the regulations in this part to allow Tribal members to use the additional hunting method.

(2) Tribes may establish off-reservation hunting regulations by Tribal members on ceded lands, with hunting seasons that may be outside of Federal limits for season dates, season length, and daily bag and possession limits.

(d) *Provisions for ceded lands.* Tribes that have special migratory game bird hunting regulations for Tribal members on ceded lands must send a copy of the Tribal regulations to officials in the affected State(s) as soon as reasonably possible prior to the season opening.

**Maureen D. Foster,**

*Chief of Staff, Office of the Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2023–19067 Filed 8–30–23; 4:15 pm]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 230224–0053; RTID 0648–XD251]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Trawl Catcher Vessels in the Western Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2023 Pacific cod total allowable catch apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2023, through 2400 hours, A.l.t., December 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Krista Milani, 907–581–2062.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2023 Pacific cod total allowable catch (TAC) apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA is 1,956 metric tons (mt), as established by the final 2023 and 2024 harvest specifications for groundfish of the GOA (88 FR 13238, March 2, 2023).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2023 Pacific cod TAC apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,356 mt and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### 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 the directed fishing closure of Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 28, 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 28, 2023.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2023–18910 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 230224–0053; RTID 0648–XD283]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 50 Feet Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting retention of Pacific cod by catcher vessels greater than or equal to 50 feet (15.2 meters (m)) length overall using hook-and-line (HAL) gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2023 total allowable catch of Pacific cod apportioned to catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA has been reached.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2023, through 2400 hours, A.l.t., December 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–581–7241.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management 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 Pacific cod total allowable catch (TAC) apportioned to catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA is 738 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the GOA (88 FR 13238, March 2, 2023).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS has determined that the 2023 Pacific cod TAC apportioned to catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that Pacific cod caught by catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(a).

## 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 the retention of Pacific cod by catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 25, 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 29, 2023.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2023–18978 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 88, No. 169
Friday, September 1, 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.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 217

**[Regulation Q; Docket No. R–1814]**

**RIN 7100–AG65**

## Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y–15)

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is inviting public comment on a notice of proposed rulemaking to amend the Board's rule that identifies and establishes risk-based capital surcharges for global systemically important bank holding companies (GSIBs). The proposal would also amend the Systemic Risk Report (FR Y–15), which is the source of inputs to the implementation of the GSIB framework under the capital rule. The changes set forth in the proposal would improve the precision of the GSIB surcharge and better measure systemic risk under the framework. For certain systemic indicators currently measured only as of a single date, the proposal would change to reporting of the average of daily or monthly values to reduce the effects of temporary changes to indicator values around measurement dates. To improve risk capture, the proposal would also make improvements to the measurement of some systemic indicators used in the GSIB surcharge framework and the framework for determining prudential standards for large banking organizations. In addition, the proposal would reduce cliff effects and enhance the sensitivity of the surcharge to changes in the method 2 score by calculating surcharges based on narrower score band ranges. Finally, the proposal would make several amendments to the FR Y–15 to improve the consistency of data reporting and systemic indicator measurement.

**DATES:** Comments must be received on or before November 30, 2023.

**ADDRESSES:** You may submit comments, identified by Docket No. R–1814 and RIN 7100–AG65, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket number and RIN in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

In general, all public comments will be made available on the Board's website at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, and will not be modified to remove confidential, contact or any identifiable information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during Federal business weekdays.

**FOR FURTHER INFORMATION CONTACT:** Anna Lee Hewko, Associate Director, (202) 250–1577; Brian Chernoff, Manager, (202) 452–2952; Jennifer McClean, Senior Financial Institution Policy Analyst II, (202) 785–6033, Policy Development, Division of Supervision and Regulation; or Jay Schwarz, Assistant General Counsel, (202) 452–2970; Mark Buresh, Special Counsel, (202) 452–5270, Jonah Kind, Senior Counsel, (202) 452–2045, David Imhoff, Attorney, (202) 452–2249, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For users of TDD–TYY, (202) 263–4869 or dial 711 from any telephone anywhere in the United States.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

The Board of Governors of the Federal Reserve System (Board) adopted a final rule in 2015 that established a methodology for identifying U.S. global systemically important bank holding companies (GSIBs) and assigning a risk-based capital surcharge for the largest, most interconnected U.S.-based bank holding companies.[1] The GSIB surcharge framework requires a GSIB to maintain additional capital to strengthen the firm's resiliency, thereby reducing the probability of its failure and the risks that the firm's failure or distress could pose to the U.S. financial system.

The Board is inviting public comment on a notice of proposed rulemaking (proposal) that would improve the measurement of systemic indicators under the GSIB surcharge framework and enhance the sensitivity of the surcharge to changes in a bank holding company's risk profile. By improving the calculation of surcharges, the

[1] Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 FR 49082 (Aug. 14, 2015). *See* 12 CFR Pt. 217, Subpart H.

proposal would better ensure that each GSIB maintains capital levels commensurate with its systemic footprint. The proposed changes include revisions to the Board's capital rule and amendments to the measurement and reporting of certain systemic indicators used in the GSIB surcharge framework. Certain of the indicators that the proposal would modify are also used for purposes of the Board's framework for determining prudential standards for large banking organizations (regulatory tiering framework).[2] The proposed changes include revisions consistent with the framework used by the Basel Committee on Banking Supervision (Basel Committee) to identify GSIBs and assess their systemic importance.[3]

*A. Background*

The methodology to identify a GSIB (method 1) uses five equally weighted categories that are correlated with systemic importance—(1) size, (2) interconnectedness, (3) substitutability, (4) complexity, and (5) cross-jurisdictional activity—and subdivides certain categories into systemic indicators. Generally, a bank holding company subject to Category I, II, or III capital standards must calculate its method 1 score annually.[4] A bank holding company calculates each systemic indicator by dividing its own measure of the indicator by an aggregate global measure for that indicator.[5] The resulting value for each systemic indicator is then multiplied by the prescribed weighting in the capital rule and by 10,000 to reflect the result in basis points. A bank holding company then sums the weighted values for the twelve systemic indicators to determine its method 1 score.[6] A bank holding company is identified as a GSIB if its method 1 score equals or exceeds 130 basis points.[7]

If a bank holding company is identified as a GSIB, it must also calculate its method 2 score.[8] Method 2 measures a bank holding company's systemic risk profile using the same systemic indicators as method 1, except that the substitutability category is replaced with a measurement of reliance on short-term wholesale funding.[9] Method 2 also uses fixed coefficient values for each of the systemic indicators, rather than multiplying indicators by a measure that changes each year based on the aggregate global measure for that indicator.[10] A firm multiplies its indicator values by the respective fixed coefficients and aggregates the amount together to compute the firm's method 2 score.

A GSIB is subject to the larger GSIB surcharge that applies based on its method 1 score and method 2 score. A GSIB is subject to a minimum surcharge of 1.0 percent, and surcharges increase with GSIB score under both method 1 and method 2. Method 1 surcharges increase in increments of 0.5 percentage points for each 100-basis point method 1 score band, up to a method 1 surcharge of 2.5 percent, which is associated with a method 1 score ranging from 430 to 529 basis points. If a GSIB's method 1 score exceeds 529, the GSIB's method 1 surcharge equals 3.5 percent, plus 1.0 percentage point for every further 100-basis point increase in score. Like the method 1 surcharge, the method 2 surcharge uses score band ranges of 100 basis points, with the lowest score band ranging from 130 to 229 basis points. The method 2 surcharge increases in increments of 0.5 percentage points per score band.

*B. Systemic Risk Report (FR Y–15)*

The Systemic Risk Report form (FR Y–15) collects systemic risk data from U.S. bank holding companies and covered savings and loan holding companies[11] with total consolidated assets of $100 billion or more, any U.S.-based bank holding company designated as a GSIB that does not meet that consolidated assets threshold, and foreign banking organizations with combined U.S. assets of $100 billion or more.[12] The FR Y–15 collects data on a firm's structure, activities, and funding that is consistent and comparable among firms and is often unavailable from other sources. In addition, the data collected on the FR Y–15 is used to identify other firms that may present significant systemic risk, to analyze the systemic risk implications of proposed mergers and acquisitions, and to determine the application of prudential standards to large banking organizations. Respondents must submit the FR Y–15 quarterly.

Under the GSIB surcharge framework, any U.S.-based top-tier bank holding company that qualifies as a Category I,

[2] *See* 12 CFR 252.5 and 238.10; *see also* ''Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations,'' 84 FR 59032 (November 1, 2019); and ''Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements,'' 84 FR 59230 (November 1, 2019). As used in this Supplementary Information section, the term ''banking organizations'' refers to U.S. GSIBs for purposes of the GSIB surcharge framework and to FR Y–15 reporters (bank holding companies, savings and loan holding companies, foreign banking organizations, and U.S. intermediate holding companies of foreign banking organizations meeting certain criteria) for purposes of the FR Y–15. There are also certain circumstances under which a depository institution that is not required to report the FR Y–15 would be subject to standards based on calculation methodologies contained in the FR Y–15. *See, e.g.,* 12 CFR 217.2, ''Category III Board-regulated institution.''

[3] The Basel Committee is a committee comprised of central banks and banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. It is the primary global standard setter for the prudential regulation of banking organizations. The Basel Committee developed a methodology, available at *https://www.bis.org/bcbs/gsib/,* that uses an indicator-based measurement approach for assessing the systemic importance of global systemically important banks. In July 2018, the Basel Committee made revisions to its methodology, which are available at *https://www.bis.org/bcbs/publ/d445.htm.*

[4] 12 CFR 217.400 and 217.402. In 2019, the Board, with the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), adopted rules establishing four categories of capital standards for U.S. banking organizations with $100 billion or more in total assets and foreign banking organizations with $100 billion or more in combined U.S. assets. Under this framework, Category I capital standards apply to U.S. global systemically important bank holding companies and their depository institution subsidiaries. Category II standards apply to banking organizations with at least $700 billion in total consolidated assets or at least $75 billion in cross-jurisdictional activity and their depository institution subsidiaries. Category III standards apply to banking organizations with total consolidated assets of at least $250 billion or at least $75 billion in weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure and their depository institution subsidiaries. Category IV standards apply to banking organizations with total consolidated assets of at least $100 billion that do not meet the thresholds for a higher category and their depository institution subsidiaries. *See* 12 CFR 252.5 and 238.10; *see also* ''Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations,'' 84 FR 59032 (November 1, 2019); and ''Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements,'' 84 FR 59230 (November 1, 2019).

[5] 12 CFR 217.404. The Board annually publishes the aggregate global measures.

[6] 12 CFR 217.404. Scores are rounded to the nearest basis point according to standard rounding rules for the purposes of assigning levels. That is, fractional amounts between zero and one-half are rounded down to zero, while fractional amounts at or above one-half are rounded to one. A bank's substitutability category score is capped at 100 basis points. *See also* 80 FR at 49088 (Aug. 14, 2015).

[7] 12 CFR 217.402.

[8] 12 CFR 217.403.

[9] 12 CFR 217.405 and 406. The short-term wholesale funding score is calculated by dividing the firm's average weighted short-term wholesale funding by the firm's average risk-weighted assets and multiplying the result by a fixed factor of 350.

[10] 12 CFR 217.405. *See also* 80 FR at 49087–88 (Aug 14, 2015).

[11] Covered savings and loan holding companies are those that are not substantially engaged in insurance or commercial activities. For more information, see the definition of ''covered savings and loan holding company'' provided in 12 CFR 217.2.

[12] The mandatory FR Y–15 is authorized by sections 163 and 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 5463 and 5365), the International Banking Act (12 U.S.C. 3106 and 3108), the Bank Holding Company Act (12 U.S.C. 1844), and Home Owners' Loan Act (HOLA) (12 U.S.C. 1467a).

II, or III Board-regulated institution must compute annually its method 1 score using the values for the systemic indicators (in each of the size, interconnectedness, substitutability, complexity, and cross-jurisdictional activity categories) that it reported on its FR Y–15 as of December 31 of the prior year. A GSIB must also determine its GSIB surcharge based on the data reported on its FR Y–15 as of the same date.

Data reported on the FR Y–15 is also used to determine the applicable category of prudential standards for U.S. banking organizations with total consolidated assets of $100 billion or more and foreign banking organizations with combined U.S. assets of $100 billion or more, under the framework adopted by the Board in 2019.[13] Specifically, measures for cross-jurisdictional activity, weighted short-term wholesale funding, and off-balance sheet exposure, which are used to determine whether a banking organization is subject to Category II or III standards, use or include data reported on the FR Y–15.[14]

## II. Summary of the Proposal

### *A. Data Averaging of Certain Systemic Indicators*

Under the current framework, FR Y–15 filers report many of the data values used to calculate a firm's method 1 or method 2 score on a point-in-time basis, reflecting the firm's amount for the indicators as of end of the reporting quarter. Indicators calculated on a point-in-time basis include intra-financial system assets, intra-financial system liabilities, securities outstanding, assets under custody, notional amount of over-the-counter (OTC) derivatives, trading and available-for-sales securities, Level 3 assets, cross-jurisdictional claims, and cross-jurisdictional liabilities. A firm's GSIB method 1 and 2 score calculations use as inputs the value of these indicators as of December 31 of the previous calendar year.

The value of a firm's indicator on December 31 may not, however, be accurately representative of a firm's actual systemic footprint if the value of the indicator on December 31 differs materially from the value on other dates. For example, the seasonality of market dynamics could cause December 31 to be an anomalous day for any given firm. Additionally, measurement based only on a single point in time may create incentives for a firm to manage the values of its systemic indicators on December 31 to reduce the amount of its GSIB surcharge in a manner that would not be commensurate with the firm's actual systemic footprint, based on the values of its systemic indicators on other days of the year.

The proposal would require a GSIB to report intra-financial system assets, intra-financial system liabilities, securities outstanding, assets under custody, OTC derivatives, trading and available for sale securities, Level 3 assets, cross-jurisdictional claims, and cross-jurisdictional liabilities on the FR Y–15 as the average of daily values of the indicator over the reporting quarter, instead of quarter-end point-in-time values.[15] For certain off-balance sheet items, a GSIB would report the average of month-end values over the reporting quarter, rather than an average of daily values. (See Table 1.) For example, for the December 31 reporting date, a GSIB would report for most items the average of the values of that item for each business day from October 1 through December 31, and for specified off-balance sheet items, the average of the month-end values for October, November, and December. This methodology would be similar to how GSIBs currently report the on- and off-balance-sheet components of the total exposures systemic indicator.[16] In addition, the proposal would base a GSIB's method 1 and method 2 score calculation for these indicators on the average of reported values over all four quarters of a calendar year, rather than only the reported values for the fourth quarter.

The proposal would not change the current reporting methodology for indicators that measure flows (payments activity, underwritten transactions, and trading volume) and short-term wholesale funding.[17]

The proposed changes to require reporting of average data for previously point-in-time indicators would only apply to GSIBs. For these firms, the averaging requirement will better reflect a firm's systemic risk profile in the calculation of its GSIB surcharge requirements and reduce opportunities to manage the values of systemic indicators in a manner that would result in a surcharge requirement that is not commensurate with the firm's systemic risk profile.

The proposal would require a firm subject to Category II or III standards to calculate its method 1 and method 2 GSIB scores by using the average of its four quarterly reported values for the year. Except as noted below regarding the total exposures systemic indicator, the proposal would not require firms that are subject to Category II, III, or IV standards to newly report FR Y–15 data as averages of daily or monthly values, in order to limit operational burdens for firms that are not yet identified as GSIBs.

Table 1 displays the systemic indicator by categories and the proposed reporting requirements for GSIBs relative to the current requirements.

TABLE 1—MEASUREMENT OF GSIB SURCHARGE INPUTS FOR GSIBS

| Category | Systemic indicator | Current U.S. reporting | Proposal |
|---|---|---|---|
| Size | Total exposures | For on-balance sheet items, average of daily values over the fourth quarter. | No changes in reporting. |
| | | For off-balance sheet items, average of the three month-end balances over the fourth quarter. | No changes in reporting. |

[13] *See* 12 CFR part 252, subpart A, and 12 CFR 238.10.

[14] *See id.*

[15] Unless otherwise noted, references to averaging of ''daily'' values in this Supplementary Information section refer to averaging of values for each business day. A firm that newly becomes a GSIB would be required to begin reporting the average of daily values as of the first quarter following its identification as a GSIB.

[16] Currently, for the purposes of calculating a Category I–III banking organization's GSIB surcharge score, the total exposures systemic indicator reflects the average of daily values for on-balance sheet items within the fourth quarter and the average of month-end values for off-balance sheet items within the fourth quarter.

[17] For these indicators, where firms currently report items as 12-month sums or averages, the proposal would require reporting of values for the reporting quarter only, with a separate line item to include the 12-month sum or averages, to align with the proposed reporting of other indicators.

TABLE 1—MEASUREMENT OF GSIB SURCHARGE INPUTS FOR GSIBS—Continued

| Category | Systemic indicator | Current U.S. reporting | Proposal |
|---|---|---|---|
| Interconnectedness | Intra-financial system assets | For on-balance sheet items, as of December 31. | For on-balance sheet items, report average of daily values over the reporting quarter. |
| | | For off-balance sheet items, as of December 31. | For off-balance sheet items, report average of month-end exposure amounts over the reporting quarter. |
| | Intra-financial system liabilities | For on-balance sheet items, as of December 31. | For on-balance sheet items, report average of daily values over the reporting quarter. |
| | | For off-balance sheet items, as of December 31. | For off-balance sheet items, report average of month-end exposure amounts over the reporting quarter. |
| | Securities outstanding | As of December 31 | Report average daily balances over the reporting quarter. |
| Substitutability (Method 1 Only) | Payments activity | Total gross value of all cash payments sent via large-value payment systems over the last year. | No change. |
| | Assets under custody | As of December 31 | Report average daily balances over the reporting quarter. |
| | Underwritten transactions in debt and equity markets. | Total underwriting over the last year. | No change. |
| Short-Term Wholesale Funding (Method 2 Only). | Short-term wholesale funding metric (ratio). | Average of daily values for weighted short-term wholesale funding over the preceding four quarters in the numerator. Four-quarter average of total risk-weighted assets in the denominator. | No change. |
| Complexity | Notional amount of over-the-counter (OTC) derivatives. | As of December 31 | For off-balance sheet items, report average of month-end exposure amounts over the reporting quarter. |
| | Trading and available-for-sale securities. | As of December 31 | Report average daily balances over the reporting quarter. |
| | Level 3 assets | As of December 31 | Report average daily balances over the reporting quarter. |
| Cross-Jurisdictional Activity | Cross-jurisdictional claims | As of December 31 | Report average daily balances over the reporting quarter. |
| | Cross-jurisdictional liabilities | As of December 31 | Report average daily balances over the reporting quarter. |

Interaction With Other Proposals

Currently, the FR Y–15 requires banking organizations subject to Category I, II, or III standards to report data for the total exposures indicator as the average of daily values for on-balance sheet items and the average of month-end values for off-balance sheet items. This reporting methodology aligns with the calculation of total leverage exposure for purposes of the supplementary leverage ratio requirement.[18] Other banking organizations must elect to report this data using averages or point-in-time data.

The Board, with the OCC and FDIC (together with the Board, the agencies), is separately issuing a proposal that would revise the agencies' risk-based capital framework applicable to banking organizations with at least $100 billion in total assets and their depository institution subsidiaries and to banking organizations with significant trading activities. In addition to revising risk-based capital requirements, this separate proposal would also revise the applicability of the supplementary leverage ratio requirement to include all banking organizations subject to the capital rule with at least $100 billion in total assets and their depository institution subsidiaries.

In connection with this separately proposed change to broaden the scope of application of the supplementary leverage ratio requirement, the proposal would require all banking organizations that file the FR Y–15 to report data for the total exposures systemic indicator as the average of daily values for on-balance sheet items and the average of month-end values for off-balance sheet items, to align with the calculation of total leverage exposure for purposes of the supplementary leverage ratio requirement.

*Question 1: What would be the advantages and disadvantages of requiring firms subject to the GSIB surcharge framework or all firms that report the FR Y–15 to report indicators that they currently report as of a single point in time instead as averages of daily, weekly, or monthly values?*

*Question 2: What operational burdens would be required, relative to what banking organizations already do to track this information? To what extent would the operational burdens of reporting averages of daily, weekly, monthly values differ for the different indicators?*

*Question 3: For off-balance sheet items, what would be the advantages or disadvantages of requiring reporting based on an average of more frequent data than month-end values, such as an average of daily or weekly values?*

[18] *See* 12 CFR 217.10(c).

*Question 4: What would be the advantages and disadvantages of requiring calculation of GSIB surcharges based on indicators averaged over the fourth quarter only, rather than based on average values over all four quarters of the calendar year? For which indicators and why?*

*B. Reducing Cliff Effects in the Calculation of Method 2 GSIB Surcharges*

As described in the 2015 rulemaking, the Board chose to assign GSIB surcharges using 100-basis point score band sizes so that modest changes in a firm's systemic indicators would generally not cause a change in its surcharge and surcharges would be reasonably sensitive to changes in a firm's systemic footprint. In practice, the Board has observed that firms' method 2 scores tend to cluster close to the upper limit of a score band range, especially at year-end.

In order to increase the sensitivity of a firm's surcharge to its systemic risk profile and reduce cliff effects around changing score bands, the Board is proposing to make the method 2 score band ranges narrower.[19] Instead of 100-basis point score band ranges corresponding to 0.5-percentage point increments in the surcharge (1.0%, 1.5%, 2.0%, etc.), the proposal would modify the ranges in method 2 to 20-basis point ranges that would correspond to 0.1-percentage point increments (1.0%, 1.1%, 1.2%, etc.).

Under this approach, the lowest score band range would be method 2 scores of 189 basis points or less, corresponding to a 1.0 percent surcharge, the lowest applicable surcharge for a GSIB. If the method 2 score of a GSIB equaled or exceeded 190 basis points, the method 2 surcharge would equal the sum of 1.1 percent and an additional 0.1 percent for each additional 20 basis points by which the GSIB's method 2 score exceeded 190 basis points. Expressed mathematically, this is equivalent to:

$$Method\ 2\ GSIB\ surcharge = \begin{cases} 1\% + 0.1\% * ceiling\left(\frac{method\ 2\ GSIB\ score - 189}{20}\right), if\ method\ 2\ score \geq 190 \\ 1\%, if\ method\ 2\ score \leq 189 \end{cases}$$

Where *ceiling* means to round the fraction to the nearest integer above or equal to it.[20] Table 2 illustrates the application of this formula up to a score of 1129.

TABLE 2—PROPOSED REVISED METHOD 2 SURCHARGE SCORE BAND RANGES

| Method 2 score range | Method 2 surcharge | | Method 2 score range | Method 2 surcharge | |
|---|---|---|---|---|---|
| | Current (percent) | Proposed (percent) | | Current (percent) | Proposed (percent) |
| Less than 189 | 1.0 | 1.0 | 630–649 | 3.5 | 3.3 |
| 190–209 | | 1.1 | 650–669 | | 3.4 |
| 210–229 | | 1.2 | 670–689 | | 3.5 |
| 230–249 | 1.5 | 1.3 | 690–709 | | 3.6 |
| 250–269 | | 1.4 | 710–729 | | 3.7 |
| 270–289 | | 1.5 | 730–749 | 4.0 | 3.8 |
| 290–309 | | 1.6 | 750–769 | | 3.9 |
| 310–329 | | 1.7 | 770–789 | | 4.0 |
| 330–349 | 2.0 | 1.8 | 790–809 | | 4.1 |
| 350–369 | | 1.9 | 810–829 | | 4.2 |
| 370–389 | | 2.0 | 830–849 | 4.5 | 4.3 |
| 390–409 | | 2.1 | 850–869 | | 4.4 |
| 410–429 | | 2.2 | 870–889 | | 4.5 |
| 430–449 | 2.5 | 2.3 | 890–909 | | 4.6 |
| 450–469 | | 2.4 | 910–929 | | 4.7 |
| 470–489 | | 2.5 | 930–949 | 5.0 | 4.8 |
| 490–509 | | 2.6 | 950–969 | | 4.9 |
| 510–529 | | 2.7 | 970–989 | | 5.0 |
| 530–549 | 3.0 | 2.8 | 990–1009 | | 5.1 |
| 550–569 | | 2.9 | 1010–1029 | | 5.2 |
| 570–589 | | 3.0 | 1030–1049 | 5.5 | 5.3 |
| 590–609 | | 3.1 | 1050–1069 | | 5.4 |
| 610–629 | | 3.2 | 1070–1089 | | 5.5 |
| | | | 1090–1109 | | 5.6 |
| | | | 1110–1129 | | 5.7 |

[19] The proposal would not amend the score band ranges for method 1, as discussed further below.

[20] For example, 2.1 rounds up to 3; 4.7 rounds up to 5; 6 does not require rounding.

The proposed method 2 score band range structure would result in a surcharge equivalent to that under the current method 2 surcharge score band range structure when a method 2 score is in the middle quintile of the current score band range, as displayed in Table 2. For example, a method 2 score of 280 basis points is near the center of the current 2.5 percent surcharge score band range and would likewise receive a 2.5 percent surcharge under the proposal. Under the proposal, method 2 scores at the lower end of a current method 2 score band range would receive a modest GSIB surcharge reduction. Method 2 scores at the higher end of a current method 2 score band range would receive a modest GSIB surcharge increase under the proposal.

The proposed revision is not meant to alter the overall calibration of the method 2 surcharge, as reflected by the fact that the surcharge for a proposed score band range that is at the center of a current score band range would remain unchanged. Rather, the proposal would apply a more continuous approach to determining a firm's GSIB surcharge that would reduce cliff-effects in the framework and increase its risk sensitivity.

The proposal would not amend the score band ranges for method 1. Because method 1 is structured to be generally consistent with the methodology used by other major jurisdictions to calculate GSIB surcharges and with the GSIB surcharge standard published by the Basel Committee, the proposal would keep the existing score band ranges for method 1 in the interest of continuing to promote international consistency.

*Question 5: What are the advantages and disadvantages of the proposed approach to method 2 surcharges, including for firms' capital planning? What alternative approaches, if any, should the Board consider for reducing cliff effects and better reflecting a firm's systemic risk profile in its GSIB surcharge?*

*Question 6: What would be the advantages and disadvantages of a wider or narrower score band structure than the proposed approach of 20 basis points of method 2 score per 0.1 percentage point increase in method 2 surcharge?*

### *C. Effective Date of Changes to a Firm's GSIB Surcharge Requirement*

Under the current framework, an increase in the GSIB surcharge of a global systemically important bank holding company takes effect on January 1 of the year that is one full calendar year after the increased GSIB surcharge was calculated.[21] This approach facilitates GSIBs' capital planning and allows time for a GSIB to shrink its systemic risk profile such that it would be subject to a lower GSIB surcharge.

The Board is seeking comment on whether it would be appropriate to modify the effective date of changes to a firm's GSIB surcharge requirement following a change in its GSIB score. Under the proposed change to measure certain indicators based on average values over a four-quarter period, rather than year-end point-in-time values, it is possible that a GSIB may have greater ability to predict its applicable GSIB surcharge further in advance than under the current framework. In addition, under the proposed change to a narrower score band structure for determining method 2 surcharges, it is possible that incremental changes in GSIB surcharge requirements may be smaller than under the current approach.

Given these dynamics, the Board requests comment regarding possible changes to the timing for an increase in a firm's GSIB surcharge to take effect following the calculation date. One potential approach could be for the effective date of the GSIB surcharge under both method 1 and 2 to occur with a shorter lag, such that increases would take effect on April 1 of the year that immediately follows the calculation of the increased GSIB surcharge. This approach would have the benefit of providing a closer matching in time between the measurement of a firm's systemic indicators and the application of a GSIB surcharge based on that data.

An alternative approach could be for the effective date of the GSIB surcharge under method 2, if binding, to coincide with the effective date of the stress capital buffer, October 1, of the year in which the increased GSIB surcharge was calculated. The effective date under method 1, if binding, could be April 1 or October 1 of the year that immediately follows the year in which the increased GSIB surcharge was calculated. This approach would have a similar benefit to the first approach, but also account for the consideration that the calculation of method 1 scores typically occurs later in the calendar year, based on the Board's publication date of the aggregate global measures used in the method 1 calculation.

[21] A firm typically calculates its method 2 score for a given year after it files its FR Y–15 for the fourth quarter, which typically occurs around April of the following year. For method 1, a firm typically calculates its score later that same year, after the Board publishes the aggregate global measures for that year, which typically occurs around November or December.

*Question 7: What would be the advantages and disadvantages of adjusting the timing for a firm's GSIB surcharge to take effect following the calculation date of its GSIB score? To what extent would other elements of the proposal, such as averaging of indicators and a narrower method 2 score band structure, reduce the amount of time needed for a GSIB to meet a higher GSIB surcharge? How would such a change affect a GSIB's capital planning?*

*Question 8: What would be the advantages and disadvantages of changing the effective date of a change to a firm's GSIB surcharge requirement to coincide with the effective date of the stress capital buffer requirement?*

*Question 9: What other approaches to the effective date of the GSIB surcharge should the Board consider, and why?*

### *D. Clarification for Reduction in GSIB Surcharge Calculated During the Intervening Year Between Calculation and Effective Date of a GSIB Surcharge Increase*

The proposal would amend section 217.403 of the capital rule to clarify ambiguity regarding the GSIB surcharge for a GSIB that calculates a GSIB score that would result in a higher GSIB surcharge taking effect on January 1 of the year that is one full calendar year after a calculation date, but then in the year after that calculation date calculates a GSIB score that would result in a lower GSIB score than the one scheduled to take effect. The proposal would clarify that in that situation, the lower, more recently calculated score would apply. The proposed clarification would specify that a firm's GSIB surcharge in effect for a calendar year is the surcharge calculated in the immediately prior calendar year, unless the surcharge calculated in the calendar year two years prior was lower, in which case the GSIB surcharge calculated in the calendar year two years prior shall be in effect. For example, a GSIB may calculate a GSIB score in 2024 that results in an increased GSIB surcharge from 2.0 to 2.2 percent to take effect on January 1, 2026. If, in 2025, that GSIB calculates a GSIB surcharge of 2.1 percent, the GSIB's effective surcharge on January 1, 2026, would be the 2.1 percent calculated in 2025, instead of the 2.2 percent calculated in 2024. If, in 2025, the GSIB calculates a GSIB surcharge of 2.3 percent, its effective surcharge on January 1, 2026, would be the 2.2 percent calculated in 2024.

*E. Amendments to Systemic Indicators*

The Board is proposing to revise various aspects of the systemic indicators, as implemented in certain cases through the data collected on the FR Y–15. This section discusses these revisions, grouped by systemic indicator category. Unless otherwise noted, each proposed modification in this section would apply to all filers of the FR Y–15. Table 3 summarizes the proposed modifications to the GSIB framework and the FR Y–15 reporting.

TABLE 3—PROPOSED AMENDMENTS TO SYSTEMIC INDICATORS

| Proposed amendments | Affected systemic indicators |
|---|---|
| Revise definition of ''financial institutions'' for interconnectedness category and treatment of holdings of securities issued by an exchange-traded fund. | Intra-financial system assets; intra-financial system liabilities; securities outstanding. |
| Clarify treatment of certain exposures of a banking organization that arise in connection with client cleared derivatives positions. | Intra-financial system assets; intra-financial system liabilities; notional amount of OTC derivatives. |
| Incorporate the standardized approach for counterparty credit risk (SA–CCR) to measure derivative exposures[22]. | Intra-financial system assets; intra-financial system liabilities. |
| Update treatment of non-cash collateral in over-the-counter (OTC) derivatives transactions. | Intra-financial system assets; intra-financial system liabilities. |
| Update treatment of certificates of deposit | Securities outstanding. |
| Clarify scope for reporting of preferred shares | Securities outstanding. |
| Introduce two trading volume indicators | Trading volume. |
| Update list of currencies | Payments activity. |
| Add derivatives exposures | Cross-jurisdictional claims; cross-jurisdictional liabilities. |
| Streamline reporting of the cross-jurisdictional liabilities systemic indicator. | Cross-jurisdictional liabilities. |
| Technical edits to align the FR Y–15 instructions for reporting short-term wholesale funding with the capital rule. | Short-term wholesale funding. |

i. Interconnectedness and Complexity

a. Definition of ''Financial Institution'' and Treatment of Exchange-Traded Funds

Banking organizations often enter into transactions with other financial sector entities, giving rise to a range of obligations. These transactions can serve many purposes and can also serve as transmission channels for stress. Financial distress at a banking organization can materially raise the likelihood of distress at other firms given the network of obligations throughout the financial system. Accordingly, the GSIB framework includes as a measure of a banking organization's systemic risk profile indicators of its interconnectedness with other financial institutions and the financial sector as a whole.

The GSIB surcharge framework measures interconnectedness using three systemic indicators: intra-financial system assets, intra-financial system liabilities, and securities outstanding. For purpose of these indicators, the FR Y–15 instructions currently define ''financial institutions'' as depository institutions, bank holding companies, securities brokers, securities dealers, insurance companies, mutual funds, hedge funds, pension funds, investment banks, and central counterparties. The definition excludes central banks and other public sector bodies, such as multilateral development banks and the Federal Home Loan Banks, but includes state-owned commercial banks. The definition also excludes stock exchanges, though stock exchanges may have subsidiaries that are included, such as securities dealers or central counterparties.

This proposal would expand the definition of ''financial institution'' to include savings and loan holding companies, private equity funds, asset management companies, and exchange-traded funds. The proposed inclusion of savings and loan holding companies would clarify that a reporting firm should include positions with these firms in the same manner as other depository institution holding companies, since a banking organization's positions with these firms can act as a similar channel for transmission of distress that can undermine financial stability.

The proposed inclusion of private equity funds in the interconnectedness indicators would be consistent with the purpose of the interconnectedness category to holistically assess a banking organization's exposures to and from other financial sector entities.[23] Private equity funds are engaged in asset management activities, which are a financial activity, and they typically have transactions or relationships with a broad set of other financial market participants. Like with other asset management entities, perceptions of distress at a private equity fund could affect market perceptions of the soundness of other financial market participants. As such, they can present a similar channel for transmission of distress and financial instability as other asset management entities and other types of entities included in the definition of ''financial institution.''

The proposed change regarding asset management companies would similarly reflect that positions with asset management companies, in addition to positions with the underlying funds managed by the companies, represent sources of financial sector interconnectedness.

To improve clarity, the proposal would modify the FR Y–15 instructions to specify that exchange-traded funds are included in the definition of ''financial institution,'' and would include in the line items for holdings of securities issued by other financial institutions (within the intra-financial system assets indicator) holdings of securities of an exchange-traded fund.

[22] The capital rule currently requires banking organizations subject to Category I and II standards to use SA–CCR to calculate standardized total risk-weighted assets and total leverage exposure and to use SA–CCR or the internal models methodology to calculate their advanced approaches total risk-weighted assets. Firms subject to Category III or IV standards may, but are not required to, use SA–CCR. The Board, with the OCC and the FDIC, is separately proposing changes to the capital rule that would remove the advanced approaches capital requirements and require firms subject to Category I, II, III, and IV standards to use SA–CCR to calculate total risk-weighted assets and total leverage exposure.

[23] The proposed change would not include the portfolio companies of a private equity fund unless a portfolio company itself meets the definition of ''financial institution.''

Currently, the instructions for this line item state not to include bond exchange-traded funds. Although the redemption structures for shares of exchange-traded funds generally differ from the structure of an open-ended mutual fund, asset management entities can have a variety of redemption structures and still act a source of financial sector interconnectedness. This change would improve the clarity of reporting instructions and the consistency of treatment of asset management entities and provide a more complete measure of a banking organization's interconnectedness.

The proposal would implement these changes through revisions to the instructions of the FR Y–15 that would apply to all filers.

*Question 10: What other types of entities should the definition of* ''*financial institution*'' *include, and why?*

*Question 11: In what ways could the Board further improve clarity regarding the types of entities included in the term* ''*financial institution*'' *for purposes of the interconnectedness indicators?*

b. Derivatives

The proposal would revise the FR Y–15 instructions for the interconnectedness and complexity indicators—specifically, intra-financial system assets and liabilities in the interconnectedness category and notional amount of OTC derivatives in the complexity category—to clarify the treatment of certain exposures of a banking organization that arise in connection with client cleared derivatives positions.

When a banking organization acts as a derivatives clearing intermediary for a client, it generally does so under one of two structures: the principal model or the agent model. Under the principal model, the banking organization facilitates the clearing of derivatives for a client by becoming a direct counterparty to both the client and the central counterparty (CCP). Under the agency model, the clearing member client and the CCP face each other directly, and the banking organization provides to the CCP a guarantee of the client's performance.

Under current reporting, all three indicators include client cleared derivative positions under the principal model. For the complexity indicator, filers must report the notional amounts associated with each of its positions with the CCP and the clearing member client. For the interconnectedness indicators, filers must report net exposures to the CCP and the net exposures to clients that fit the definition of a financial institution.

To promote consistent treatment of the two clearing models and better capture sources of interconnectedness and complexity, the proposal would include in all three indicators (intra-financial system assets and intra-financial system liabilities in the interconnectedness category and notional amount of OTC derivatives in the complexity category) a firm's guarantees of client performance to a CCP with respect to client cleared derivative positions.

For the interconnectedness indicators, inclusion of guarantees by a banking organization of a client's performance would provide a more accurate measurement of the firm's interconnectedness. While the banking organization is not the primary obligor under these positions, these positions could become transmission channels for distress if the banking organization experienced material distress or failure.

For the complexity indicator, inclusion of guarantees by a banking organization of a client's performance on derivative contracts would provide a more accurate assessment of the firm's complexity, because it would provide a more complete picture of the firm's derivative exposures. As OTC derivatives contribute to complexity, whether the banking organization is a primary or secondary obligor, a more accurate representation of the notional amount of OTC derivatives exposures would improve the Board's ability to assess systemic risk.

*Question 12: What are the advantages and disadvantages of including in the interconnectedness and complexity indicators guarantees of client performance to a CCP with respect to client cleared derivative positions?*

The proposal would also update the reporting of derivative positions in the interconnectedness indicators to align with amendments to the capital rule in 2019 that adopted the standardized approach for counterparty credit risk (SA–CCR). The indicators for intra-financial system assets and intra-financial system liabilities include the net fair value and potential future exposure of OTC derivatives with other financial institutions, as calculated under the capital rule. The current instructions specify that firms should use the current exposure method to calculate the potential future exposure of these positions. The proposal would update the instructions for the relevant line items, 5(b) and 11(b) in the interconnectedness category, to provide instead for calculation using SA–CCR for a banking organization that uses SA–CCR. Specifically, the proposal would state that a firm should report the exposure amount of derivatives in accordance with the capital rule, 12 CFR 217.34(a). This change would align with the measurement of derivatives in the interconnectedness category with that used in the size category, as well as in the calculation of standardized total risk-weighted assets and total leverage exposure in the capital rule.

In addition, the proposal would allow a banking organization to recognize, for purposes of the intra-financial system assets and intra-financial system liabilities indicators, the value of non-cash collateral to offset the net fair value of derivatives if such collateral is financial collateral (as defined in the capital rule, 12 CFR 217.2) and if adjusted for the applicable haircuts under SA–CCR or the current exposure method, depending on which the banking organization uses in accordance with the capital rule, 12 CFR 217.34(a). Specifically, this proposal would revise line items 5(a) and 11(a) in the interconnectedness category of the FR Y–15. This change would provide recognition of risk mitigants that reduce the impact to other financial institutions from a firm's failure.

c. Securities Outstanding

The proposal would revise the scope of certain exposures measured under the securities outstanding systemic indicator in the interconnectedness category. First, the proposal would revise the FR Y–15 instructions to indicate that filers should not report a certificate of deposit in the securities outstanding indicator if the certificate of deposit is not due to or held by a financial institution and is non-transferable. This modification would exclude such certificates of deposit from the interconnectedness category because they are not, and cannot become, exposures due to or held by a financial institution.

Consistent with the purpose of the interconnectedness indicators, filers would continue to include in the securities outstanding indicator a certificate of deposit that is issued to a financial institution and a certificate of deposit that is transferable.

The proposal would also modify the instructions for other items included in the securities outstanding systemic indicator in order to provide greater clarity to filers. Specifically, the proposal would require banking organizations to include preferred shares that have a determinable fair value in the securities outstanding systemic indicator, even if the preferred shares are not registered with the

Securities and Exchange Commission or listed on a securities exchange. The proposed change would clarify the FR Y–15 instructions, which state that publicly traded instruments must be reported. The proposed change is intended to include instruments for which banking organizations can easily determine a fair value, which can be done for securities for which there is an active market. The proposed change would be consistent with the intent of the securities outstanding category to accurately measure issued and outstanding debt and equity instruments of a banking organization.

*Question 13: What further modifications or clarifications to the securities outstanding systemic indicator should the Board consider, and why?*

*Question 14: What are the advantages and disadvantages of the proposed revisions to the interconnectedness and complexity categories? What other changes should the Board consider, and why?*

ii. Substitutability

a. Trading Volume

The substitutability category used in method 1 measures the extent to which a banking organization provides critical financial services and infrastructure to third parties and the broader financial system that would be difficult to substitute in a period of financial stress or failure. Currently, there are three substitutability indicators: (1) payments activity; (2) assets under custody; and (3) underwritten transactions in debt and equity markets.

The proposal would revise the substitutability category to introduce two new systemic indicators, ''trading volume—fixed income'' and ''trading volume—equity and other,'' as a complement to the existing systemic indicator for underwritten transactions in debt and equity markets.

The proposed inclusion in the substitutability category of trading volume in addition to underwriting activity would provide a broader measure of the extent to which a banking organization's activities contribute to liquidity in the primary market (underwriting) and secondary market (trading). The permitted trading activity of banking organizations, such as market making, can promote market liquidity, thereby enhancing price discovery and permitting market participants to manage financial risk more holistically. The provision of market-making services can require substantial investments in information technology and infrastructure, making it difficult to substitute in a period of financial stress or firm default. The proposal would include separate systemic indicators for trading volume in fixed income and in equities and other securities to avoid disproportionate impact due to differences in overall trading volumes in the two markets.

The FR Y–15 sections for the substitutability indicators (Schedules C and J) currently include these measures as memoranda line items. The proposal would move these line items into the main section of Schedule C to reflect their inclusion as new systemic indicators.[24] The indicator for trading volume in fixed income securities includes money market instruments, certificates of deposit, bills, bonds, and other fixed income securities, such as commercial paper, corporate bonds, syndicated corporate loans, covered bonds, convertible debt, and securitized products.[25] This indicator includes securities issued by public sector entities (as defined in 12 CFR 217.2) as well as securities issued or guaranteed by government-sponsored agencies, multilateral development banks, and state and local governments, but does not include securities issued by a sovereign, as defined in 12 CFR 217.2. The indicator for trading volume of equities and other securities includes all publicly traded equities (as defined in 12 CFR 217.2), including American depositary receipts (ADRs) and global depositary receipts (GDRs), unlisted equity securities, preferred stock, trust preferred securities, and securities issued by investment funds, as defined in 12 CFR 217.2.[26]

The proposal would also modify the weighting of the indicators for substitutability in a firm's method 1 GSIB score calculation to reflect the addition of the two new indicators. Currently, the indicator for underwritten transactions in debt and equity markets receives a 6.67 percent weighting. The proposal would reallocate a portion of this weighting to the two new indicators: the indicator for underwritten transactions in debt and equity markets would receive a 3.33 percent weighting, and the trading volume—fixed income and trading volume—equity and other systemic indicators would each receive a 1.67 percent weight. The remaining systemic indicators in the substitutability category would retain their current weighting of 6.67 percent each. The inclusion of the proposed systemic indicators for trading volume would not affect a GSIB's method 2 score calculation, as method 2 does not include the substitutability category of indicators.

*Question 15: What are the advantages and disadvantages of the proposed trading volume systemic indicators as measures of a banking organization's substitutability, based on its contributions to efficient market functioning? What alternative indicators, if any, should the Board consider?*

*Question 16: What, if any, other trading instruments and exposures besides those mentioned above should the proposed systemic indicators for trading volume include, and why?*

b. Currencies Included in the Payments Activity Systemic Indicator and Associated Memoranda Items

The payments activity indicator includes the value of all cash payments sent via large-value payment systems, along with the value of all cash payments sent through an agent (for example, using a correspondent or nostro account), over the calendar year in major global currencies. To determine which currencies to include in this indicator, the Board considers factors such as the extent to which a currency represents a material share of global foreign exchange market turnover, among other factors.[27] In identifying major currencies, the Board takes into account the list of major currencies announced by the Basel Committee for purposes of the international GSIB surcharge standard, including updates typically announced by the Basel Committee every three years.[28] The FR Y–15 also collects payments activity for certain other currencies (memorandum item currencies) that are not used at sufficient volumes to be included in the payments activity metric, in order to help inform the selection of major currencies in the future and monitor activity more consistently over time in currencies that may become major currencies in the future.

The proposal would update the list of currencies that are included in the payments activity systemic indicator to reflect changes in the materiality of

[24] As discussed in section II.F of this Supplementary Information section below, the proposal would remove Schedule J to streamline reporting by foreign banking organizations.

[25] *See* FR Y–15 Instructions, Schedule C, line items M5, M5(a), M5(b), and M6.

[26] *See* FR Y–15 Instructions, Schedule C, line items M5, M5(c), M5(d), and M7.

[27] For example, a currency may also be considered a major currency if it represents a material share of global nominal gross domestic product (GDP).

[28] *See, e.g., Instructions for the end-2022 G–SIB assessment exercise,* January 2023, available at *https://www.bis.org/bcbs/gsib/instr_end22_gsib.pdf.*

certain currencies' share of global foreign exchange market turnover. The proposal would also update the list of currencies that are not included in the payments activity systemic indicator but that are collected as memorandum item currencies.

The proposal would revise the payments activity systemic indicator to include the Singapore dollar based on its use in global foreign exchange markets, and to remove the Brazilian real and the Mexican peso from the systemic indicator based on their reduced relative use in global foreign exchange markets. Based on the 2022 Triennial Central Bank Survey published by the Bank for International Settlements (BIS), the Singapore dollar accounted for over 2 percent of foreign exchange market turnover in April 2022.[29] The Mexican peso, which the FR Y–15 currently includes in the payments systemic indicator, accounted for slightly less than 2 percent of foreign exchange market turnover, and the Brazilian real, which the FR Y–15 also currently includes in the payments systemic indicator, accounted for significantly less than 2 percent of foreign exchange market turnover.

Under the proposal, the Board would continue to collect data on payments in the Mexican peso on the FR Y–15 as a memorandum item currency, based on its share of foreign exchange market turnover. In addition, the proposal would add payments activity in Norwegian krone and South Korean won as memoranda item currencies on the FR Y–15. These currencies each accounted for slightly less than 2 percent of foreign exchange market turnover, based on the Triennial Central Bank Survey. Like other memoranda item currencies, the Norwegian krone and South Korean won would not be included in the payments activity systemic indicator under the proposal.

The proposal would amend the FR Y–15 to no longer collect data on payments activity in Russian rubles and the Brazilian real, which are currently included as memoranda item currencies, as the foreign exchange market turnover for these currencies is significantly less than the other currencies for which the report collects information.

*Question 17: Which, if any, other currencies should the Board include in the payments activity systemic indicator or as memorandum item currencies, and why?*

*Question 18: Which, if any, of the currencies that would be included in the payments activity systemic indicator or as memorandum item currencies should the Board not include, and why?*

c. Clarifications for the Payments Activity Indicator

The proposal would make additional changes to the FR Y–15 instructions for the payments activity indicator to improve clarity for filers. First, the proposal would modify the instructions for payments made in the last four quarters to more clearly state the current requirement that filers should include in their reported values the quarter including the as-of date of the report. This clarification would make no substantive change to the current instructions. Additionally, the proposal would update a footnote in the instructions for line item 1, which cites a report published by the Bank for International Settlements' Committee on Payment and Settlement Systems, to reflect a change in the name of this body to the Committee on Payments and Market Infrastructures and to provide an updated hyperlink.

iii. Cross-Jurisdictional Activity

a. Cross-Jurisdictional Derivatives Activity

Banking organizations with large cross-border activities and exposures may be more difficult and costly to resolve than domestically focused banking organizations in the event of a failure. The greater a banking organization's exposures across borders and to non-domestic counterparties, the more difficult it can be to coordinate its resolution were it to fail. In addition, cross-jurisdictional activity can add complexity and present channels for transmission of distress with parties in different jurisdictions. The two systemic indicators included in this category—cross-jurisdictional claims and cross-jurisdictional liabilities—measure a depository institution holding company's global profile by considering its activity and exposures outside of the United States.

Under the current FR Y–15 instructions, neither of these indicators for cross-jurisdictional activity include derivative exposures. Derivatives, however, can give rise to cross-jurisdictional claims and liabilities, present sources of cross-border complexity, and act as channels for transmission of distress in the same manner as other assets and liabilities or even to a greater extent to amplify the effect of a banking organization's failure. (The failure of Lehman Brothers during the 2007–09 financial crisis presents a notable example.) Omission of derivatives from the systemic indicators for cross-jurisdictional activity can materially understate this measure for a banking organization, and also present opportunities for a banking organization to use derivatives to structure its exposures in a manner that reduces the value of its systemic indicators without reducing the risks the indicator is intended to measure.

Accordingly, the proposal would revise the systemic indicators for cross-jurisdictional claims and cross-jurisdictional liabilities to include derivative exposures. As a result of this change, these indicators would provide a more accurate and comprehensive measure of a banking organization's cross-jurisdictional activity and the associated risks intended to be captured. Under the proposal, cross-jurisdictional derivative claims and cross-jurisdictional derivative liabilities would be calculated gross of collateral in order to measure the underlying scale of a banking organization's cross-jurisdictional derivatives activity. A banking organization may be engaged in significant cross-jurisdictional derivatives business even if its cross-jurisdictional claims and liabilities are relatively small net of collateral. The proposal would implement the modification to include derivative exposures to the cross-jurisdictional activity category systemic indicators through revisions to the FR Y–15, which currently collects such cross-jurisdictional derivative exposures as memoranda items.[30]

In addition to its usage under the GSIB surcharge framework, cross-jurisdictional activity as reported on the FR Y–15 also serves as a risk-based indicator in the Board's framework for determining the applicable category of prudential standards for large banking organizations. Specifically, a banking organization that has cross-jurisdictional activity of $75 billion or more is subject to Category II standards.[31] The proposed change would therefore also have the effect of

[29] The BIS Triennial Central Bank Survey is a comprehensive source of information on the size and structure of global over-the-counter markets in foreign exchange and interest rate derivatives. The BIS coordinates the Triennial Survey every three years. The foreign exchange turnover part of the 2022 Triennial Survey took place in April 2022 and involved central banks and other authorities in 52 jurisdictions. These authorities collected data from more than 1,200 banks and other dealers and reported national aggregates to the BIS for inclusion in global aggregates. *See Triennial Central Bank Survey,* October 2022, available at *https://www.bis.org/statistics/rpfx22_fx.pdf.*

[30] Currently, the cross-jurisdictional derivative claims memorandum item is reported net of cash collateral. Under the proposal, a banking organization would report cross-jurisdictional derivative claims gross of cash and other collateral.

[31] *See* 12 CFR 252.2.

improving the measurement of cross-jurisdictional activity for the purposes of determining the application of prudential standards for large banking organizations, for the same reasons described above.

*Question 19: What other modifications, if any, would improve measurement of the cross-jurisdictional activity indicators?*

b. Other Changes to Measurement of Cross-Jurisdictional Activity Indicators

Currently, the FR Y–15 instructions direct filers to measure cross-jurisdictional liabilities by referencing instructions for the Treasury International Capital reports and the Country Exposure Report (FFIEC 009). To streamline the reporting instructions for cross-jurisdictional liabilities, the proposal would remove references to the Treasury International Capital reports, consolidate line items related to cross-jurisdictional liabilities, and apply consistent definitions with the FFIEC 009 for the measurement of cross-jurisdictional liabilities. This approach would result in a consistent methodology for measuring the consolidated cross-jurisdictional liabilities of firms while simplifying the reporting instructions.

As part of this change, the proposal would revise the scope of the cross-jurisdictional liabilities indicator to include total liabilities booked at foreign offices regardless of whether payment is guaranteed at locations outside the country of the office. Foreign office liabilities may present complexity or increase the difficulty and cost of resolving a banking organization in the event of a failure regardless of whether payments are guaranteed at locations outside the country of the office. Therefore, this revision would better reflect a banking organization's cross-jurisdictional activities and exposures.

The proposal would also make other revisions to the FR Y–15 instructions for cross-jurisdictional activity to provide greater clarity to filers.

iv. Short-Term Wholesale Funding

The proposal would make amendments to the short-term wholesale funding indicator and its associated FR Y–15 instructions to improve the consistency of data measurement and reporting, reduce operational burden, and improve the clarity of reporting instructions. For purposes of the method 2 surcharge, short-term wholesale funding measures the ratio of weighted daily average wholesale funding with a remaining maturity of one year or less to average risk weighted assets. In addition to the method 2 surcharge, short-term wholesale funding is also used to determine the applicable category of prudential standards under the regulatory tiering framework adopted by the Board in 2019. Specifically, a firm with weighted short-term wholesale funding of $75 billion or more is subject to Category III standards.[32]

a. Alignment With Other Requirements

To improve consistency of data measurement and reporting and reduce operational burden for filers, the proposal would align the maturity categories used to calculate a firm's short-term wholesale funding score under the GSIB surcharge framework and reported on the FR Y–15 with the maturity categories used for liquidity data reporting on the Complex Institution Liquidity Monitoring Report (FR 2052a) and for purposes of the net stable funding ratio (NSFR) rule,[33] by moving the start and end dates for certain categories by one day.

Due to recent amendments to the FR 2052a to align the report with the net stable funding ratio (NSFR) rule,[34] there is currently a one-day difference between the start and end dates for certain maturity categories for reporting data items on the FR Y–15 and the FR 2052a. Specifically, one of the maturity categories in the FR 2052a and under the NSFR rule includes a lower bound of 180 days. The short-term wholesale funding indicator under the GSIB surcharge framework and the FR Y–15 reporting form, however, include a category for remaining maturity of 181 to 365 days.

The proposal would modify the maturity category of 91 to 180 days under the GSIB surcharge framework and FR Y–15 to a remaining maturity of 91 to 179 days, and the maturity category of 181 to 365 days to a maturity of 180 to 364 days, to align with the FR 2052a. This change would improve consistency and reduce operational burdens, for example, by allowing banking organizations to pull data from the FR 2052a to complete FR Y–15 reporting.

b. Sweep Deposits

The GSIB surcharge framework's method 2 score calculation of short-term wholesale funding requires banking organizations to include brokered deposits, as defined in the Board's liquidity coverage ratio and NSFR rules.[35] The proposal would make a conforming amendment to the GSIB surcharge framework's reference to brokered deposits to align with a 2021 change to the defined term under the Board's liquidity rules. In the 2021 NSFR final rule, the Board amended the definition of ''brokered deposit'' to create a separate defined term, ''sweep deposits,'' for a category of funding that had previously been included in the scope of the term ''brokered deposits.'' [36]

The proposal would clarify that the change to create a separate defined term for this class of funding was not intended to scope sweep deposits out of the short-term wholesale funding indicator in the GSIB surcharge framework. Specifically, the proposal would amend the GSIB surcharge framework to add ''sweep deposits'' to the scope of the short-term wholesale funding indicator and add a definition of ''sweep deposits.'' The Board made similar conforming terminology changes to the FR Y–15 and its instructions for Schedules G and N, ''Short-Term Wholesale Funding Indicator,'' line item 1.b, ''Retail brokered deposits and sweeps,'' as well as the glossary entry for ''sweep deposit,'' as of the June 30, 2021, reporting period.

c. Short-Term Wholesale Funding Calculation

The proposal would revise the General Instructions for the short-term wholesale funding indicator in the FR Y–15 to more closely align with the GSIB surcharge framework. The revised instructions would clarify that firms should report short-term wholesale funding consistent with the definition in the capital rule.[37]

*Question 20: In addition to the proposed changes, what additional changes, if any, should the Board consider making to the FR Y–15, and why—for example, to improve the measurement of indicators and systemic risk or to reduce operational reporting burdens?*

[32] *See* 12 CFR part 252, subpart A.

[33] *See* 12 CFR part 249; *see also* Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements, 86 FR 9120 (Feb. 11, 2021).

[34] *Id.*

[35] 12 CFR part 249.

[36] ''Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements,'' 86 FR 9120 (February 11, 2021). A sweep deposit is a deposit held at a banking organization by a customer or counterparty through a contractual feature that automatically transfers to the banking organization from another regulated financial company at the close of business each day amounts identified under the agreement governing the account from which the amount is being transferred. *See* 12 CFR 249.3. The 2021 change was also consistent with amendments adopted by the FDIC to its regulations regarding brokered deposits. *See* ''Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions,'' 86 FR 6742 (January 22, 2021).

[37] *See* 12 CFR 217.406(b)(2).

*F. Foreign Banking Organization Reporting Requirements*

In 2019, in connection with the final rule establishing categories and thresholds for determining prudential standards for large banking organizations, the Board added new Schedules H through N to the FR Y–15, which apply solely to foreign banking organizations and their U.S. intermediate holding companies. The new schedules were intended to simplify reporting for foreign banking organizations and their intermediate holding companies. However, based on experience since this change, the Board is proposing to consolidate FR Y–15 reporting for U.S. and foreign banking organizations on a single set of schedules to reduce technical challenges and operational burden and improve administration and consistency of reporting.

To simplify and streamline the reporting form and its instructions, the proposal would remove Schedules H through N and make adjustments to accommodate reporting by foreign banking organizations using the same schedules as domestic firms, Schedules A through G. Under the proposal, a foreign banking organization would file Schedules A through G for its combined U.S. operations and separately for any applicable U.S. intermediate holding company. This change would only reorganize the way that foreign banking organizations report the FR Y–15 and would not change the actual information collected. The proposal would make corresponding updates to the FR Y–15 instructions to reflect this change.

*G. Implementation and Timing*

The proposal's amendments to the capital rule, FR Y–15, and FR Y–15 instructions would take effect two calendar quarters after the date of adoption of a final rule. This effective date timing would give firms a minimum of two quarters to make the required changes to their systems and processes. During the initial three quarters following the effective date, items that require a four-quarter average or sum would include data from quarters for which the underlying reporting instructions differ. Banking organizations would not be required to adjust data reported in previous quarters when calculating these four-quarter averages or sums. A banking organization that does not have data for an indicator for a previous quarter would be required to use a pro-rata approach.

*Question 21: What alternative implementation timing should the Board consider and why?*

*Question 22: To the extent that the Board decides to adopt any particular element of this proposal and not to adopt other elements of this proposal, how should the Board account for that for those elements of the proposal that are adopted? Which elements of the proposal, if any, would require adjustment if another element is not adopted and what adjustments should the Board consider?*

*H. Interaction With Other Proposals*

The Board, with the OCC and FDIC, is separately issuing a proposal that would revise the agencies' risk-based capital framework applicable to banking organizations with at least $100 billion in total assets and their depository institution subsidiaries and to banking organizations with significant trading activities (the capital proposal).[38] The capital proposal would require these banking organizations to use more risk-sensitive standardized approaches and reduce the use of internal models to enhance consistency in capital requirements across these banking organizations and better reflect the risks of these banking organizations' exposures.[39]

*Question 23: What modifications, if any, should the Board consider to this proposal due to the capital proposal?*

## III. Impact

This section assesses the impact of the proposed changes, using supervisory data for 2021 and 2022. The impact analysis focuses on domestic GSIBs, which would see small changes to their GSIB scores and capital surcharges as a result of the proposal.[40] Additionally, some proposed changes, such as the amendments to the FR Y–15 reporting requirements, would affect all FR Y–15 filers, as well as, potentially, their categorizations and requirements under the regulatory tiering framework for large banking organizations.[41] Overall, the Board expects that the systemic stability and operational benefits of the proposed changes would outweigh their relatively small costs.

The Board analyzed the combined benefits and costs of the proposal. Where feasible and relevant, the Board assessed the effects of measuring systemic indicators by using averages of daily or monthly values (henceforth: ''averaging'') and using narrow GSIB score bands separately from the rest of the proposed changes. The analysis also considered potential interactions between the proposal and other elements of the regulatory framework for banking organizations, such as the regulatory tiering framework, and with proposed changes by the Board, OCC, and FDIC to make amendments to their capital rule for large banking organizations and banking organizations with significant trading activity (the capital proposal, as described above in section II.H of this **SUPPLEMENTARY INFORMATION** section).

*A. Benefits of the Proposed Changes*

The proposed changes would increase the stability of the financial system by better aligning firms' applicable GSIB capital surcharges with the intended functioning of the GSIB framework. The proposal would achieve this by enhancing the risk sensitivity of method 1 and method 2 GSIB scores as well as implementing a more continuous correspondence between the method 2 GSIB scores and the applicable capital surcharges.

The reporting of systemic indicators on an average, rather than point-in-time, basis would improve the measurement of firms' systemic footprints and reduce opportunities for firms to lower their systemic indicators at year end so that they receive lower GSIB capital surcharges than warranted by their actual systemic footprints, as measured by the value of their systemic indicators at other times of the year. Both internal staff analysis and empirical evidence in Berry, Khan, and Rezende (2020) show that some domestic GSIBs have reported reduced systemic indicators at year end relative to amounts reported on other dates, especially reporting reduced ''complexity'' systemic indicators before year end.[42] Averaging would both

[38] In addition to revising risk-based capital requirements, the capital proposal would also revise the applicability of the supplementary leverage ratio and countercyclical capital buffer requirements to include all banking organizations with at least $100 billion in total assets and their depository institution subsidiaries.

[39] The capital proposal also includes certain proposed amendments to the FR Y–15 form and instructions.

[40] Where not explicitly noted, the impact analysis considers the proposal's impact on both method 1 and method 2 GSIB scores, although method 2 GSIB scores determine the applicable capital surcharges of GSIBs at the time of this proposal. Currently, there are eight GSIBs in the United States: Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., The Goldman Sachs Group Inc., JPMorgan Chase & Co., Morgan Stanley, State Street Corporation, and Wells Fargo & Company.

[41] *See* 12 CFR part 252, subpart A; *see also* 84 FR 59230.

[42] For more details, see Berry, J., Khan, A., and Rezende, M., ''How Do U.S. Global Systemically Important Banks Lower Their Capital Surcharges?,'' FEDS Notes (2020) and working paper (2021, available at: *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3764965*).

reduce the incentive and the associated social costs of this practice, such as the potential reduction of market depth and willingness to participate in related market segments at year end, which is an important consideration given the supply of liquidity that GSIBs provide in financial markets.[43] Additionally, averaging would also have the benefit of making the measurement of systemic indicators more robust to seasonal (intra-year) fluctuations and thus yielding a more accurate measure of firms' systemic footprints for the determination of GSIB capital surcharges.

The proposed amendments to FR Y–15 reporting requirements would further enhance the risk sensitivity of GSIB scores by improving the measurement of firms' systemic footprints. Most of the amendments would entail small refinements to the cross-jurisdictional activity, interconnectedness, and short-term wholesale funding systemic indicators. Additionally, many of the amendments would improve measurement and reporting consistency across jurisdictions, by aligning with changes to the international GSIB surcharge standard published by the Basel Committee on Banking Supervision.

The benefits of implementing more narrow method 2 GSIB score bands would include reducing cliff effects and improving the alignment between firms' systemic footprints and their capital surcharges. Cliff effects occur when firms cross the boundary between two score bands and thus experience a relatively large change in their applicable capital surcharges, which could affect their marginal lending, investment, and capital distribution decisions. Narrow score bands would substantially reduce the size of these changes in the capital surcharge (from 50 basis points to 10 basis points), thereby making the transition between score bands and the related changes in firms' cost of capital smoother. Narrow score bands would also have the benefit of tying the applicable capital surcharges more closely to firms' systemic footprints, as measured by method 2 GSIB scores. Specifically, the proposal would ensure that firms with similar systemic footprints are assigned similar capital surcharges by reducing score differences across GSIBs that fall in the same band.

Crucially, under the proposal, the rate of change in the GSIB capital surcharge per score change (that is, the steepness of the surcharge schedule) would be unchanged, and firms would retain their ability to determine their capital surcharges in the long run by adjusting their systemic risk profiles.

*B. Costs of the Proposed Changes*

The proposal would modestly increase the GSIB scores and capital surcharges of GSIBs, with minimal effect on their cost of capital and real economic activity. The Board estimates that most of the method 2 score increase would be driven by the addition of cross-jurisdictional derivative exposures to the cross-jurisdictional activity systemic indicators, which would increase method 2 GSIB scores by about 11 points on average across firms. The averaging of systemic indicators would have a somewhat smaller effect, increasing method 2 GSIB scores by about 9 points on average across firms. This effect would primarily affect the scores of those GSIBs that have recently reported lower systemic indicators at year end such that they received lower GSIB capital surcharges than would be warranted based on typical systemic indicator values at other times of the year. Notably, the implementation of narrow score bands would not affect GSIB scores, and the proposed score bands would not have a material effect on firms' GSIB capital surcharges.

Considering all proposed changes, the Board estimates that their combined effect would increase method 2 GSIB scores by about 27 points on average across firms, which corresponds to an about 13-basis-point increase in the average method 2 GSIB capital surcharge. At the end of 2022, the combined effect of the proposed changes would correspond to an about $13 billion aggregate increase in the risk-based capital requirements of domestic GSIBs.

Finally, the Board anticipates that the proposal may increase the costs of regulatory compliance, as detailed below in the Paperwork Reduction Act section of the preamble.

*C. Interaction With Other Rules and Proposals*

The last part of this impact analysis considers the interactions of the proposal with other elements of the regulatory framework for banking organizations. Specifically, the Board examined the interaction of the proposal with the regulatory tiering framework, capital proposal, and long-term debt and total loss-absorbing capacity requirements.[44]

The Board estimates that the proposed revisions to the cross-jurisdictional activity systemic indicator would not have a material impact on the category of prudential standards applicable to any domestic banking organization. The Board estimates that the proposed revisions would substantially increase the reported value of cross-jurisdictional activity of the combined U.S. operations and U.S. intermediate holding companies of most foreign banking organizations that have combined U.S. assets of $100 billion or more. For some of these firms, this change could result in the application of more stringent capital and liquidity standards.

For the combined U.S. operations of most foreign banking organizations that have combined U.S. assets of $100 billion or more, the reported value of cross-jurisdictional activity would increase above $75 billion as a result of the proposal. This change would result in seven foreign banking organizations that are currently subject to Category III or IV standards becoming subject to Category II standards, which include requirements for daily liquidity reporting (rather than monthly or no liquidity reporting); monthly (rather than quarterly) internal liquidity stress testing; and full (rather than reduced) liquidity risk management. This change would have the benefit of enhancing the liquidity positions and liquidity risk management of these foreign banking organizations' U.S. operations at the cost of somewhat higher administrative expenses.

For the U.S. intermediate holding companies of foreign banking organizations, the Board estimates that the increase in the reported value of cross-jurisdictional activity would move two firms that are currently subject to Category III standards to Category II, making them subject to more stringent capital and liquidity requirements. Consequently, these two firms would have to conduct annual company-run stress testing (rather than every two years); recognize accumulated other comprehensive income (AOCI) in their regulatory capital; and meet the full (rather than 85 percent reduced) standardized liquidity requirements. The Board expects that the two affected U.S. intermediate holding companies would not incur significant costs to meet the increased liquidity requirements because they had sufficiently large liquidity buffers throughout 2022 and in the first quarter

[43] For the role of domestic GSIBs as liquidity providers and ''lenders of second-to-last resort'' in U.S. Treasury repurchase agreement and foreign exchange swap markets, see Correa, R., Du, W., and Liao, G.Y., ''U.S. Banks and Global Liquidity,'' National Bureau of Economic Research working paper 27491 (2020).

[44] *See* 12 CFR part 252, subpart G; *see also* 85 FR 17003.

of 2023. The impact of AOCI inclusion in regulatory capital would be small, while the cost of increasing the frequency of company-run stress tests would likely be modest for these firms.[45] A notable benefit of the proposed change would be to make the categorization and regulatory treatment of banking organizations more consistent within the tiering framework through the enhanced measurement of the cross-jurisdictional activities of banking organizations, which would ensure the application of more stringent requirements for firms with significant cross-jurisdictional activity.

The capital proposal, which the Board, the OCC, and the FDIC are concurrently proposing, would also interact with the effects of this proposal on the scores and surcharges of GSIBs through changes to the calculation of risk-weighted assets of these firms under the capital rule. The capital proposal would increase the risk-weighted assets of most GSIBs, affecting their GSIB capital surcharge in two ways. First, the risk-weighted asset change would reduce the short-term wholesale funding systemic indicators of most GSIBs (by mechanically increasing the denominator of the indicator), which in turn would reduce their capital surcharges. Second, the dollar amounts of the capital surcharge changes under the proposal would be proportionally larger due to the change in risk-weighted assets.

Finally, the Board considered how the small increase in method 1 and method 2 GSIB scores would affect the long-term debt and total loss-absorbing capacity requirements of GSIBs. The increase in GSIB scores would have no immediate impact on long-term debt requirements because it only affects the risk-based long-term debt requirement, which was not binding at the end of 2021 for any of the domestic GSIBs. Meanwhile, the Board estimates that the total loss-absorbing capacity requirement would increase by a small amount for one GSIB as a result of increases to method 1 GSIB scores under the proposal.

## IV. Administrative Law Matters

### *A. Paperwork Reduction Act Analysis*

Certain provisions of the proposed rule contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The proposed rule contains reporting requirements subject to the PRA. To implement these requirements, the Board proposes to revise the Systemic Risk Report (FR Y–15; OMB No. 7100–0352).

Comments are invited on the following:

(a) Whether the proposed collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including using automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Comments on aspects of this proposed rule that may affect reporting or recordkeeping requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of the Supplementary Information. A copy of the comments may also be submitted to the OMB desk officer for the Agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by facsimile to (202) 395–5806, Attention, Federal Banking Agency Desk Officer.

Proposed Revision, With Extension, of the Following Information Collection

*Collection title:* Systemic Risk Report.
*Collection identifier:* FR Y–15.
*OMB control number:* 7100–0352.
*General description of report:* The FR Y–15 quarterly report collects systemic risk data from U.S. bank holding companies and covered savings and loan holding companies with total consolidated assets of $100 billion or more, any U.S.-based bank holding company designated as a GSIB that does not meet the consolidated assets threshold, and foreign banking organizations with $100 billion or more in combined U.S. assets. The Board uses the FR Y–15 data to monitor, on an ongoing basis, the systemic risk profile of subject institutions. In addition, the FR Y–15 is used to (1) facilitate the implementation of the GSIB surcharge rule, (2) identify other institutions that may present significant systemic risk, and (3) analyze the systemic risk implications of proposed mergers and acquisitions.

*Proposed effective date:* Two full quarters after the adoption of the final rule.

*Frequency:* Quarterly.

*Affected Public:* Businesses or other for-profit.

*Respondents:* Top-tier U.S. bank holding companies and covered savings and loan holding companies with $100 billion or more in total consolidated assets, any U.S.-based bank holding company designated as a GSIB that does not meet that consolidated assets threshold, and foreign banking organizations with combined U.S. assets of $100 billion or more.

*Estimated number of respondents:* 53.

*Estimated average hours per response:* Reporting—56 hours for GSIBs, 49 hours for Category II and Category III firms, and 50 hours for Category IV Firms. Recordkeeping—0.25 hours.

*Estimated annual burden hours:* Reporting—10,528 hours;[46] Recordkeeping—53 hours.

*Estimated change in total burden:* 256 hours.

*Legal authorization and confidentiality:*

Sections 163 and 165 of the Dodd-Frank Act, as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act, authorize the Board to consider risk to U.S. financial stability in regulating and examining bank holding companies with $100 billion or more in consolidated assets and nonbank financial companies who are under the Board's supervision.[47] The Board is further authorized to impose prudential standards for such entities and to differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities, size, and any other risk-related factors that the Board deems appropriate.[48] This authorization also

[45] Under the capital proposal, the Board, OCC, and FDIC are separately proposing to require banking organizations subject to Category III and IV standards to recognize AOCI in their regulatory capital, in addition to banking organizations subject to Category I and II standards.

[46] This estimated total annual burden reflects adjustments that have been made to the Board's burden methodology for the FR Y–15 that provide a more consistent estimate of respondent burden across different regulatory reports.

[47] 12 U.S.C. 5363; 5365.

[48] 12 U.S.C. 5365(a)(2)(C). The Board is required to establish prudential standards for bank holding companies with assets equal to or greater than $250 billion and nonbank financial companies

covers certain foreign banks with U.S. operations under the International Banking Act (''IBA'').[49] Sections 165(b)(1)(B) and 165(f) of the Dodd-Frank Act authorize the Board to establish enhanced public disclosures for companies subject to prudential standards under section 165.[50]

In addition, the reporting requirements associated with the FR Y–15 are authorized for bank holding companies pursuant to section 5 of the BHC Act;[51] for savings and loan holding companies pursuant to sections 10(b)(2) and 10(g) of the Home Owners' Loan Act;[52] and for U.S. intermediate holding companies of foreign banking organizations pursuant to section 5 of the BHC Act and sections 8(a) and 13(a) of the IBA.[53]

The FR Y–15 report is mandatory.

The data collected on the FR Y–15 is made public unless a specific request for confidentiality is submitted by the reporting entity, either on the FR Y–15 or on the form from which the data item is obtained. Determinations regarding confidential treatment will be made on a case-by-case basis based on exemption 4 of the Freedom of Information Act (FOIA), which protects from disclosure trade secrets and commercial or financial information (5 U.S.C. 552(b)(4)). A number of the items in the FR Y–15 are retrieved from the FR Y–9C and other items may be retrieved from the FFIEC 009 and FFIEC 101. Confidential treatment will also extend to any automatically calculated items on the FR Y–15 that have been derived from confidential data items and that, if released, would reveal the underlying confidential data. To the extent confidential data collected under the FR Y–15 will be used for supervisory purposes, it may be exempt from disclosure under exemption 8 of FOIA (5 U.S.C. 552(b)(8)).

The Board proposes to modify the confidentiality treatment of items 1 through 4 in Schedule G. Currently, the FR Y–15 instructions indicate that these items will be kept confidential until the first reporting date after the final liquidity coverage ratio standard has been implemented. Because the Board has implemented that standard,[54] this language is no longer appropriate, and would be deleted under the proposal. Under the amended instructions, requests for confidential treatment with respect to these items would be considered on a case-by-case basis based on exemption 4 of FOIA.

*Current Actions:* The Board is proposing to amend the FR Y–15 form and instructions to align with the proposed rulemaking which would amend the Board's GSIB surcharge requirement under the Board's capital rule. See section II of the proposal for a description of the changes to the FR Y–15.

*B. Regulatory Flexibility Act Analysis*

The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The Regulatory Flexibility Act[55] (RFA), requires an agency to consider whether the rule it proposes will have a significant economic impact on a substantial number of small entities.[56] In connection with a proposed rule, the RFA requires an agency to prepare and invite public comment on an initial regulatory flexibility analysis describing the impact of the rule on small entities, unless the agency certifies that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities.[57]

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. The proposal would also make corresponding changes to the Board's reporting forms.

As discussed in detail above, the proposed rule would amend the Board's rule that identifies and establishes risk-based capital surcharges for GSIBs, as well as related regulatory reports. The proposed rule would improve the precision of the GSIB surcharge and better measure systemic risk under the GSIB framework, including by changing the reporting of certain values from point-in-time indicators to longer-term averages, making additional improvements to certain systemic risk indicators, and reducing cliff effects by implementing narrower score band ranges.

The Board has broad authority to establish regulatory capital standards for bank holding companies and U.S. intermediate holding companies of foreign banking organizations under the Bank Holding Company Act and the Dodd-Frank Act.[58] Sections 163 and 165 of the Dodd-Frank Act, as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act, authorize the Board to consider risk to U.S. financial stability in regulating and examining bank holding companies with $100 billion or more in consolidated assets and nonbank financial companies under the Board's supervision.[59] The Board is further authorized to impose prudential standards for such entities and to differentiate among companies on an individual basis or by category, taking into consideration their capital

supervised by the Board that (A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and (B) increase in stringency based on the considerations enumerated in section 165(b)(3). 12 U.S.C. 5365(a)(1).

[49] 12 U.S.C. 3106(a). Section 8(a) provides that certain foreign banks with U.S. operations will be treated as bank holding companies for purposes of the Bank Holding Company Act (''BHC Act''), and sections 163 and 165 of the Dodd-Frank Act amend the BHC Act.

[50] 12 U.S.C. 5365(b)(1)(B) and (f).

[51] 12 U.S.C. 1844.

[52] 12 U.S.C. 1467a(b)(2); 1467a(g).

[53] 12 U.S.C. 3106(a); 3108(a).

[54] *See* ''Liquidity Coverage Ratio: Public Disclosure Requirements; Extension of Compliance Period for Certain Companies To Meet the Liquidity Coverage Ratio Requirements,'' 81 FR 94922 (December 27, 2016).

[55] 5 U.S.C. 601 *et seq.*

[56] Under regulations issued by the Small Business Administration, a small entity includes a bank holding company with total assets of $850 million or less. Consistent with the General Principles of Affiliation in 13 CFR 121.103(a), the assets of all domestic and foreign affiliates are counted toward the size threshold when determining whether to classify a Board-regulated institution as a small entity. As of December 31, 2022, there were approximately 2,081 small bank holding companies and approximately 88 small savings and loan holding companies.

[57] 5 U.S.C. 603(b).

[58] *See* 12 U.S.C. 1844, 5365, and 5371.

[59] 12 U.S.C. 5363 and 5365.

structure, riskiness, complexity, financial activities, size, and any other risk-related factors that the Board deems appropriate.[60] This authorization also covers certain foreign banks with U.S. operations under the International Banking Act.[61] The Board also has broad authority under the International Lending Supervision Act (ILSA)[62] to establish regulatory capital requirements for the institutions it regulates. For example, ILSA directs each Federal banking agency to cause banking institutions to achieve and maintain adequate capital by establishing minimum capital requirements as well as by other means that the agency deems appropriate.[63]

As discussed in the **SUPPLEMENTARY INFORMATION** section, the Board is proposing to revise its GSIB surcharge framework under its capital rule and related regulatory reports. The only companies subject to these rules and reports, and thus potentially impacted by the proposal, are GSIBs; holding companies subject to Category II, III, and IV standards; and foreign banking organizations with combined U.S. assets of $100 billion or more. Companies that would be impacted by the proposal therefore substantially exceed the $850 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations.[64] The proposed rule therefore would not impose mandatory requirements on any small entities.

As discussed previously in the Paperwork Reduction Act section, the proposed rule includes proposed changes to the Systemic Risk Report (FR Y–15). The Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed rule. Because the proposed rule generally would not apply to any small entities supervised by the Board, the Board believes that the proposed rule would not have a significant economic impact on small banking organizations supervised by the Board. Therefore, the Board believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

[60] 12 U.S.C. 5365(a).

[61] 12 U.S.C. 3106(a).

[62] 12 U.S.C. 3901–3911.

[63] 12 U.S.C. 3907(a)(1).

[64] 13 CFR 121.201.

*C. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner and invites comment on the use of plain language. For example:

- *Is the material organized to suit your needs? If not, how could the Board present the proposed rule more clearly?*
- *Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?*
- *Does the proposal contain technical language or jargon that is not clear? If so, which language requires clarification?*
- *Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes would achieve that?*
- *Is this section format adequate? If not, which of the sections should be changed and how?*
- *What other changes can the Board incorporate to make the proposed rule easier to understand?*

*D. Providing Accountability Through Transparency Act of 2023*

The Providing Accountability Through Transparency Act of 2023 (12 U.S.C. 553(b)(4)) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of the proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note).

In summary, in the proposal the Federal Reserve Board requests comment on a proposal that would make certain adjustments to the calculation of the capital surcharge for the largest and most complex banks. The changes would better align the surcharge to each bank's systemic risk profile, in particular by measuring a bank's systemic importance averaged over the entire year, instead of only at the year-end value.

The proposal and such a summary can be found at *https://www.regulations.gov* and *https://www.federalreserve.gov/supervisionreg/reglisting.htm.*

**List of Subjects in 12 CFR Part 217**

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies.

**Authority and Issuance**

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

## PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 1. The authority citation for Part 217 is revised to read as follows:

**Authority:** 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, and 5371 note.

■ 2. In § 217.401:

■ a. Revise paragraphs (b), (j) through (m), (q), (r), (t), (w), (y), (z), (aa) through (dd); and

■ b. Add new paragraph (ee).

The revisions and addition read as follows:

**§ 217.401 Definitions.**

* * * * *

(b) *Assets under custody* means the value reported as ''Assets under custody—systemic indicator amount'' on Schedule C of the FR Y–15.

* * * * *

(j) *Cross-jurisdictional claims* means the value reported as ''Total cross-jurisdictional claims—systemic indicator amount'' on Schedule E of the FR Y–15.

(k) *Cross-jurisdictional liabilities* means the value reported as ''Total cross-jurisdictional liabilities—systemic indicator amount'' on Schedule E of the FR Y–15.

(l) *Intra-financial system assets* means the value reported as ''Total intra-financial system assets—systemic indicator amount'' on Schedule B of the FR Y–15.

(m) *Intra-financial system liabilities* means the value reported as ''Total intra-financial system liabilities—systemic indicator amount'' on Schedule B of the FR Y–15.

* * * * *

(q) *Level 3 assets* means the value reported as ''Total Level 3 assets—systemic indicator amount'' on Schedule D of the FR Y–15.

(r) *Notional amount of over-the-counter (OTC) derivatives* means the value reported as ''Total notional amount of over-the-counter (OTC)

derivative contracts—systemic indicator amount'' on Schedule D of the FR Y–15.

* * * * *

(t) *Payments activity* means the value reported as ''Payments activity—systemic indicator amount'' on Schedule C of the FR Y–15.

* * * * *

(w) *Securities outstanding* means the value reported as ''Total securities outstanding—systemic indicator amount'' on Schedule B of the FR Y–15.

* * * * *

(y) *Sweep deposit* has the meaning set forth in 12 CFR 249.3.

(z) *Systemic indicator* includes the following indicators included on the FR Y–15:

(1) Total exposures;

(2) Intra-financial system assets;

(3) Intra-financial system liabilities;

(4) Securities outstanding;

(5) Payments activity;

(6) Assets under custody;

(7) Underwritten transactions in debt and equity markets;

(8) Trading volume—equity and other;

(9) Trading volume—fixed income;

(10) Notional amount of over-the-counter (OTC) derivatives;

(11) Trading and available-for-sale (AFS) securities;

(12) Level 3 assets;

(13) Cross-jurisdictional claims; or

(14) Cross-jurisdictional liabilities.

(aa) *Total exposures* means the value reported as ''Total exposures—systemic indicator amount'' on Schedule A of the FR Y–15.

(bb) *Trading and AFS securities* means the value reported as ''Total trading and available-for-sale (AFS) securities—systemic indicator amount'' on Schedule D of the FR Y–15.

(cc) *Trading volume—equity and other* means the value reported as ''Trading volume—equities and other securities—systemic indicator amount'' on Schedule C of the FR Y–15.

(dd) *Trading volume—fixed income* means the value reported as ''Trading volume—fixed income—systemic indicator amount'' on Schedule C of the FR Y–15.

(ee) *Underwritten transactions in debt and equity markets* means the value reported as ''Underwriting activity—systemic indicator amount'' on Schedule C of the FR Y–15.

■ 3. In § 217.403:

■ a. Remove Table 2 to § 217.403; and

■ b. Revise paragraphs (c) and (d).

The revisions read as follows:

**§ 217.403 GSIB Surcharge.**

* * * * *

(c) *Method 2 surcharge—*

(1) *General.* The method 2 surcharge of a global systemically important BHC is 1.0 percent if the method 2 score of the global systemically important BHC is 189 basis points or less.

(2) *Higher method 2 surcharges.* To the extent that the method 2 score of a global systemically important BHC equals or exceeds 190 basis points, the method 2 surcharge equals the sum of:

(i) 1.1 percent; and

(ii) An additional 0.1 percent for each 20 basis points that the global systemically important BHC's score exceeds 190 basis points.

(d) *Effective date of an adjusted GSIB surcharge.* As of January 1 of a calendar year, the GSIB surcharge in effect (*i.e.,* incorporated into the maximum payout ratio under § 217.11) for a global systemically important BHC for that year is the GSIB surcharge calculated by the global systemically important BHC in the immediately prior calendar year, unless the GSIB surcharge calculated by the global systemically important BHC in the calendar year two years prior was lower, in which case the GSIB surcharge calculated in the calendar year two years prior shall be in effect.

■ 4. In § 217.404, revise Table 1 to § 217.404 to read as follows:

**§ 217.404 Method 1 Score.**

* * * * *

TABLE 1 TO § 217.404—SYSTEMIC INDICATOR WEIGHTS

| Category | Systemic indicator | Indicator weight (percent) |
|---|---|---|
| Size | Total exposures | 20 |
| Interconnectedness | Intra-financial system assets | 6.67 |
| | Intra-financial system liabilities | 6.67 |
| | Securities outstanding | 6.67 |
| Substitutability | Payments activity | 6.67 |
| | Assets under custody | 6.67 |
| | Underwritten transactions in debt and equity markets | 3.33 |
| | Trading volume—fixed income | 1.67 |
| | Trading volume—equity and other | 1.67 |
| Complexity | Notional amount of over-the-counter (OTC) derivatives | 6.67 |
| | Trading and available-for-sale (AFS) securities | 6.67 |
| | Level 3 assets | 6.67 |
| Cross-jurisdictional activity | Cross-jurisdictional claims | 10 |
| | Cross-jurisdictional liabilities | 10 |

■ 5. In § 217.406:

■ a. Revise paragraph (b)(2); and

■ b. Revise Table 1 to § 217.406.

The revisions read as follows:

**§ 217.406 Short-term wholesale funding score.**

* * * * *

(b) * * *

(2) Short-term wholesale funding includes the following components:

(i) All funds that the bank holding company must pay under each secured funding transaction, other than an operational deposit, with a remaining maturity of 1 year or less;

(ii) All funds that the bank holding company must pay under all unsecured wholesale funding, other than an operational deposit, with a remaining maturity of 1 year or less;

(iii) The fair value of an asset as determined under GAAP that a bank holding company must return under a covered asset exchange with a remaining maturity of 1 year or less;

(iv) The fair value of an asset as determined under GAAP that the bank holding company must return under a short position to the extent that the borrowed asset does not qualify as a Level 1 liquid asset or a Level 2A liquid asset;

(v) All brokered deposits held at the bank holding company provided by a retail customer or counterparty; and

(vi) All sweep deposits held at the bank holding company.

* * * * *

TABLE 1 TO § 217.406—SHORT-TERM WHOLESALE FUNDING COMPONENTS AND WEIGHTS

| Component of short-term wholesale funding | Remaining maturity of 30 days of less or no maturity (percent) | Remaining maturity of 31 to 90 days (percent) | Remaining maturity of 91 to 179 days (percent) | Remaining maturity of 180 to 364 days (percent) |
|---|---|---|---|---|
| *Category 1* ..... (1) Secured funding transaction secured by a level 1 liquid asset; (2) Unsecured wholesale funding where the customer or counterparty is not a financial sector entity or a consolidated subsidiary thereof; (3) Brokered deposits and sweep deposits provided by a retail customer or counterparty; and (4) Short positions where the borrowed asset does not qualify as either a level 1 liquid asset or level 2A liquid asset. | 25 | 10 | 0 | 0 |
| *Category 2* ..... (1) Secured funding transaction secured by a level 2A liquid asset; and (2) Covered asset exchanges involving the future exchange of a Level 1 liquid asset for a Level 2A liquid asset. | 50 | 25 | 10 | 0 |
| *Category 3* ..... (1) Secured funding transaction secured by a level 2B liquid asset; (2) Covered asset exchanges (other than those described in Category 2); and (3) Unsecured wholesale funding (other than unsecured wholesale funding described in Category 1). | 75 | 50 | 25 | 10 |
| *Category 4* ..... Any other component of short-term wholesale funding. | 100 | 75 | 50 | 25 |

By order of the Board of Governors of the Federal Reserve System.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2023–16896 Filed 8–31–23; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2023–1720; Project Identifier MCAI–2023–00003–R]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Airbus Helicopters Model SA–365C1, SA–365C2, and SA–365N helicopters. This proposed AD was prompted by reports of damaged control rod dual bearings (dual bearings) that are installed on the tail rotor gearbox (TGB). This proposed AD would require repetitively inspecting the TGB magnetic plug for particles, analyzing any particles collected, taking corrective actions if necessary, and reporting certain information. Finally, this proposed AD would allow an affected dual bearing to be installed on a helicopter if certain actions are accomplished, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by October 16, 2023.

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

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

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1720; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

*Material Incorporated by Reference:*

- For EASA material that is proposed for incorporation by reference in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *regulations.gov* under Docket No. FAA–2023–1720.

*Other Related Service Information:* For Airbus Helicopters service information identified in this NPRM, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *airbus.com/en/products-services/helicopters/hcare-services/airbusworld.*

You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

**FOR FURTHER INFORMATION CONTACT:** Kevin Kung, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (781) 238–7244; email *9-AVS-AIR-BACO-COS@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1720; Project Identifier MCAI–2023–00003–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kevin Kung, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (781) 238–7244; email *9-AVS-AIR-BACO-COS@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Background**

EASA, which is the Technical Agent for the Member States of the European Union, has issued a series of EASA ADs with the most recent being EASA AD 2023–0001, dated January 4, 2023 (EASA AD 2023–0001), to correct an unsafe condition for Airbus Helicopters Model SA 365 C1, SA 365 C2, SA 365 C3, and SA 365 N helicopters, all manufacturer serial numbers.

This proposed AD was prompted by reports of damaged dual bearings that are installed on the TGB. The FAA is proposing this AD to inspect for particles in the TGB magnetic plug. The unsafe condition, if not addressed, could result in loss of yaw control and subsequent loss of control of the helicopter.

You may examine EASA AD 2023–0001 in the AD docket at *regulations.gov* under Docket No. FAA–2023–1720.

**Related Service Information Under 1 CFR Part 51**

EASA AD 2023–0001 requires continuing close monitoring for certain helicopters and analyzing any particles collected during required inspections, repetitively inspecting the magnetic plug of the TGB for particles, and corrective actions. Corrective actions include replacing or repairing an affected TGB; sending certain information and affected parts to the manufacturer; accomplishing a metallurgical analysis; and replacing an affected dual bearing and other affected parts.

Additionally, EASA AD 2023–0001 requires for certain helicopters with an affected dual bearing installed, performing a one-time inspection of the dual bearing.

EASA AD 2023–0001 allows a dual bearing part number (P/N) 360A33–4052–00 installed on a control rod of a TGB P/N 365A33–4000–00, 365A33–4000–01, 365A33–4000–02, or 365A33–5000–00 to be installed on an aircraft, if certain requirements are met.

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

**Other Related Service Information**

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS365–05.00.83 and Airbus Helicopters ASB No. SA365–05.35, both Revision 0, and both dated February 7, 2022. This service information specifies procedures to inspect the magnetic plug of the TGB for particles; analyze and define the particles collected; replace an affected TGB and an affected dual bearing; perform a metallurgical analysis; and report certain information to the manufacturer.

The FAA also reviewed Airbus Helicopters ASB No. AS365–65.00.20 Revision 0, dated November 23, 2022. This service information specifies procedures for a one-time inspection of a certain dual bearing and replacement of the dual bearing if any particles are found.

Additionally, the FAA reviewed Airbus Standard Practices Manual, 20–08–01–601, Periodical monitoring of lubricating oil checking elements, dated July 7, 2020. This service information specifies procedures for analyzing collected particles.

**FAA's Determination**

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

**Proposed AD Requirements in This NPRM**

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0001, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and discussed under ''Differences Between this Proposed AD and the EASA AD.''

**Explanation of Required Compliance Information**

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0001 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0001 AD in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same

as the heading of a particular section in EASA AD 2023–0001 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0001. Service information referenced in EASA AD 2023–0001 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1720 after the FAA final rule is published.

**Differences Between This Proposed AD and the EASA AD**

EASA AD 2023–0001 applies to Airbus Helicopters Model SA 365 C3 helicopters, whereas this proposed AD would not because that model is not FAA type-certificated.

This proposed AD would clarify that Model SA–365N helicopters with an affected dual bearing installed that has an unknown total number of hours time-in-service accumulated on the dual bearing would be subject to certain requirements in this proposed AD, whereas EASA AD 2023–0001 is unclear about those parts with an accumulated usage that cannot be determined.

EASA AD 2023–0001 does not clarify what is considered an anomaly regarding the chip detector and conical housing chip detector; whereas, for this proposed AD, an anomaly may be indicated by the magnetic component of the TGB chip detector or the conical housing chip detector not being magnetized. EASA AD 2023–0001 also does not clarify what is considered good condition regarding the chip detector or conical housing chip detector; whereas, for this proposed AD, good condition for the chip detector is indicated when there are no signs of wear on the locking systems (including wear on the bayonets and slotted tubes) and good condition for the conical housing chip detector is when the conical housing chip detector is magnetized.

Where EASA AD 2023–0001 describes a doubt concerning the physical characteristics of any collected particles, this AD requires performing a metallurgical analysis. If there is any doubt remaining after performing the metallurgical analysis, EASA AD 2023–0001 requires contacting Airbus, whereas this proposed AD would require removing an affected TGB from service and replacing it with an airworthy part, or repairing the TGB in accordance with a method approved by the FAA, EASA, or Airbus Helicopters' Design Organizational Approval.

If any particles (including abrasion-type particles) are found on the magnetic plug during any inspection that are outside the limits, EASA AD 2023–0001 requires replacing each affected dual bearing with a serviceable dual bearing, and replacing the TGB, whereas this proposed AD would require removing each affected dual bearing and replacing with a serviceable dual bearing, or removing the TGB from service and replacing it with an airworthy TGB, or repairing the TGB in accordance with a method approved by the FAA, EASA, or Airbus Helicopters' Design Organization Approval.

Service information referenced in EASA AD 20223–0001 permits a pilot to perform a magnetic plug check, whereas this proposed AD would not.

Service information referenced in EASA AD 2023–0001 specifies sending compliance forms, certain parts, and particles to the manufacturer, whereas this proposed AD would require reporting certain information but would not require sending any parts or particles to the manufacturer.

**Interim Action**

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

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 1 helicopter of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Inspecting the magnetic plug of the TGB for particles would take about 1 work-hour for an estimated cost of $85 per inspection and up to $85 for the U.S. fleet, per inspection cycle.

Inspecting a dual bearing would take about 16 work-hours for an estimated cost of $1,360 per inspection and up to $1,360 for the U.S. fleet. If required, replacing a dual bearing would take about 1 additional work-hour following the inspection and parts would cost about $6,678 for an estimated cost of $6,763 per dual bearing replacement.

If required, analyzing collected particles would take about 1 work-hour for an estimated cost of $85 per helicopter. If required, a metallurgical analysis would take about 1 work-hour for an estimated cost of $85 per instance.

If required, replacing an O-ring would take about 1 work-hour and parts would cost about $100 for an estimated cost of $185 per O-ring.

If required, replacing a TGB would take about 8 work-hours and parts would cost about $155,302 for an estimated cost of $155,982 per replacement.

The FAA has received no definitive data for the repair cost of a TGB.

If required, reporting information to the manufacturer would take about 1 work-hour for an estimated cost of $85 per instance.

**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 current 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**

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Airbus Helicopters:** Docket No. FAA–2023–1720; Project Identifier MCAI–2023–00003–R.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by October 16, 2023.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Helicopters Model SA–365C1, SA–365C2, and SA–365N helicopters, certificated in any category.

**(d) Subject**

Joint Aircraft Service Component (JASC) Code: 6520, Tail rotor gearbox.

**(e) Unsafe Condition**

This AD was prompted by reports of damaged control rod dual bearings (dual bearings) installed on the tail rotor gearbox (TGB). The FAA is issuing this AD to inspect for particles in the TGB magnetic plug. The unsafe condition, if not addressed, could result in loss of yaw control and subsequent loss of control of the helicopter.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0001, dated January 4, 2023 (EASA AD 2023–0001).

**(h) Exceptions to EASA AD 2023–0001**

(1) Where EASA AD 2023–0001 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2023–0001 refers to the effective dates specified in paragraphs (h)(2)(i) and (ii) of this AD, this AD requires using the effective date of this AD.

(i) March 21, 2022 (the effective date of EASA AD 2022–0038, dated March 7, 2022).

(ii) The effective date of EASA AD 2023–0001.

(3) Where EASA AD 2023–0001 defines Groups, for Group 2, replace the text ''SA 365 N helicopters with an affected part installed that has accumulated 500 flight hours (FH) or more since first installation on a helicopter,'' with ''SA–365N helicopters with an affected part installed that has accumulated 500 or more total hours time-in-service on the affected part or the total hours time-in-service on the affected part cannot be determined.''

(4) Where the service information referenced in EASA AD 2023–0001 permits a pilot to perform a check of the magnetic plug, this AD requires that action be performed by a person authorized under 14 CFR 43.3.

(5) Where Note 1 of EASA AD 2023–0001 specifies, ''Helicopters that were under close monitoring on March 21 2022 (the effective date of EASA AD 2022–0038) must continue the close monitoring procedure up to the first inspection accomplished in accordance with the instructions of ASB 1;'' for this AD, replace that text with, ''Helicopters that are under close monitoring as of the effective date of this AD, must continue close monitoring until the first instance of the requirements in paragraph (1) of EASA AD 2023–0001 are completed.''

(6) Where EASA AD 2023–0001 requires replacing the TGB and the service information referenced in EASA AD 2023–0001 specifies replacing the TGB, for this AD, before further flight, remove the TGB from service and replace it with an airworthy part, or repair the TGB in accordance with a method approved by the Manager, Europe Middle East & Africa Section, International Validation Branch, FAA; EASA; or Airbus Helicopters' Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(7) Where paragraphs (5) and (6) of EASA AD 2023–0001 require replacing an affected part, as defined in EASA AD 2023–0001, with a serviceable part, as defined in EASA AD 2023–0001; for this AD, remove the affected part, as defined in EASA AD 2023–0001, from service and replace it with a serviceable part, as defined in EASA AD 2023–0001.

(8) Where paragraph (5) of EASA AD 2023–0001 does not specify a compliance time; for this AD, the compliance time for those actions is before further flight.

(9) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies to do the actions identified in paragraphs (h)(9)(i) and (ii) of this AD, this AD does not include those requirements.

(i) Comply with paragraph 2.D., except this AD requires reporting information, including the information in Appendix 4. of the service information, in accordance with paragraph (h)(18) of this AD.

(ii) Send parts and particles to Airbus Helicopters.

(10) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies replacing the chip detector or conical housing chip detector if there is an anomaly; for this AD, an anomaly may be indicated by the magnetic component of the TGB chip detector or the conical housing chip detector not being magnetized. If there is an anomaly, this AD requires before further flight, removing from service the TGB chip detector or the conical housing chip detector, as applicable to your model helicopter.

(11) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies making sure that the chip detector or conical housing chip detector is in good condition; for this AD, good condition for the chip detector is indicated when there are no signs of wear on the locking systems (including wear on the bayonets and slotted tubes). If there are any signs of wear on the locking systems, this AD requires, before further flight, removing the TGB chip detector from service. Good condition for the conical housing chip detector is when the conical housing chip detector is magnetized. If the conical housing chip detector is not being magnetized, this AD requires, before further flight, removing the conical housing chip detector from service.

(12) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies replacing the O-rings if necessary; this AD requires, before further flight, removing any affected O-ring from service and replacing it with an airworthy O-ring.

(13) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies removing an affected TGB, returning it to an approved workshop, including sending all the particles found in the affected part; this AD requires, before further flight, removing an affected TGB from service and replacing it with an airworthy part, or repairing the TGB in accordance with a method approved by the Manager, Europe Middle East & Africa Section, International Validation Branch, FAA; EASA; or Airbus Helicopters' DOA. If approved by the DOA, the approval must include the DOA-authorized signature. You are not required to send the particles found

in the TGB to Airbus Helicopters or send an affected TGB to an approved workshop.

(14) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies to use tooling, this AD allows the use of equivalent tooling.

(15) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies discarding certain parts, this AD requires removing those parts from service.

(16) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies performing a metallurgical analysis of particles if there is a doubt concerning the type, size, or classification of any collected particle, this AD requires, before further flight, performing a metallurgical analysis if the type, size, or classification of any collected particle cannot be determined.

(17) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies if there is any doubt remaining (pertaining to particle classification) after performing a metallurgical analysis, contact Airbus, this AD requires, before further flight, removing an affected TGB from service and replacing it with an airworthy part, or repairing the TGB in accordance with a method approved by the Manager, Europe Middle East & Africa Section, International Validation Branch, FAA; EASA; or Airbus Helicopters' DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(18) Where the service information referenced in EASA AD 2023–0001 requires reporting inspection results, including Appendix 4.A., to Airbus Helicopters, if any M50 particles are found, this AD requires reporting those inspection results along with a detailed description of any information and findings, and if possible, provide photos, at the applicable time in paragraph (h)(18)(i) or (ii) of this AD.

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

(ii) 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.

(19) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0001.

**(i) Special Flight Permits**

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199, provided no passengers are onboard.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) 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, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

**(k) Related Information**

For more information about this AD, contact Kevin Kung, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (781) 238–7244; email *9-AVS-AIR-BACO-COS@faa.gov.*

**(l) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0001, dated January 4, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0001, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on August 23, 2023.

**Victor Wicklund,**

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

[FR Doc. 2023–18612 Filed 8–31–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2023–1812; Project Identifier MCAI–2023–00726–A]**

**RIN 2120–AA64**

## Airworthiness Directives; Diamond Aircraft Industries Inc. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Diamond Aircraft Industries Inc. Model DA 62 airplanes. This proposed AD was prompted by reports of baggage nets installed with defective buckles, which may result in failure of the baggage net to restrain the baggage or cargo, which could lead to injury to the occupants in the case of an emergency landing. This proposed AD would require identifying and replacing the affected part. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this NPRM by October 16, 2023.

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

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

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1812; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

*Material Incorporated by Reference:*

- For service information identified in this NPRM, contact Diamond Aircraft Industries Inc., Att: Thit Tun, 1560 Crumlin Road, London, N5V 1S2, Canada; phone: (519) 457–4000; email: *t.tun@diamondaircraft.com;* website: *diamondaircraft.com.*
- 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.

**FOR FURTHER INFORMATION CONTACT:** Chirayu Gupta, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7300; email: *chirayu.a.gupta@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1812; Project Identifier MCAI–2023–00726–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Chirayu Gupta, 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**

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2021–24, dated July 21, 2021 (referred to after this as the MCAI), to correct an unsafe condition on all Diamond Aircraft Industries Inc. Model DA 40, DA 40 D, DA 40 F, DA 40 NG, and DA 62 airplanes.

The MCAI states Diamond Aircraft Industries Inc. received reports of defective buckles installed on the baggage nets on DA 40 NG and DA 62 airplanes. An investigation revealed a quality issue during the manufacturing of the Quick Fix Baggage Net Assembly, part number (P/N) D44–2550–90–00 and P/N D67–2550–90–00_02, by the supplier. P/N D44–2550–90–00 baggage nets can also be installed on DA 40, DA 40 D, and DA 40 F airplanes. The baggage nets installed with defective buckles may not maintain sufficient holding force to restrain the baggage or cargo that is carried in the same compartment as passengers. Consequently, they may not provide adequate means to protect the passengers from injury. This condition, if not corrected, could result in the failure of the baggage net to restrain the baggage or cargo, which could lead to injury to the occupants in the case of an emergency landing. The MCAI mandates the removal and replacement of the affected baggage nets. The MCAI also renders any affected baggage nets not eligible for installation as a replacement part on Diamond Aircraft Industries Inc. Model DA 40, DA 40 D, DA 40 F, DA 40 NG, and DA 62 airplanes.

Previously, the FAA issued AD 2022–13–06, Amendment 39–22092 (87 FR 40435, July 7, 2022) (AD 2022–13–06) to address the unsafe condition on all Diamond Aircraft Industries Inc. Model DA 40, DA 40 F, and DA 40 NG airplanes (including Model DA 40 D airplanes that have been converted to Model DA 40 NG airplanes). AD 2022–13–06 requires removing and replacing the affected baggage nets. The Diamond Aircraft Industries Inc. Model DA 62 airplanes were not included in AD 2022–13–06. This proposed AD would require these same actions on the Diamond Aircraft Industries Inc. Model DA 62 airplanes.

The FAA is proposing this AD to prevent failure of the baggage net to restrain the baggage or cargo. This unsafe condition, if not corrected, could result in injury to occupants in the case of an emergency landing.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1812.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed Diamond Aircraft Industries Mandatory Service Bulletin MSB 62–028, Rev. 1, dated July 6, 2021, which specifies procedures for identifying, removing, and replacing the affected baggage nets.

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**.

**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 NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

**Proposed AD Requirements in This NPRM**

This proposed AD would require accomplishing the actions specified in the MCAI, except as discussed under ''Differences Between this Proposed AD and the MCAI.''

**Differences Between This Proposed AD and the MCAI**

The MCAI applies to Diamond Aircraft Industries Inc. Model DA 40, DA 40 D, DA 40 F, DA 40 NG, and DA 62 airplanes. This proposed AD would only apply to Diamond Aircraft Industries Inc. Model DA 62 airplanes and would not apply to Model DA 40, DA 40 F, and DA 40 NG airplanes because those airplanes are already covered by AD 2022–13–06. This proposed AD would not apply to Model DA 40 D airplanes because that model does not have an FAA type certificate.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 81 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replace baggage net | 0.25 work-hour × $85 per hour = $21.25 | $441 | $462.25 | $37,442.25 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Diamond Aircraft Industries Inc.:** Docket No. FAA–2023–1812; Project Identifier MCAI–2023–00726–A.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by October 16, 2023.

**(b) Affected ADs**

AD 2022–13–06, Amendment 39–22092 (87 FR 40435, July 7, 2022) is related to this AD.

**(c) Applicability**

This AD applies to Diamond Aircraft Industries Inc. Model DA 62 airplanes, all serial numbers, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 2550, Cargo Compartments.

**(e) Unsafe Condition**

This AD was prompted by reports of baggage nets installed with defective buckles. The FAA is issuing this AD to prevent failure of the baggage net to restrain the baggage or cargo. The unsafe condition, if not addressed, could result in injury to occupants in the case of an emergency landing.

**(f) Compliance**

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

**(g) Definition**

The following are ''affected baggage nets'' for purposes of this AD: Quick fix baggage net assembly part number D67–2550–90–00_02 with a date of manufacture of June 2016.

**(h) Required Actions**

(1) Within 12 months after the effective date of this AD or within 50 hours time-in-service after the effective date of this AD, whichever occurs first, inspect each baggage net to determine whether an affected baggage net is installed on your airplane.

**Note 1 to paragraph (h)(1):** The date of manufacture is located on the label with the abbreviation ''DMF.''

(i) If an affected baggage net is installed, before further flight, remove the baggage net from service.

(ii) Before the next flight carrying baggage or cargo in the baggage compartment, install a baggage net that is not an affected baggage net in accordance with Figure 1 of the Accomplishment Instructions in Diamond Aircraft Industries Mandatory Service Bulletin MSB 62–028, Rev. 1, dated July 6, 2021.

(2) As of the effective date of this AD, do not install an affected baggage net on any airplane.

**(i) 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 (j)(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/certificate holding district office.

**(j) Additional Information**

(1) Refer to Transport Canada AD CF–2021–24, dated July 21, 2021, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1812.

(2) For more information about this AD, contact Chirayu Gupta, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7300; email: *chirayu.a.gupta@faa.gov*.

**(k) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) 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) Diamond Aircraft Industries Mandatory Service Bulletin MSB 62–028, Rev. 1, dated July 6, 2021.

(ii) [Reserved]

(3) For service information identified in this AD, contact Diamond Aircraft Industries Inc., Att: Thit Tun, 1560 Crumlin Road, London, N5V 1S2, Canada; phone: (519) 457–4000; email: *t.tun@diamondaircraft.com;* website: *diamondaircraft.com*.

(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 28, 2023.

**Victor Wicklund,**

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

[FR Doc. 2023–18827 Filed 8–31–23; 8:45 am]

**BILLING CODE 4910–13–P**

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### 29 CFR Part 1406

**RIN 3076–AA26**

### FMCS Terms of Service

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS) is issuing this proposed rule for FMCS clients. This rulemaking sets forth terms for FMCS's provision of services. This rulemaking further expounds upon confidentiality rules associated with FMCS's services.

**DATES:** Comments must be submitted on or before October 31, 2023.

**ADDRESSES:** You may submit comments, in writing, to FMCS on this proposed rule, identified by RIN 3076–AA26, by any of the following methods:

- *Email: register@fmcs.gov.* Include the reference ''Proposed Rule FMCS Terms of Service, RIN 3076–AA26'' in the subject line of the message.
- *Mail:* FMCS, One Independence Square, 250 E Street SW, Washington, DC 20427, Attention: Alisa Zimmerman, Deputy General Counsel.

**FOR FURTHER INFORMATION CONTACT:** Alisa Zimmerman, Deputy General Counsel, Office of General Counsel, Federal Mediation and Conciliation Service, 250 E St SW, Washington, DC 20427; Office/Fax/Mobile 202–606–5488; *azimmerman@fmcs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Federal Mediation and Conciliation Service (FMCS) works to build better, more effective workplace relationships and mitigate the damage from inevitable conflict through preventive dialogue, honest communication, and responsive strategies. Through our mission, FMCS provides professional services to a wide range of Federal, state, and local government agencies to resolve disputes, design conflict management systems, build capacity for constructive conflict management, and strengthen inter-agency and public-private cooperation. In offering these services, FMCS recipients must agree to abide by the proposed rule to preserve the integrity of the provided services.

## II. Analysis of the Regulations

*Section 1406.1 General Terms of Service*

Paragraphs (a) through (g) set forth general terms of service applicable to all FMCS services. More specifically:

Paragraph (a) explains that when FMCS services are chosen, recipients of the services agree to abide by the terms as well as any other terms of services provided by FMCS and will hold FMCS and any FMCS neutral harmless.

Paragraph (b) notes FMCS will determine the date, time, and manner of services in accordance with applicable statutes and regulations.

Paragraph (d) explains that any person shadowing an FMCS neutral agrees to be bound by the same confidentiality standards as the FMCS neutral, which will be honored by the parties.

Paragraph (e) notes that FMCS recognizes the importance of mediator confidentiality, and as such FMCS will not produce materials related to a mediation, with some exceptions.

Paragraph (f) states that's the section does not negate or modify FMCS's Confidential Commercial Information (CCI) regulation.

Paragraph (g) discusses that FMCS will make the terms publicly available and make a copy available to all parties upon request.

*Section 1406.2 Terms of Service for Mediation, Facilitation, and Other Alternative Dispute Resolution Services*

Paragraphs (a) through (g) sets forth additional terms of service specific to mediation, facilitation, & other alternative dispute resolution services provided by FMCS.

*Section 1406.3 Virtual Services—Additional Terms of Service*

Paragraphs (a) through (c) set forth additional terms of service specific to virtual services provided by FMCS.

*Section 1406.4 Grievance Mediation and Federal Sector Inter-Agency Agreement Mediation—Additional Terms of Service*

Paragraphs (a) through (e) set forth additional terms of service specific to grievance mediations and Federal sector inter-agency agreement mediations provided by FMCS.

*Section 1406.5 Training and Outreach*

This section sets forth additional terms of service specific to training and outreach presentations provided by FMCS.

## III. Matters of Regulatory Procedure

*Administrative Procedure Act*

Under 5 U.S.C. 553(a)(2), rules relating to agency management or personnel are exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, under 5 U.S.C. 553(b)(3)(A), notice and comment rulemaking requirements do not apply to rules concerning matters of agency organization, procedure, or practice. Given that the rule concerns matters of agency management or personnel, and organization, procedure, or practice, the notice and comment requirements of the APA do not apply here. Nor is a public hearing required under 45 U.S.C. 160a. In issuing a proposed rule on this matter, FMCS, will consider all written comments on this proposed rule that are submitted by the October 31, 2023 due date.

*Executive Order 12866*

This proposed rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

*Regulatory Flexibility Act*

FMCS has determined under the Regulatory Flexibility Act, 5 U.S.C. chapter 6, that this proposed rule would not have a significant economic impact on a substantial number of small entities because it would primarily affect FMCS employees.

*Paperwork Reduction Act*

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply to this proposed rule because it does not contain any information collection requirements that would require the approval of the Office of Management and Budget.

*Congressional Review Act*

FMCS has determined that this proposed rule does not meet the definition of a rule, as defined by the Congressional Review Act, 5 U.S.C. chapter 8, and thus does not require review by Congress.

**List of Subjects in 29 CFR Part 1406**

Administrative practice and procedure, Labor management relations.

For the reasons discussed in the preamble, FMCS proposes to amend 29 CFR chapter XII by adding part 1406 to read as follows:

## PART 1406—FMCS TERMS OF SERVICE

Sec.

1406.1 General terms of service.
1406.2 Terms of service for mediation, facilitation, and other alternative dispute resolution services.
1406.3 Virtual services—additional terms of service.
1406.4 Grievance mediation and Federal sector inter-agency agreement mediation—additional terms of service.
1406.5 Training and outreach presentations.

**Authority:** 29 U.S.C. 172; 29 U.S.C. 173 *et seq.;* and 5 U.S.C. 574.

### § 1406.1 General terms of service.

When Federal Mediation and Conciliation Service (FMCS) services are chosen, the recipients of the services have agreed to abide by FMCS's general terms of service as well as any other terms of service provided by FMCS.

(a) The recipients of a service shall hold FMCS and any FMCS neutrals harmless of any claim arising from the delivery of that FMCS service.

(b) FMCS will determine the date, time, place, and manner (virtual, in-person, or hybrid) of services provided in accordance with any applicable statutes, regulations, and agreements.

(c) FMCS may convene the parties for a threatened or actual work stoppage whenever in its judgment such dispute threatens to cause a substantial interruption of commerce.

(d) Any person shadowing an FMCS neutral agrees to be bound by the same confidentiality standards as the FMCS neutral and such confidentiality standards will be honored by the parties.

(e) FMCS recognizes the importance of mediator confidentiality to further its mission. Therefore, FMCS will not produce any materials related to a mediation other than the date, parties, location, and mediator, unless required by law. FMCS will not produce materials related to a mediation, materials exchanged in a mediation or facilitation, information related to non-plenary sessions of a facilitation, mediator or facilitator notes, and any internal communications with the mediator of facilitator, unless required by law.

(f) Nothing in this section shall be construed so as to negate or modify the FMCS's Confidential Commercial Information (CCI) regulation (29 CFR 1401.26).

(g) FMCS will make a copy of these terms available to all parties upon request.

### § 1406.2 Mediation, facilitation, and other alternative dispute resolution services—additional terms of service.

The following Terms of Service additionally apply when the FMCS service is a mediation, facilitation, training, and other alternative dispute resolution service.

(a) These services are voluntary processes that may be terminated at any time unless otherwise provided by statute or by agreement.

(b) The neutral has no authority to compel resolution.

(c) These services are confidential to the extent allowed by law. The obligations imposed by these terms and conditions are in addition to and do not supersede any obligations imposed by applicable state or Federal laws regarding mediation confidentiality.

(d) The parties agree that they will not record, transcribe, save, or otherwise capture any audio, video, files, documents, chat texts, or any other data that they would not have access to but for the service being provided, unless agreed to by all parties and with prior written approval of FMCS, or as otherwise required by law. They further agree to notify the neutral immediately if recordings, saves or other captures of data occur, to ensure that no further distribution or transfer occurs, and to immediately and permanently delete them.

(e) Non-parties may attend only with the agreement of the parties and the neutral unless otherwise required by law and are bound by these terms of service.

(f) If a party inadvertently gains access to any confidential discussions involving another party, the party with inadvertent access shall immediately disclose their presence and exit from the confidential discussions. Any confidential information inadvertently disclosed may not be used by the party with inadvertent access, even within the confines of the alternative dispute resolution session.

(g) The parties agree not to subpoena or compel the neutral to testify or produce any documents provided by a party in any administrative or judicial proceeding. The neutral will not voluntarily testify or produce documents on behalf of a party in any administrative or judicial proceeding unless otherwise required by law.

### § 1406.3 Grievance mediation and Federal sector inter-agency agreement mediation—additional terms of service.

The following Terms of Service additionally apply when the FMCS service is a grievance mediation or Federal sector inter-agency agreement mediation.

(a) The grievant or complainant is entitled to be present at the mediation.

(b) The parties agree not to disclose to any non-party oral or written communications made during the mediation process, including settlement terms, proposals, offers, or other statements, whether made privately to the neutral or when all parties are present.

(c) Evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation proceedings.

(d) The neutral has no authority to compel agreement or other resolution of the dispute and will issue no written recommendations or conclusions. At the request of the parties, or on the initiative of the neutral, the neutral may provide an oral recommendation or opinion to resolve the dispute. In that circumstance, the parties may jointly decide to implement that recommendation or opinion but neither party is obligated to do so.

(e) (For Federal sector inter-agency agreement mediation, if applicable) Any communications between the Agency or Organizational Program/or Alternative Dispute Resolution Coordinator and the neutral(s) and/or the parties are considered dispute resolution communications with a neutral and will be kept confidential.

### § 1406.4 Training and outreach presentations.

The following Terms of Service additionally apply when the FMCS service is a training or outreach presentation.

(a) The parties agree that they will not record any FMCS training or outreach presentation (whether delivered in-person or virtually) without the knowledge and consent of the parties and prior written approval of FMCS.

(b) [Reserved]

### § 1406.5 Virtual services—additional Terms of Service.

The following Terms of Service additionally apply when the FMCS service is provided virtually.

(a) Parties may not provide meeting access information to non-parties without permission from the neutral unless the session is open to the public.

(b) The neutral and all parties must be provided notice of all attendees before or at the time of attendance unless the session is open to the public.

(c) Parties must ensure the integrity of technology used in virtual meetings. If an attendee is aware of any security breach, that attendee will inform the neutral immediately.

Dated: August 29, 2023.

**Anna Davis,**

*General Counsel.*

[FR Doc. 2023–18970 Filed 8–31–23; 8:45 am]

**BILLING CODE 6732–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 310

**[Docket ID: DoD–2023–OS–0060]**

**RIN 0790–AL64**

## Privacy Act of 1974; Implementation

**AGENCY:** Office of the Secretary of Defense (OSD), Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense (Department or DoD) is giving concurrent notice of a new Department-wide system of records pursuant to the Privacy Act of 1974 for the DoD–0019, ''Information Technology Access and Audit Records,'' system of records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of this system of records from certain provisions of the Privacy Act of 1974, as amended, because of national security requirements and to avoid interference during the conduct of criminal, civil, or administrative actions or investigations.

**DATES:** Send comments on or before October 31, 2023.

**ADDRESSES:** You may submit comments, identified by docket number, Regulation Identifier Number (RIN), and title, by any of the following methods.

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rahwa Keleta, *OSD.DPCLTD@mail.mil;* (703) 571–0070.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In accordance with the Privacy Act of 1974, the DoD is establishing a new Department-wide system of records titled ''Information Technology Access and Audit Records,'' DoD–0019. The purpose of this system of records is to support information systems being established within the DoD using the same categories of data for the same purposes. This system of records covers DoD's maintenance of records related to requests for user access, attempts to access, granting of access, records of user actions for DoD information technology (IT) systems, and user agreements. This includes details of programs, databases, functions, and sites accessed and/or used, and the information products created, received, or altered during the use of IT systems. The system consists of both electronic and paper records and will be used by DoD components and offices to maintain records about individuals who have user agreements, user access to and activity on networks, computer systems, applications, databases, or other digital technologies.

### II. Privacy Act Exemption

The Privacy Act permits Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including that provide individuals with a right to request access to and amendment of their own records and accountings of disclosures of such records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process pursuant to 5 U.S.C. 553(b)(1)–(3), (c), and (e). This proposed rule explains why an exemption is being claimed for this system of records and invites public comment, which DoD will consider before the issuance of a final rule implementing the exemption.

The DoD proposes to modify 32 CFR part 310 to add a new Privacy Act exemption rule for DoD–0019, ''Information Technology Access and Audit Records.'' The DoD proposes to exempt portions of this system of records from certain provisions of the Privacy Act because information in this system of records may fall within the scope of the following Privacy Act exemptions: (k)(1) and (k)(2).

The DoD proposes to exempt this system of records because some of these records may contain classified national security information and providing notice, access, amendment, and disclosure of accounting of those records to an individual, as well as certain record-keeping requirements, may cause damage to national security. The Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), authorizes agencies to claim an exemption for systems of records that contain information properly classified pursuant to executive order. DoD is proposing to claim an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements, to prevent disclosure of any information properly classified pursuant to executive order, as implemented by DoD Instruction 5200.01 and DoD Manual 5200.01, Volumes 1 and 3.

The DoD is also proposing this exemption rule because this system of records may contain investigatory material compiled for law enforcement purposes within the scope of 5 U.S.C. 552a(k)(2). This exemption allows DoD entities to claim an exemption for systems of records that contain investigatory materials compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. 552a(j)(2), which describes certain material related to the enforcement of criminal laws maintained by principal-function criminal law enforcement agencies. The Department therefore is proposing to claim an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements, to prevent, among other harms, the identification of actual or potential subjects of investigation and/or sources of investigative information and to avoid frustrating the underlying law enforcement purpose for which the records were collected.

Records in this system of records are only exempt from the Privacy Act to the extent the purposes underlying the exemption pertain to the record. A notice of a new system of records for DoD–0019, ''Information Technology Access and Audit Records,'' is also published in this issue of the **Federal Register**.

### Regulatory Analysis

*Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''*

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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action.

*Congressional Review Act (5 U.S.C. 804(2))*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule may take effect no earlier than 60 calendar days after Congress receives the rule report or the rule is published in the **Federal Register**, whichever is later. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''*

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532(a)) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, in any one year of $100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

*Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601 et seq.)*

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency has certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule is concerned only with the administration of Privacy Act systems of records within the DoD. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

*Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. 3501 et seq.)*

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local and tribal governments; and other persons resulting from the collection of information by or for the Federal Government. The Act requires agencies obtain approval from the Office of Management and Budget before using identical questions to collect information from ten or more persons. This rule does not impose reporting or recordkeeping requirements on the public.

*Executive Order 13132, ''Federalism''*

It has been determined that this rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''*

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or affects the distribution of power and responsibilities between the Federal Government and Indian tribes. This rule will not have a substantial effect on Indian tribal governments.

**List of Subjects in 32 CFR Part 310**

Privacy.

Accordingly, 32 CFR part 310 is proposed to be amended as follows:

## PART 310—PROTECTION OF PRIVACY AND ACCESS TO AND AMENDEMENT OF INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974

■ 1. The authority citation for part 310 continues to read as follows:

**Authority:** 5 U.S.C. 552a.

■ 2. Amend § 310.13 by adding paragraph (e)(14) to read as follows:

**§ 310.13 Exemptions for DoD-wide systems.**

* * * * *

(e) * * *

(14) *System identifier and name.* DoD–0019, ''Information Technology Access and Audit Records.''

(i) *Exemptions.* This system of records is exempt from 5 U.S.C. 552a (c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1) and (k)(2).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections is justified for the following reasons:

(A) *Subsections (c)(3), (d)(1), and (d)(2).*

(1) *Exemption (k)(1).* Records in this system of records may contain information that is properly classified pursuant to executive order. Application of exemption (k)(1) may be necessary because access to and amendment of the records, or release of the accounting of disclosures for such records, could reveal classified information. Disclosure of classified records to an individual may cause damage to national security.

(*2*) *Exemption (k)(2).* Records in this system of records may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2). Application of exemption (k)(2) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could: inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or disciplinary investigation, and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom he might disclose the records or the accounting of records to avoid criminal penalties, civil remedies, or disciplinary measures; interfere with a civil or administrative action or investigation by allowing the subject to tamper with witnesses or evidence, and to avoid detection or apprehension, which may undermine the entire investigatory process; reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD's ability to obtain information from future confidential sources; and result in an unwarranted invasion of the privacy of others. Amendment of such records could also impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated.

(B) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent an exemption is claimed from subsections (d)(1) and (2). Accordingly, exemptions from subsections (d)(3) and

(d)(4) are claimed pursuant to (k)(1) and (k)(2).

(C) *Subsection (e)(1).* Additionally, records within this system may be properly classified pursuant to executive order. The collection of information pertaining to the use of government information technology and data systems may include classified records, and it is not always possible to conclusively determine the relevance and necessity of such information in the early stages of a collection. In some instances, it will be only after the collected information is evaluated in light of other information that its relevance and necessity can be assessed. Further, disclosure of classified records to an individual may cause damage to national security. Additionally, in the collection of information for investigatory or law enforcement purposes it is not always possible to conclusively determine the relevance and necessity of particular information in the early stages of the investigation or adjudication. In some instances, it will be only after the collected information is evaluated in light of other information that its relevance and necessity for effective investigation and adjudication can be assessed. Collection of such information permits more informed decision-making by the Department when making required investigatory or law enforcement determinations. Accordingly, application of exemptions (k)(1) and (2) may be necessary.

(D) *Subsections (e)(4)(G) and (H).* These subsections are inapplicable to the extent exemption is claimed from subsections (d)(1) and (2).

(E) *Subsection (e)(4)(I).* To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect national security, the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. Accordingly, application of exemptions (k)(1) and (2) may be necessary.

(F) *Subsection (f).* The agency's rules are inapplicable to those portions of the system that are exempt. Accordingly, application of exemptions (k)(1) and (2) may be necessary.

(iv) *Exempt records from other systems.* In the course of carrying out the overall purpose for this system, exempt records from other systems of records may in turn become part of the records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the prior system(s) of which they are a part, provided the reason for the exemption remains valid and necessary.

Dated: August 24, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–18681 Filed 8–31–23; 8:45 am]

**BILLING CODE 5001–06–P**

## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 202

**[Docket No. 2023–3]**

## Access to Electronic Works

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Copyright Office is issuing a notice of proposed rulemaking to update its regulation governing electronic deposits of published works submitted to the Office that have been selected for addition to the collections of the Library of Congress. The current regulation permits the Library to collect and provide limited on-site access to groups of newspapers electronically submitted for registration, as well as electronic serials and books submitted for mandatory deposit. The proposed rule expands the categories of electronic deposits covered by the regulation with the same limitations on access as are currently in place. The proposed changes are part of ongoing steps by the Library and the Office to encourage the submission of works in electronic form and reduce the need for copyright owners to deposit physical copies.

**DATES:** Written comments must be received by no later than 11:59 p.m. Eastern Time on October 2, 2023. Reply written comments must be received no later than 11:59 p.m. Eastern Time on October 16, 2023.

**ADDRESSES:** For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://www.copyright.gov/rulemaking/edeposit-access.*

**FOR FURTHER INFORMATION CONTACT:** Rhea Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov* or telephone at 202–707–8350.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Copyright Act provides two sources of materials that can be selected by the Library of Congress for its collections. The first is the ''mandatory deposit'' requirement set forth in section 407 of title 17. Under section 407, owners of copyright-protected works published in the United States must generally deposit two complete copies of the best edition of the work ''for the use or disposition of the Library of Congress.'' [1] ''The 'best edition' of a work'' is defined as ''the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.'' [2] The Office's regulations, including § 202.19 and Appendix B of part 202, set forth rules and criteria for the different types of works subject to mandatory deposit.

The second source of materials is section 408, which requires applicants seeking to register the copyright in published works to provide the Office with ''two complete copies or phonorecords of the best edition.'' [3] To avoid the duplication of deposits, section 408 specifies that copies or phonorecords deposited under section 407 ''may be used to satisfy the deposit provisions'' of section 408 if they ''are accompanied by the prescribed application and fee.'' [4] Registration deposits are ''available to the Library of Congress for its collections,'' and items not selected by the Library are retained by the Office for a period of time.[5]

Both sections 407 and 408 grant the Register of Copyrights broad regulatory authority to specify the nature of the

[1] 17 U.S.C. 407, 407(b).

[2] *Id.* at 101.

[3] *Id.* at 408(b)(2). Section 408(b) also sets out the deposit requirements for the registration of unpublished works (*id.* at 408(b)(1)), works first published outside of the United States (*id.* at 408(b)(3)), and contributions to collective works (*id.* at 408(b)(4)).

[4] *Id.* at 408(b). Although section 408 states that copies deposited pursuant to the mandatory deposit provision in section 407 may be used to satisfy the registration deposit requirement in section 408, in practice, the Office treats copies of works submitted for registration as satisfying the mandatory deposit requirement (assuming the deposit requirements are the same), and not vice versa. 37 CFR 202.19(f)(1), 202.20(e); *see Registration of Claims to Copyright Deposit Requirements,* 43 FR 763, 768 (Jan. 4, 1978).

[5] 17 U.S.C. 704(b), 704(d). Deposits of works submitted under either sections 407 and 408 are ''property of the United States Government'' and can be used by the Library for its collections. *Id.* at 704(a), 704(b).

required deposits, including the ability to exempt certain works from the deposit requirements.[6] Using this authority, the Register has permitted the deposit of only one copy instead of two for certain classes of works submitted for registration.[7] Similarly, the Register has issued regulations exempting specific categories of works from the mandatory deposit requirements.[8]

The Office also has used its regulatory power in sections 407 and 408 to accommodate the submission of electronic deposits instead of physical deposits in certain cases. With respect to section 407, the Office issued an interim rule in 2010 generally exempting electronic works that are ''available only online'' from the mandatory deposit requirement, with a limited exception for electronic-only serials.[9] The Office revised this rule in 2020 to require the mandatory deposit of electronic-only books in response to an affirmative demand under section 407(d).[10] To date, the Office's regulations for registration deposits have generally required or preferred the deposit of physical copies. Recently, however, the Office created new flexible registration options across a number of categories that either permit or require the submission of electronic copies depending on the work.[11] For example, in 2018, the Office issued a final rule with respect to the group registration of newspaper issues, which states that deposits ''must be submitted in a digital form.'' [12]

Under its current regulation, the Office places strict limits on access to electronic deposits selected by the Library of Congress for its collections.[13] Electronic deposits received by the Library from the Office can only be accessed by specific authorized users at limited locations, and only two such users may access a particular deposit at a time. ''Authorized users'' are defined as (i) Members of the U.S. House of Representatives and the U.S. Senate, as well as their officers and staff, (ii) the Library of Congress's staff and contractors, and (iii) registered researchers who are authorized to use the Library of Congress's public reading rooms and the collections that are accessible there.[14] Authorized users may access the Library's electronic collections only on the Library's premises at terminals connected to a secure network.[15] The only exception to the on-site requirement is for Library staff, who are permitted to access electronic deposits ''off-site as part of their assigned duties via a secure connection.'' [16] These limitations on access would not be changed by the proposed rule.

Although the Copyright Act provides that the Library may select any deposit received by the Office, current regulations authorize the Library's acquisition of only two types of electronic deposits: those received through mandatory deposit pursuant to section 407 and those submitted for group registrations of newspapers.[17] When the regulations were enacted, technical limitations prevented the Library from selecting and transferring other types of electronic copies to its collections. As a result of technical developments since that time, the Library has systems now capable of ingesting and preserving online-only serials deposited under section 407.[18] In addition, technical development of the Office's electronic registration system (''eCO'') now provides the ability for the Library to select and transfer other electronic deposits to its collections. The Library's selection decisions will remain limited, however, to registration deposits for group newspapers and mandatory deposits for eSerials and eBooks absent amendment of the Office's regulations. The proposed rule will expand the electronic deposits of published works that the Library can select.[19]

As the Office reported to Congress in December 2022, the Library is ''increasing its focus on collecting works in digital form.'' [20] The proposed rule expands the Library's ability to select and transfer to its collections additional categories of published works in electronic form submitted to the Office. Accordingly, it provides the regulatory authority necessary for the Library to meet this goal, while maintaining the current limits on public access to the works. Additional intended beneficiaries of the proposed rule will be those copyright owners who wish to satisfy their deposit requirements under sections 407 and 408 through the submission of electronic rather than physical deposits.

## II. Proposed Rule

The Library and Office propose to expand the current regulations governing the transfer of electronic deposits for the Library's collections. As the Office's recent study on the best edition requirement explained, the Library has determined that in many cases its collections needs can be met using electronic deposits of textual works,[21] and it is studying other types of works for which that is true.

### *A. The Proposed Rule's Expansion of Existing Categories*

This Notice of Proposed Rulemaking updates the regulation governing the addition of electronic copyright deposits to the Library's collections. Specifically, the proposed rule will expand the Library's authority to select electronic deposits of published works for addition to its collections.[22] This change is

[6] *Id.* at 407(c); *id.* at 408(c)(1).

[7] 37 CFR 202.20(c)(2)(i).

[8] *Id.* § 202.19(c) (listing ''categories of material [that] are exempt from the deposit requirements of section 407'').

[9] *Mandatory Deposit of Published Electronic Works Available Only Online,* 75 FR 3863, 3869 (Jan. 25, 2010); 37 CFR 202.19(c)(5). The interim rule codified the Office's preexisting practice of not demanding copies of electronic-only works such as website content. *See Mandatory Deposit of Electronic Books and Sound Recordings Available Only Online,* 81 FR 30505, 30506 (May 17, 2016). Under the interim rule and current regulations, copyright owners are not obligated to deposit electronic-serials unless and until the Office affirmatively makes a demand. *See* 37 CFR 202.24(a).

[10] *Mandatory Deposit of Electronic-Only Books,* 85 FR 71834 (Nov. 12, 2020).

[11] *See, e.g., Group Registration of Contributions to Periodicals,* 82 FR 29410 (June 29, 2017); *Group Registration of Photographs,* 83 FR 2542 (Jan. 18, 2018); *Group Registration of Newspapers,* 83 FR 4144, 4146 (Jan. 30, 2018); *Group Registration of Serials,* 84 FR 60918 (Nov. 12, 2019); *Group Registration of Newsletters,* 85 FR 31981 (May 28, 2020); *Group Registration of Short Online Literary Works,* 85 FR 37341 (June 22, 2020); *Liberalizing the Deposit Requirements for Registering a Single Issue of a Serial Publication,* 87 FR 43744 (July 22, 2022).

[12] 37 CFR 202.4(e)(6)(ii) (for group newspaper deposits, ''[t]he issues must be submitted in a digital form, and each issue must be contained in a separate electronic file'').

[13] *Id.* § 202.18.

[14] *Id.* § 202.18(d). The process for becoming a registered researcher is available at *https://www.loc.gov/rr/readerregistration.html.*

[15] *Id.* § 202.18(b); *id.* § 202.18(d) (''Authorized user' means Library of Congress staff, contractors, and registered researchers, and Members, staff and officers of the U.S. House of Representatives and the U.S. Senate for the purposes of this section.'').

[16] *Id.* § 202.18(a).

[17] *Id.*

[18] *See* 75 FR 3863, 3865 (explaining that ''the Library is currently developing technological systems that will allow it to ingest electronic works, including those available exclusively online, and maintain them in formats suitable for long-term preservation'').

[19] Neither the current regulation nor the proposed changes allow access to *unpublished* works in electronic form. *See also* 37 CFR 201.23 (governing the transfer of unpublished deposits to the Library of Congress, requiring the Library maintain ''appropriate safeguards against unauthorized copying or other unauthorized use of the deposits which would be contrary to the rights of the copyright owner'').

[20] Letter from Shira Perlmutter, Reg. of Copyrights, U.S. Copyright Office, Sen. Thom Tillis, Ranking Member, S. Comm. on the Judiciary, Subcomm. on Intell. Prop. at 7 (Dec. 1, 2022) (''Best Edition Study'').

[21] *Id.* at 13.

[22] The rule will not affect the Library's inability to provide public access to unpublished electronic

effected by replacing the current regulatory language limiting this authority to electronic deposits received through group newspaper registrations and mandatory deposits with language encompassing all published works covered by the following existing regulations: §§ 202.4 (d) through (g) and (i) through (k) (certain group registrations), 202.19 (deposit of published copies or phonorecords for the Library of Congress), 202.20 (deposit of copies and phonorecords for copyright registration).

The proposed rule does not alter the current strict limits on access to these works after their selection and acquisition by the Library: electronic deposits covered by the proposed rule will be available only to authorized users on the Library's premises via a secure system. Library staff will continue to have authorization for remote access, but only through a secure server and network limited to serving the Library. In all cases, access to any individual electronic deposit received under sections 407 and 408 will be limited to two simultaneous authorized users.

*B. The Library's Digital Collections Strategy*

As part of its Digital Collections Strategy, the Library is making a gradual shift towards an ''e-preferred'' approach, in which digital formats will be preferred over traditional physical formats across its major acquisitions streams, including deposits received from the Office.[23] Because of the increased prevalence of digital content, the Library's plan encompasses ''all aspects of born digital collecting and curation, end-to-end.'' [24] This will involve policies and workflows that support digital content acquisition and curation, developing ''an agile technical infrastructure [to] allow for the routine and efficient acquisition of desired digital materials,'' and establishing and implementing appropriate methods to ''ensure that rights-restricted digital content remains secure.'' [25] A key component of the Library's strategy is expanding the acquisition for its collections of digital content deposited with the Copyright Office.[26] But before the Library can begin to make operational changes, it must have the legal authority to do so. The Office's proposed regulatory amendment will further this goal.

The proposed rule is designed to offer long-term benefits to the Library and its authorized users by expanding its collections of digital content. By reducing the need for physical deposits, the revised rule is also intended to benefit copyright owners. When the Library's needs can be met with digital copies, the Office will be able to provide additional opportunities for applicants to submit electronic deposits with their registration materials.[27] This will lower the overall cost for applicants who would otherwise need to produce and mail physical copies to the Office, and will be particularly helpful for small businesses and independent creators who may have limited resources.[28]

In turn, the Office's Registration Program will benefit from the expansion of copyright owners' ability to submit electronic deposits. The Office spends significantly more time and resources to process registrations with physical deposits than those with electronic ones.[29] The most significant reason for this disparity is the time required to receive mailed deposits. When an application includes an electronic deposit, the Office can typically review the registration file as soon as it is assigned. But when an applicant mails physical copies, it may take weeks or longer for the deposit to reach the Office and be connected with the corresponding application.[30] Because the effective date of a registration is the date that the Office receives the application, filing fee, and deposit in proper form, the delay associated with physical deposits can cause copyright applicants to have an effective date much later than the date they submitted an electronic application through eCO. The proposed rule will pave the way for the Office to increase opportunities for electronic deposits, and will allow copyright owners to avoid the delays caused by physical deposits and benefit from faster decisions and earlier effective dates of registration.

Finally, the rule will provide significant benefits to the Office's retention and preservation of works. Currently, the Library often acquires all physical copies of the registration deposits for its collections, and no copies are retained by the Office. If a selected work is subsequently needed in connection with litigation or another records request, the Office must seek to retrieve a copy from the Library.[31] By contrast, digital deposits can be used by the Library for its needs without affecting the Office's records. When a digital copy of a work is uploaded into the electronic registration system, the copy automatically becomes part of the Office's administrative record. If the Library selects an electronically submitted work, the Office can retain a digital ''record'' copy,[32] meaning that work would remain available for the applicable retention period as an Office

deposits submitted to the Office for copyright registration.

[23] U.S. Library of Congress, *Digital Collections Strategy Overview 2022–2026* at 4–5 (Oct. 2021) (''Digital Collections Strategy''), *https://www.loc.gov/acq/devpol/Digital%20Collections%20Strategy%20Overview_final.pdf.*

[24] *Id.* at 1.

[25] *Id.* at 1–2.

[26] *Id.* at 4 (Library plans to ''[w]ork with the Copyright Office to explore and strategically plan the possible implementation of regulatory updates'' that help ''[e]xpand the depth and breadth of digital content acquisition via the Copyright Office.'').

[27] To be clear, the Office does not plan to require applicants to submit electronic deposits. Instead, applicants will choose whether to submit an electronic or physical deposit. Applicants who prefer to submit physical copies will have the ability to do so. *See* Best Edition Study at 8 (Office plans to ''provide digital options for additional types of works, although deposits in physical form will still be permitted.'').

[28] *Best Edition Study: Notice and Request for Public Comment,* 87 FR 33836, 33839 (June 3, 2022) (''[w]hile the submission of e-copies as opposed to print copies for purposes of registration would pose some difficulties in terms of service to Congress and other user groups, having access to e-copies of the content will be beneficial in the long term''); *see also* Best Edition Study at 5–7 (discussing Office's efforts to reduce burden on copyright owners from compliance with the best edition requirement, particularly from submission of physical best edition copies).

[29] The current average processing time for registrations with uploaded digital deposits is 1.2 months if no correspondence is needed, or 3.3 months in cases of correspondence. Registrations with physical deposits are much longer—an online application with a physical deposit takes an average of 2.7 months to resolve with no correspondence or 6.6 months with correspondence. Updated registration processing times can be found on the Office's website at *https://www.copyright.gov/registration/docs/processing-times-faqs.pdf.*

[30] In addition to the time consumed by mail delivery, physical deposits consume additional resources to process. Copyright deposits, like all material sent to the Capitol Complex, are first redirected offsite to be screened and decontaminated for possible pathogens. Once the deposit has been screened and delivered to the Office, the Materials Control and Analysis Division (''MCAD'') manually matches the deposit to the corresponding application. To facilitate this process, applicants are supposed to include a ''shipping slip'' containing a barcode generated by eCO for tracking purposes. But many applicants omit the shipping slip with their deposits, requiring MCAD to correspond with the applicant, obtain the application case number, search for the application in the electronic registration system, and manually generate a new shipping slip and barcode. Electronic deposits bypass all of these steps and avoid the rare occasions where a deposit either does not reach the Office at all or is misplaced.

[31] The Office cannot certify copies of works transferred to the Library's collection. Its regulations provide that the Office will make a certified copy of a registered work if it is needed for litigation or other legitimate purposes, provided it has retained a copy of that work. 37 CFR 201.2(d)(2). But the Office cannot issue a certified copy of a work transferred to the Library or another institution. *See* U.S. Copyright Office, Compendium of U.S. Copyright Office Practices, secs. 2405.3, 2409.5 (3d ed. 2021) (''Compendium (Third)'').

[32] 17 U.S.C. 704(c).

record.[33] Digital copies are also easier to track, store, and retrieve than physical copies, allowing the Office to more readily provide a copy for use in litigation or in responding to other public records requests.

Ultimately, the proposed rule will provide significant benefits by reducing the Office's and Library's reliance on physical deposits and their accompanying logistical challenges. In addition, it will support the Library's strategic objective to ''[e]xpand the depth and breadth of digital content acquisition via the Copyright Office.'' [34]

*C. Information Technology and Security Considerations*

The Office recognizes that because this rule expands the Library's authority to select and transfer to its collections electronic deposits of published works submitted for registration, copyright owners may have questions about the Library's information technology (''IT'') security practices. The security of electronic deposits is a shared priority of copyright owners, the Office, and the Library. The Library is committed to ''the need to ensure the security of the digital content in [its] care'' [35] and takes careful steps to address concerns about the protection of electronic copyright deposits. Critically, it employs the same level of encryption to protect copyright deposits as other highly sensitive information it holds, such as congressional material.[36] The Office is not aware of any security threats to date with respect to the eSerials and eBooks that have been submitted for mandatory deposit. In the last decade, the Library has received tens of millions of digital files from copyright owners,[37] and it reports that there have been no known instances of a breach in its security or theft from its digital collections.

The Office encourages commenters to review its recent policy study on the best edition requirements, which addressed IT security concerns in connection with the storage of electronic deposits.[38] As that study explains, the Library has invested substantially in its IT security capacity in recent years, including centralizing IT security under a Chief Information Officer and enacting policies and practices to secure Library and Office data.[39] The Library also obtains ongoing public feedback on its practices in part through the Copyright Public Modernization Committee (''CPMC'') and a vulnerability disclosure program.[40]

The proposed rule's expansion of the categories of published electronic deposits that will be available for the Library's selection, combined with the current limits on access, will not increase the risk that these deposits will be stolen or misused. Any electronic registration deposits that are added to the Library's collections will be protected by the same technical measures that currently secure 236 million electronic serials and 1.2 million e-books.[41] These security measures are extensive—at a recent CPMC meeting, the Library's Chief Information Officer detailed the continuous security measures for eDeposit material. Among other steps, the data is protected both at rest and in transit, with over 300 IT security controls.[42] These controls are subject to repeated testing per the Library's continuous monitoring schedule.[43]

Just as with current treatment of electronic deposits, access will be restricted to authorized users as defined in the regulation and only permitted on the Library's physical premises, with a narrow exception for Library staff working offsite over a secure connection.[44] This limited onsite access for authorized users occurs through computer terminals located in the Library's reading rooms.[45] The reading room terminals are not connected to the internet, have USB and other ports disabled, and are under the supervision of Library staff.

The Library takes seriously its responsibilities as a steward of the cultural works in its collections, including safeguarding deposits received from the Office. The Office is confident that the current security measures and practices provide robust security for electronic deposits in the Library's collection. To the extent there remain comments or questions about the security of deposits, the Office is prepared to address them in the final rule.

## III. Conclusion

As the Library implements its Digital Collections Strategy, it will increase the digital works held in its collections, including through the selection of digital deposits submitted to the Copyright Office. The proposed rule facilitates this by providing the Library the authority to select and transfer digital deposits for all types of published works submitted to the Office through the registration process. Access to these materials will remain limited and subject to the existing regulation's restrictions. These changes will help the Library fulfill its mission as the Nation's library and the research arm of Congress.

The Copyright Office welcomes public feedback and seeks comments on the regulatory amendments presented in this Notice of Proposed Rulemaking, as well as related issues discussed within.

**List of Subjects in 37 CFR Part 202**

Claims, Copyright.

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 202 as follows:

## PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

**Authority:** 17 U.S.C. 408(f), 702.

■ 2. Amend § 202.18 by:

■ a. In paragraph (a), removing ''Access to electronic works received under § 202.4(e) and § 202.19'' and adding in its place ''Access to published electronic works received under § 202.4(d) through (g), § 202.4(i) through (k), § 202.19, or § 202.20'';

■ b. In paragraph (a), removing ''only to authorized users at Library of Congress premises'' and adding in its place ''at Library of Congress premises only to authorized users'';

■ c. In paragraph (b), removing ''Access to each individual electronic work received under § 202.4(e) and § 202.19'' and adding in its place ''Access to each individual electronic work received pursuant to paragraph (a) of this section''; and

[33] The Office retains published deposit materials for a period of twenty years. Compendium (Third) sec. 1510.1 (''Published deposit materials are currently stored for twenty years.''). If the Office closes a file for a published work without issuing a registration or refuses to register the work, the deposit materials are retained subject to the disposition schedules set by the National Archives and Records Administration. *Id.*

[34] Digital Collections Strategy at 4.

[35] *Mandatory Deposit of Electronic-Only Books,* 85 FR 38806, 38812, n.88 (June 29, 2020).

[36] *See id.* at 38811–14 (detailed explanation of the Library's IT security improvements and upgrades).

[37] Best Edition Study at 18.

[38] *See id.* at 16–19.

[39] *Id.* at 17–18.

[40] *Id.* at 19–20.

[41] *Id.* at 18.

[42] U.S. Copyright Office, Library of Congress, *CPMC Public Meeting* (Mar. 2, 2023), *https://www.loc.gov/item/webcast-10761/.*

[43] *Id.*

[44] Library staff have limited offsite access to deposits ''as part of their assigned duties via a secure connection.'' 37 CFR 202.18(a). This allows employees working remotely to fulfill work duties but does not permit access for other purposes.

[45] *Access to Rights-Restricted Content,* Library of Congress, *https://catalog.loc.gov/vwebv/ui/en_US/htdocs/help/eDepositAccess.html* (Access to rights restricted content is available on dedicated Stacks terminals located in Library reading rooms.). While onsite, Library staff may also access these materials through their workstations.

■ d. In paragraph (c), removing ''electronic works received under § 202.4(e) and § 202.19'' and adding in its place ''electronic works received pursuant to paragraph (a) of this section''.

Dated: August 24, 2023.

**Suzanne V. Wilson,**

*General Counsel and Associate Register of Copyrights.*

[FR Doc. 2023–18664 Filed 8–31–23; 8:45 am]

**BILLING CODE 1410–30–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 17 and 51

**RIN 2900–AR61**

### Determining Eligibility for Domiciliary Care

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its medical regulations and State Veterans Home (State home) regulations. VA proposes to update the criteria used by VA in determining whether a veteran has no adequate means of support relative to eligibility for domiciliary care, and to shift the focus of the regulatory language from the veterans' ability to pursue substantially gainful employment to a broader consideration of available support systems and medical conditions or disabilities that might impact the veteran's ability to live independently. In addition, we propose amending our State home regulations to implement VA's authority to waive certain eligibility requirements for receipt of State home domiciliary care per diem.

**DATES:** Comments must be received by VA on or before October 31, 2023.

**ADDRESSES:** Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Burden, Ph.D., National Mental Health Director, Mental Health Residential Rehabilitation and Treatment Programs (11MHSP), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; (540) 819–1190 (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Section 1710(b)(2) of title 38, United States Code (U.S.C.) authorizes VA to provide needed domiciliary care to veterans whose annual income does not exceed the applicable maximum annual rate of VA pension and to veterans VA determines have no adequate means of support. Historically, domiciliary care in VA has primarily been focused on delivering care to older residents who cannot live independently but who do not require admission to a nursing home, although the scope of domiciliary care provided by VA has expanded over the decades to meet the changing needs of veterans.

The term domiciliary care is defined in § 17.30(b) of title 38, Code of Federal Regulations (CFR), which reflects the two alternative models of domiciliary care VA is authorized to provide to eligible veterans. Domiciliary care is defined at § 17.30(b)(1)(i) to mean the furnishing of a temporary home to a veteran, embracing the furnishing of shelter, food, clothing, and other comforts of home, including necessary medical services. This model focuses on the needs of veterans eligible for VA domiciliary care who cannot live independently but who do not require admission to a nursing home. While VA retains the authority to directly provide domiciliary care under this model, it currently pays a per diem to State homes to provide this model of domiciliary care to eligible veterans. The statutory authority for the payment program is set forth at 38 U.S.C. 1741–43. VA has published regulations governing this program at 38 CFR part 51. VA regulates eligibility for VA payment of State home domiciliary care per diem at § 51.51.

The second model for providing domiciliary care is defined in § 17.30(b)(1)(ii). There, domiciliary care is defined to mean the furnishing of a day hospital program consisting of intensive supervised rehabilitation and treatment provided in a therapeutic residential setting for residents with mental health or substance use disorders and co-occurring medical or psychosocial needs such as homelessness and unemployment. This model focuses on the needs of veterans eligible for domiciliary care and who are receiving care through VA's Mental Health Residential Rehabilitation Treatment Program, including Domiciliary Care for Homeless Veterans Program; General Domiciliary; Domiciliary Substance Use Programs; and Domiciliary Post-Traumatic Stress Disorder Programs. Today, a VA domiciliary consists of intensive supervised rehabilitation and treatment provided in a therapeutic residential setting that is aligned with VA medical facilities.

Veterans must meet the eligibility criteria found in 38 CFR 17.46(b) as well as §§ 17.47(b)(2) and 17.47(c) to receive domiciliary care in a VA domiciliary. Per § 17.46(b) domiciliary care may be furnished when needed to any veteran whose annual income does not exceed the maximum annual rate of pension payable to a veteran in need of regular aid and attendance, or any veteran who VA determines had no adequate means of support. There is an additional requirement in that paragraph that the veteran must be able to perform certain listed activities related to self-care. In turn, 38 CFR 17.47(b)(2) addresses how VA determines whether a veteran has no adequate means of support for purposes of eligibility for domiciliary care. Finally, 38 CFR 17.47(c) establishes that to be provided domiciliary care, the veteran must have a disability, disease, or defect which is essentially chronic in type and is producing disablement of such degree and probable persistency as will incapacitate from earning a living for a prospective period. Eligibility criteria found in §§ 17.46 and 17.47 are applicable to domiciliary care provided by VA in residential rehabilitation treatment venues. The same eligibility criteria generally are reflected in current 38 CFR 51.51 and are applicable to State home domiciliary veterans for purposes of per diem payment eligibility.

We propose multiple changes to our regulations. Initially, we propose to make a technical change in part 17 to remove the word domiciliary from a regulation that does not address domiciliary care. VA also proposes amending both Part 17 and 51 regulations that address how VA determines whether a veteran has no adequate means of support for purposes

of eligibility for domiciliary care or domiciliary care per diem. VA proposes to amend its regulations to update the criteria used by VA in determining whether a veteran has no adequate means of support relative to eligibility for domiciliary care, and to shift the focus in the regulatory language from the veterans' ability to pursue substantially gainful employment to a broader consideration of the availability of a family and/or community support system to assist the veteran in living independently, consideration of the veteran's ability to access that support system, and any medical conditions or disabilities that might impact that ability. In addition, we propose amending our State home regulations to implement VA's authority to waive certain eligibility requirements for eligibility for State home domiciliary care per diem and to permit waivers of these eligibility requirements retroactive to January 5, 2021.

**Section 17.43 Persons Entitled to Hospital or Domiciliary Care.**

The title of this section references domiciliary care as does the introductory sentence. However, the remaining content focuses on eligibility for hospital care. Eligibility for domiciliary care, as noted above, is addressed in subsequent sections of Part 17. We propose deleting references to domiciliary care in § 17.43.

**Section 17.46 Eligibility for Hospital, Domiciliary or Nursing Home Care of Persons Discharged or Released From Active Military, Naval, or Air Service.**

Current § 17.46(b)(2) states that domiciliary care may be provided to any veteran who the Secretary determines had no adequate means of support. This paragraph further states that a veteran eligible for domiciliary care must be able to make rational and competent decisions as to their desire to remain or leave the facility and perform tasks related to self-care listed at § 17.46(b)(2)(i)–(viii). One task on the list, at paragraph (b)(2)(vii), provides that the veterans must be able to share in some measure, however slight, in the maintenance and operation of the facility. We propose removing this requirement, as the purpose of providing domiciliary care is treatment and rehabilitation, and requiring the veteran to participate in the maintenance and operation of the facility is inconsistent with that purpose. For this reason, we propose removing this requirement and redesignating current (b)(2)(viii) as (b)(2)(vii).

**Section 17.47 Considerations Applicable in Determining Eligibility for Hospital Care, Medical Services, Nursing Home Care, or Domiciliary Care.**

Current § 17.47(b)(2) specifies that ''. . . the phrase *no adequate means of support* refers to an applicant for domiciliary care whose annual income exceeds the annual rate of pension for a veteran in receipt of regular aid and attendance, as defined in 38 U.S.C. 1503, but who is able to demonstrate to competent VA medical authority, on the basis of objective evidence, that deficits in health and/or functional status render the applicant incapable of pursuing substantially gainful employment, as determined by the Chief of Staff of the VA medical center, and who is otherwise without the means to provide adequately for self, or be provided for in the community.''

The foci of current 38 CFR 17.47(b)(2) is on the ability to engage in substantially gainful employment and on self-reliance and achieving or sustaining independence in the community. VA believes that predicating eligibility for domiciliary care on the ability of the veteran to engage in gainful employment, is inconsistent with delivery of patient centered care. In patient-centered care, an individual's specific health needs and desired health outcomes are the driving force behind all health care decisions. Historically, domiciliary care in VA was primarily focused on delivering care to older residents who could not live independently but who did not require admission to a nursing home. The scope of domiciliary care provided by VA has expanded over the decades to meet the changing needs of veterans. Today, VA domiciliary care consists of intensive supervised rehabilitation and treatment provided in a therapeutic residential setting that is aligned with VA medical facilities. As discussed in further detail below, VA proposes taking a different approach to determining whether a veteran has no adequate means of support.

To determine that a veteran has no adequate means of support, current § 17.47(b)(2) requires a determination by VA on separate but interconnected issues. VA must determine that the veteran has an annual income that *exceeds* the annual rate of pension for a veteran in receipt of regular aid and attendance, as defined in 38 U.S.C. 1503. In addition, VA must determine that the veteran is able to demonstrate to VA medical authority that deficits in health and/or functional status render them incapable of pursuing substantially gainful employment and that the veteran is otherwise without the means to provide adequately for self, or be provided for in the community. VA does not consider the inability to pursue substantially gainful employment as a prime determinant in assessing a veteran's need for domiciliary care. VA believes that it also needs to consider the veteran's condition, medical and financial, in its entirety in the context of the veteran's ability to sustain and maintain independence in the community given available support systems and the veteran's ability to access those systems. For the purpose of determining eligibility for domiciliary care, VA believes that veterans with annual income above the rate set in the current regulation could still not have adequate means of support because having adequate means of support may also require the availability of a family and/or community support system to assist the veteran in living independently and the veteran's ability to access that support system, which takes into account any medical conditions or disabilities that might impact that ability.

VA proposes to amend § 17.47(b)(2) to state that for purposes of determining eligibility for domiciliary care, the phrase no adequate means of support refers to an applicant for or recipient of domiciliary care whose annual income exceeds the maximum annual rate of pension for a veteran in receipt of regular aid and attendance, as defined in 38 U.S.C. 1503, whose deficits in health and/or functional status may render the veteran incapable of achieving or sustaining independence in the community as determined by the Chief of Staff of the VA medical center, or designee. In assessing a veteran's ability to achieve or sustain independence in the community, the Chief of Staff or designee will make a determination of eligibility for domiciliary care based on objective evidence, considering factors including, but not limited to: (i) the impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's safety in the community; (ii) the impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's ability to provide self-care; (iii) the availability of community or family support systems; (iv) the impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's ability to access and utilize community support systems; (v) the risk of loss of housing in the community; (vi) the risk of loss

of the veteran's income; (vii) access to outpatient mental health and substance use disorder care; and (viii) the current effectiveness of any outpatient mental health and substance use disorder care provided to the veteran.

VA believes that this list of factors that must be considered, which is not intended to be all inclusive, would provide guidance to the Chief of Staff of a VA medical center, or designee, on the criteria that must be considered in determining eligibility for domiciliary care in those cases where the veteran's annual income exceeds the annual rate of pension for a veteran in receipt of regular aid and attendance.

Additionally, VA proposes to clarify existing language in 38 CFR 17.47(b)(2) by referring to the ''maximum annual rate of pension'' as opposed to ''annual rate of pension''. Section 17.47(b)(2) addresses how VA determines whether a veteran has no adequate means of support, while § 17.46(b) provides the eligibility requirements for domiciliary care. Specifically, § 17.46(b)(1) refers to the maximum annual rate of pension. VA believes that this is a non-substantive change that will maintain consistency with §§ 17.46(b)(1) and 17.47(b)(2). Further, VA proposes to add ''or designee'' when referring to the Chief of Staff. The authority to make determinations on eligibility for domiciliary care is exercised by the Chief of Staff of the VA medical center; however, the Chief of Staff may delegate this responsibility to another clinical reviewer in the VA medical center.

We propose deleting paragraph (c) and marking that paragraph designation as Reserved. Current § 17.47(c) addresses three distinct issues. It provides a definition for the term disability, disease, or defect; it clarifies that domiciliary care is intended to provide a temporary home (not permanent) with ambulant care as needed; and it provides that to receive domiciliary care from VA, an applicant must consistently have a disability, disease, or defect which is essentially chronic in type and that disables the veteran to such a degree and probable persistency that the veteran will be unable to earn a living for a prospective period. The term disability, disease, or defect was used in earlier versions of our Part 17 regulations as an eligibility criterion for one class of veterans eligible for domiciliary care. The term disability, disease, or defect is not used anywhere else in Part 17 of 38 CFR except in the last sentence of current § 17.47(c), which is discussed below. We note that it is used in the definition of domiciliary care found in § 59.2, which defines terms relevant to grants to States for construction or acquisition of State homes. However, there is no reference to § 17.47(c) in § 59.2, and VA believes that the § 17.47(c) definition of disability, disease, or defect is not necessary for understanding the use of that term in Part 59. For those reasons, we propose removing the definition of disability, disease, or defect.

The second sentence in paragraph (c) states that ''domiciliary care, as the term implies, is the provision of a temporary home, with such ambulant medical care as is needed.'' This definition of domiciliary care is not as complete as the definition already in § 17.30(b) which includes the following: The term domiciliary care . . . [m]eans the furnishing of . . . [a] temporary home to a veteran, embracing the furnishing of shelter, food, clothing and other comforts of home, including necessary medical services. Because the regulations already have a more complete definition of domiciliary care in § 17.30(b), we propose deleting the second sentence in § 17.47(c).

The final sentence in current § 17.47(c) states that to be provided with domiciliary care, the applicant must consistently have a disability, disease, or defect which is essentially chronic in type and is producing disablement of such degree and probable persistency as will incapacitate from earning a living for a prospective period. We propose removing this sentence because it ties eligibility for domiciliary care solely to incapacity to earn a living, which is inconsistent with VA's view that eligibility for domiciliary care needs to consider the veteran's condition, medical and financial, in its entirety as noted above.

**Section 51.42 Payment Procedures**

Section 51.42 addresses per diem payment procedures under part 51, and we propose to add a new paragraph (c) to implement per diem payments to a State home domiciliary because of the new authority granted by Public Law (Pub. L.) 116–315, section 3007(a). As explained later in this rulemaking, we propose to revise eligibility for per diem for domiciliary care in § 51.51(b) to implement the new authority as of January 5, 2021. In proposed § 51.42(c) we would state that VA will make per diem payments under this part retroactive to the date specified by § 51.42(b)(3), or January 5, 2021, whichever date is later, if all the requirements in proposed § 51.42(c)(1) through (4) are met. We would make per diem payments retroactive pursuant to § 51.42(b)(3) (*i.e.,* from the date of receipt of the completed forms or from the date care began if the State home submitted completed forms (no later than 10 calendar days after care began)). State homes have and continue to be required to submit the following forms no later than 10 calendar days after care begins to receive payments retroactive to the date of admission: (1) VA Form 10–10EZ, Application for Medical Benefits (or VA Form 10–10EZR, Health Benefits Renewal Form); and (2) VA Form 10–10SH, State Home Program Application of Care—Medical Certification. Further, we believe State homes that have admitted veterans in reliance on this new discretionary authority have continued to submit completed forms for per diem payments for these veterans under § 51.42.

Proposed § 51.42(c)(1) would set forth one of the requirements that must be met for VA to make per diem payments under this part retroactive to the date specified by paragraph (b)(3) of this section: that within 30 calendar days of the effective date of the rule, a State home provides VA a written list of veterans' names for whom completed forms were received by VA on or after January 5, 2021, and the State home requests that VA consider them for a waiver under proposed § 51.51(b)(2). It would be administratively burdensome for VA to conduct a retrospective review of every denied application since January 5, 2021 and review current applications in a timely manner. Not all denied applications would be eligible for a waiver under § 51.51(b). Therefore, we would require State homes to submit to VA a written list of veterans whose completed forms have been denied pursuant to current § 51.51(b) on or after January 5, 2021, and whom the State home wants to have considered for a waiver under proposed § 51.51(b)(2). We believe this would result in the most efficient retrospective review of denied applications and allow VA to process applicable retroactive per diem payments in a timely manner. We would require that the list be provided within 30 days of the effective date of the rule because we believe State homes have already been tracking which veterans they believe might receive a waiver under this new authority and would be on notice upon publication of this proposed rule of our intent to require that a written list be provided within that time period. Also, we would limit retrospective reviews to completed forms received by VA on or after January 5, 2021. We would use January 5, 2021, as this is consistent with the effective date of Public Law 116–315, section 3007(a) granting the new authority and the date we propose to use in 38 CFR 51.51(b)(1). We would

focus on completed forms received because 38 U.S.C. 1743 only allows VA to pay per diem from the date that VA receives the request for VA to determine the veteran's eligibility or from the date care began if the request is received within 10 days after care begins. If the required forms are received after 10 days from the date care begins, then payments will be made from the date VA receives the required forms. *Id.* Therefore, we believe that VA lacks the statutory authority to make per diem retroactive to the date veterans began receiving care in a State home domiciliary in reliance on Pub. L. 116–315, section 3007(a), unless the State home submitted the required forms (*i.e.,* VA Form 10–10EZ and VA Form 10–10SH) within 10 days of that date. For example, if a State home admitted a veteran in reliance of Public Law 116–315, section 3007(a) on January 5, 2021, and to date has not submitted the required forms, then the earliest VA may make per diem payments is as of the date VA receives the required forms. In the same example, if a State home submitted the required forms no later than 10 days from January 5, 2021, then the State home may receive per diem retroactive to January 5, 2021, so long as all of the requirements in proposed 38 CFR 51.42(c)(1) through (4) are met. In the same example, if a State home submitted the required forms on the day on which care began, *e.g.,* January 25, 2022, then the State home may receive per diem retroactive to January 25, 2022, so long as all the requirements in proposed § 51.42(c)(1) through (4) are met. Further, we note that in the proposed regulatory text for this paragraph, the effective date is referenced as ''[EFFECTIVE DATE OF FINAL RULE]''. It is VA's intent to replace this language with the actual effective date of this rule which will be determined upon publication of the final rule.

Two other requirements would need to be met for a State home to receive retroactive per diem for care provided prior to the effective date of this regulation. Proposed § 51.42(c)(2) and (c)(3) would provide that with respect to the veterans on the written list under proposed (c)(1), VA denied the State's request for per diem for the veterans when their forms were originally submitted and the denial was solely because the veteran did not meet the requirements under § 51.51(b) and that, upon VA review, the veteran would have received a waiver under proposed § 51.51(b)(2) if this regulation had been in effect when the request for per diem was originally submitted, respectively. Upon receipt of a list of veterans whom the State home wants to have considered for a waiver under proposed § 51.51(b)(2), VA would verify that the claim was denied solely pursuant to current § 51.51(b), which lists the eight tasks and activities a veteran must be able to perform to establish eligibility for VA per diem for State home domiciliary care, because, as discussed below, Public Law 116–315, section 3007(a) requires VA to amend 38 CFR 51.51(b) to allow waivers of these requirements under certain conditions. Further, as discussed below we propose to revise § 51.51(b) by creating a new paragraph (b)(2) to implement the new authority. Therefore, after verifying that a claim was denied solely due to a veteran's inability to perform the eight tasks and activities listed in current § 51.51(b), we would then determine whether the claim is eligible for a waiver under proposed § 51.51(b)(2). We note we will not continue to conduct a retrospective review if the claim was denied for a reason other than the eligibility requirement under current § 51.51(b). Therefore, if a claim was denied because the veteran did not meet the eligibility requirements in current § 51.51(a), VA would not grant a waiver under proposed § 51.51(b)(2).

The final requirement that would need to be met for a State home to receive retroactive per diem for care provided prior to the effective date of this regulation is in proposed § 51.42(c)(4). That provision would require the State home to submit to VA a completed VA Form 10–5588, State Home Report and Statement of Federal Aid Claimed, for each month that the State home provided domiciliary care to a veteran for whom the home is requesting a waiver. The form would cover only the veterans not originally included on the form when submitted previously for that month. This requirement would enable VA to make applicable retroactive per diem payments to State homes. VA Form 10–5588 is an invoice in VA's payment system and is required for State homes to receive payments. The submission of VA Form 10–5588 will enable VA to make a supplemental payment to State homes for veterans who meet the requirements for retroactive per diem.

We believe the changes discussed above will allow VA to provide retroactive per diem payments to a State home domiciliary if the requirements under proposed § 51.41(c)(1) through (4) are met, irrespective of when this rulemaking is effective.

**Section 51.51 Eligible Veterans—Domiciliary Care**

Section 51.51 specifies the Veterans on whose behalf State homes may receive per diem payments from VA for domiciliary care in State home domiciliaries. The criteria reflected in this section derive primarily from §§ 17.46(b) and 17.47(b)(2). VA determinations regarding which veterans on whose behalf VA may pay per diem payments for domiciliary care in State homes and which are eligible for domiciliary care in a VA domiciliary, and the factors considered by VA in making those determinations, are currently the same regardless of whether the domiciliary care is provided directly by VA or by a State home. See 38 U.S.C. 1741. As discussed below, under section 3007 of Public Law 116–315, VA is required to modify 38 CFR 51.51(b) to provide VA the authority to waive the requirements under current § 51.51(b) for a veteran to be eligible for per diem payments for domiciliary care at a State home if—

(1) the veteran has met not fewer than four of the requirements set forth in such section; or

(2) such waiver would be in the best interest of the veteran.

Current § 51.51(a)(2) substantively mirrors current § 17.47(b)(2), and for purposes of consistency, we propose amending § 51.51(a)(2) consistent with proposed § 17.47(b)(2). We note that the addition of these factors that must be considered when determining if a veteran has no adequate means of support would not affect the waiver authority granted by Public Law 116–315, section 3007(a). Some of the factors in proposed §§ 51.51(a)(2) and (b)(1) overlap. For example, a veteran's ability to provide self-care in proposed paragraph (a)(2) and a veteran's ability to perform daily ablutions, dress or feed oneself in proposed paragraph (b)(1). However, the factors listed under proposed § 51.51(a)(2) are focused, in part, on any medical conditions or disabilities that might impact a veteran's ability to live independently; whereas the factors listed under proposed § 51.51(b) are tasks that a veteran must be able to perform and would thus be indicative of a veteran's ability to live independently. We believe that any requirement waived under proposed § 51.51(b) would be indicative of a veteran's inability to live independently. Therefore, a factor waived under proposed § 51.51(b)(2) could be considered under the proposed factors in proposed § 51.51(a)(2) to determine whether a veteran has no means of adequate support.

Current § 51.51(b) mirrors current § 17.46(b)(2), listing tasks and abilities that a veteran must exhibit to be eligible for domiciliary care. Public Law 116–315, section 3007(a) states that notwithstanding 38 U.S.C. 1741, the Secretary of Veterans Affairs shall modify 38 CFR 51.51(b) (or successor regulations), to provide the Secretary the authority to waive the requirements under § 51.51(b) for a veteran to be eligible for per diem payments for domiciliary care at a State home if (1) the veteran has met not fewer than four of the requirements set forth in such section; or (2) such waiver would be in the best interest of the veteran.

The authority to make decisions on eligibility for domiciliary level of care is exercised by the Chief of Staff of the VA medical center of jurisdiction, or designee. VA believes that this local VA official is in the best position to evaluate whether there is sufficient evidence to establish that an individual veteran is eligible for the purposes of payment of per diem for domiciliary care in a State home, and to know the capabilities and level of care provided by the State home domiciliary.

We propose revising § 51.51(b) by listing the tasks and activities a veteran must be able to perform for VA to pay the State home a per diem for domiciliary care on behalf of the veteran in a new paragraph (b)(1) and creating a new paragraph (b)(2) to implement the new authority in Public Law 116–315, section 3007(a) to waive the requirements in paragraph (b)(1).

Proposed § 51.51(b)(1) would list the tasks and activities a veteran must be able to perform for VA to pay per diem on behalf of the veteran to the State home for domiciliary care. This list is similar to current 51.51(b), with differences discussed below, and would mirror that in proposed § 17.46(b)(2), with one substantive difference discussed below. Proposed § 17.46(b)(2)(vii) states that a veteran eligible for domiciliary care must be able to make rational and competent decisions as to his or her desire to remain or leave the facility. This is an important requirement for domiciliary care provided via a day hospital residential rehabilitation treatment model, as the primary goal is rehabilitation. However, State homes are residential sites operated for veterans by the States. In those cases, authority to make decisions as to whether to remain or leave the facility is governed by State law. In proposed 51.51(b)(1)(vii), we would keep the same language in current 51.51(b)(8); however, we would add additional language to address that in cases of veterans who lack the general capacity needed to decide to remain in or to leave a State Home, which is a community residential placement decision, their legal representative as designated under State law is empowered to make this decision behalf of the veteran.

In our discussion of the rationale for removing the requirement in current § 17.46(b)(2)(vii) that a veteran eligible for domiciliary care be able to share in some measure, however slight, in the maintenance and operation of the facility, we stated that the purpose of providing domiciliary care is treatment and rehabilitation, and requiring the veteran to share in the maintenance and operation of the facility is inconsistent with that purpose. As noted, we likewise propose removing this similar requirement found in current § 51.51(b)(7) for eligibility for per diem for domiciliary care provided by a State home. The requirement that the veteran must ''participate in some measure, however slight, in work assignments that support the maintenance operation of the State home'' is inconsistent with the mission and goals of the State home domiciliary program, to include domiciliary care as a temporary home as one of its primary goals. Further, some States prohibit their State homes from requiring any type of work from domiciliary residents. By removing this requirement, the list of tasks that a veteran must be capable of performing, except in those instances where the Chief of Staff of the VA medical center of jurisdiction, or designee, grants a waiver under paragraph (b)(2), is reduced from eight to seven tasks. Therefore, we believe that the removal of this requirement neither diminishes the effect nor is contrary to the new waiver authority granted by Public Law 116–315, section 3007(a).

In proposed 38 CFR 51.51(b)(2), we would state that the Chief of Staff of the VA medical center of jurisdiction, or designee, may waive the requirements in § 51.51(b)(1) for purposes of per diem for domiciliary care in a State home on or after January 5, 2021, if the veteran is able to perform not fewer than four of the requirements set forth in such paragraph; or such waiver would be, based on a clinical determination, in the best interest of the veteran because receipt of domiciliary care in the particular State home would likely be beneficial to the veteran. This clinical determination must consider whether receiving domiciliary care in the State home would significantly enhance the veteran's ability to live safely, would support the veteran's potential progress in rehabilitation, if such potential exists, and would create an environment that supports the health and well-being of the veteran. In granting a waiver of paragraph (b)(1) of this section, the Chief of Staff of the VA medical center of jurisdiction, or designee, must make a finding that the State home has the capability to provide the domiciliary care that the veteran needs.

We would use January 5, 2021, as this is consistent with the effective date of Public Law 116–315, section 3007(a) granting this authority. Also, we would include language to define ''in the best interest'' as used in this paragraph. VA believes that determinations of ''in the best interest'' must be a clinical determination, guided by VA health professionals' judgment on what care will best support the health and well-being of the veteran—including that which offers the best opportunity for recovery and rehabilitation, whenever possible. In some cases, a clinician may determine that other care and maintenance options would better promote the veteran's functional capabilities and potential for greater independence, or that a higher level of care may better ensure that the veteran receives the level of care necessary. Further, we would require the Chief of Staff of the VA medical center of jurisdiction, or designee, to make a finding that the State home has the capability to provide the domiciliary care that the veteran needs to clearly indicate that the decision to waive a particular regulatory requirement for domiciliary care cannot be made independent of an understanding of the State home's capabilities and level of care provided to domiciliary residents. State home domiciliaries vary in the type of resident that can be admitted, based on factors such as building structure, staffing expertise, staffing levels, and availability of support equipment. If the veteran's medical status is beyond the scope of care that can be provided by the State home domiciliary to which admission is sought, we do not believe VA should encourage the State home domiciliary to accept the veteran as a resident by paying the home a per diem for the veteran. If waiver is requested of an eligibility requirement in proposed 38 CFR 51.51(b)(1) VA must make a determination that the State home domiciliary is capable of providing the level of care necessary if such waiver is granted. Evaluating the capabilities provided in the State home domiciliary is an integral element that must be considered when determining to grant a waiver. Although this is not explicitly stated in current § 51.51, such

consideration has been longstanding VA policy and practice.

**Section 51.300 Resident Rights and Behavior; State Home Practices; Quality of Life**

Current 38 CFR 51.300(b) states that the State home resident must participate, based on his or her ability, in some measure, however slight, in work assignments that support the maintenance and operation of the State home. It requires the State home to create a written policy to implement the work requirement and integrate the work requirement into a comprehensive care plan. As we would remove the requirement that a State home resident participate to some degree in work in support of maintenance and operation of the State home, we likewise propose removing this paragraph and marking it as reserved.

**Paperwork Reduction Act**

This proposed rule includes provisions constituting a revised collection of information under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521) that requires approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collection of information it approves. VA 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. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the new collection of information contained in this rulemaking should be submitted through *www.regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AR61, Determining Eligibility for Domiciliary Care'' and should be sent within 60 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: *www.reginfo.gov/public/do/PRAMain.*

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on a new collection of information in—

- Evaluating whether the new collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the new collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The collection of information associated with this rulemaking contained in 38 CFR 51.42(c) is described immediately following this paragraph, under its respective title. This new information collection will be added to OMB control number 2900–0160, containing State home program forms 10–5588, 10–5588A, and 10–10SH, which has a current PRA clearance.

*Title:* List of Veteran Names for Claim Reconsideration.

*OMB Control No:* 2900–0160.

*CFR Provision:* 38 CFR 51.42(c).

- *Summary of collection of information:* The revised collection of information in proposed 38 CFR 51.42(c) would allow State homes to submit a list of veteran names whose completed forms were received by VA on or after January 5, 2021, but VA subsequently denied the State home's request for payment for the care of these veterans pursuant to current § 51.51(b), to VA for consideration of a waiver under proposed § 51.51(b)(2). This is a time limited opportunity—the list of names must be received within 30 days of the effective date of the rule.
- *Description of need for information and proposed use of information:* The information will be used by VA to conduct retrospective reviews of denied applications and allow VA to process applicable retroactive payments in a timely manner.
- *Description of likely respondents:* State home administrators and State homes that have admitted veterans in reliance on the authority granted by Public Law 116–315, section 3007(a) and that want these veterans considered for a waiver under proposed § 51.51(b)(2).
- *Estimated number of respondents:* Two.
- *Estimated frequency of responses:* Once.
- *Estimated average burden per response:* 90 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 3 hours.
- *Estimated cost to respondents per year:* VA estimates the one-time annual cost to respondents to be $177.21. Using VA's average annual number of respondents, VA estimates the total information collection burden cost to be $177.21 per year * (3 burden hours for × $59.07 per hour).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) mean hourly wage for ''General and Operations Managers'' of $59.07 per hour. This information is available at *https://www.bls.gov/oes/current/oes_nat.htm#13-0000.*

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would directly affect only individuals who are veterans applying for domiciliary care as well as States operating State homes and would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

**Executive Orders 12866, 13563, and 14094**

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in

Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Assistance Listing**

The Assistance Listing number and title for the program affected by this document is 64.014—Veterans State Domiciliary Care.

**List of Subjects**

*38 CFR Part 17*

Administrative practice and procedure, Claims, Domiciliary care, Government contracts, Health care, Health facilities, Mental health programs, Reporting and recordkeeping requirements, Veterans.

*38 CFR Part 51*

Administrative practice and procedure, Claims, Domiciliary care, Government contracts, Health care, Health facilities, Mental health programs, Reporting and recordkeeping requirements, Veterans.

**Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, approved this document on August 24, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Consuela Benjamin,**

*Regulation Development Coordinator Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR parts 17 and 51 as follows:

## PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by adding an entry in numerical order for § 17.47 to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Section 17.47 is also issued under 38 U.S.C. 1701, 1710, 1721, 1722, 1729, 3104(a)(9), 7333, Public Law 99–272; 42 U.S.C. 1396 *et seq.*

* * * * *

**§ 17.43 [Amended]**

■ 2. Amend § 17.43 by removing the words ''or domiciliary'' in the section heading and introductory text.

**§ 17.46 [Amended]**

■ 3. Amend § 17.46 by removing paragraph (b)(2)(vii), and redesignating paragraph (b)(2)(viii) as paragraph (b)(2)(vii).

■ 4. Amend § 17.47 by:

■ a. Removing the authority citations immediately following paragraphs (b)(1), (b)(2), (c), (d)(1)(i), (d)(1)(iii), (d)(2), (d)(3), (d)(4), (d)(5), (e)(1), (e)(2), (f), (g)(1)(ii), (g)(2)(iv), (i)(2)(vii), (j), and (k).

■ b. Revise paragraph (b)(2).

■ c. Remove and reserve paragraph (c).

Revisions read as follows:

**§ 17.47 Considerations applicable in determining eligibility for hospital care, medical services, nursing home care, or domiciliary care.**

* * * * *

(b) * * *

(2) For purposes of determining eligibility for domiciliary care under § 17.46(b)(2) of this part, the phrase no adequate means of support refers to an applicant for or recipient of domiciliary care whose annual income exceeds the maximum annual rate of pension for a veteran in receipt of regular aid and attendance, as defined in 38 U.S.C. 1503, whose deficits in health and/or functional status may render the veteran incapable of achieving or sustaining independence in the community as determined by the Chief of Staff of the VA medical center, or designee. In assessing a veteran's ability to achieve or sustain independence in the community, the Chief of Staff or designee will make a determination of eligibility for domiciliary care based on objective evidence, considering factors including, but not limited to:

(i) the impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's safety in the community;

(ii) the impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's ability to provide self-care;

(iii) the availability of community or family support systems;

(iv) the impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's ability to access and utilize community support systems;

(v) the risk of loss of housing in the community;

(vi) the risk of loss of the veteran's income;

(vii) access to outpatient mental health and substance use disorder care; and

(viii) the current effectiveness of any outpatient mental health and substance use disorder care provided to the veteran.

(c) [Reserved]

* * * * *

## PART 51—PER DIEM FOR NURSING HOME, DOMICILIARY, OR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

■ 5. The authority citation for part 51 is amended by revising § 51.42, and adding an entry in numerical order for § 51.51 to read as follows:

* * * * *

Section 51.42 also issued under 38 U.S.C. 510, 1744, and Public Law 116–315 section 3007.

* * * * *

Section 51.51 also issued under Public Law 116–315 section 3007.

* * * * *

■ 6. Amend § 51.42 by adding paragraph (c) to read as follows:

**§ 51.42 Payment procedures.**

* * * * *

(c) *Retroactive payments.* VA will make per diem payments under this part retroactive to the date specified by paragraph (b)(3) of this section, or January 5, 2021, whichever date is later, if all the following are met:

(1) Within 30 calendar days of [EFFECTIVE DATE OF FINAL RULE]] the State home provides VA a written list of veterans' names for whom completed forms were received by VA

on or after January 5, 2021, and the State home requests that VA consider them for a waiver under § 51.51(b)(2);

(2) With respect to the veterans on the written list under paragraph (c)(1), VA denied the State's request for per diem for the veterans when their forms were originally submitted and the denial was solely because the veteran did not meet the requirements under 38 CFR 51.51(b) (2021);

(3) Upon VA review, the veteran would have received a waiver under § 51.51(b)(2) if that paragraph had been in effect when the request for per diem was originally submitted; and

(4) The State home submits to VA a completed VA Form 10–5588, State Home Report and Statement of Federal Aid Claimed, for each month that the State home provided domiciliary care to a veteran for whom the home is requesting a waiver. The form would only cover the veterans not originally included on the form when submitted previously for that month.

■ 7. Amend § 51.51 by revising paragraphs (a)(2) and (b) to read as follows:

**§ 51.51 Eligible veterans—domiciliary care.**

(a) * * *

(1) * * *

(2) A veteran who VA determines has no adequate means of support. When an applicant's annual income exceeds the rate of pension described in paragraph (a)(1) of this section, VA will determine if the applicant has no adequate means of support. This determination will be made through an assessment of the veteran's deficits in health or functional status that may render the veteran incapable of achieving or sustaining independence in the community as determined by the Chief of Staff of the VA medical center of jurisdiction, or designee. Assessment of whether the veteran has no adequate means of support will be based on objective evidence that considers factors that are inclusive of but not limited to:

(i) the impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's safety in the community;

(ii) the impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's ability to provide self-care;

(iii) the availability of community or family support systems;

(iv) the impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's ability to access and utilize community support systems;

(v) the risk of loss of housing in the community;

(vi) the risk of loss of the veteran's income;

(vii) access to outpatient mental health and substance use disorder care; and

(viii) the current effectiveness of any outpatient mental health and substance use disorder care provided to the veteran.

(b) (1) For purposes of this section, the eligible veteran must be able to perform the following:

(i) Daily ablutions, such as brushing teeth, bathing, combing hair, and body eliminations, without assistance.

(ii) Dress himself or herself with a minimum of assistance.

(iii) Proceed to and return from the dining hall without aid.

(iv) Feed himself or herself.

(v) Secure medical attention on an ambulatory basis or by use of a personally propelled wheelchair.

(vi) Have voluntary control over body eliminations or have control by use of an appropriate prosthesis.

(vii) Make rational and competent decisions as to the veteran's desire to remain in or leave the State home; or, if the veteran lacks the general capacity to make this residential care placement decision, as defined by State law, then the veteran's legal representative designated in accordance with State law, is authorized to make this decision on behalf of the veteran.

(2) The Chief of Staff of the VA medical center of jurisdiction, or designee, may waive the requirements in paragraph (b)(1) of this section for purposes of payment of per diem for domiciliary care in a State home on or after January 5, 2021, if the veteran is able to perform not fewer than four of the requirements set forth in such paragraph; or such waiver would be, based on a clinical determination, in the best interest of the veteran because receipt of domiciliary care in the particular State home would likely be beneficial to the veteran. This clinical determination must consider whether receiving domiciliary care in the State home would significantly enhance the veteran's ability to live safely, would support the veteran's potential progress in rehabilitation, if such potential exists, and would create an environment that supports the health and well-being of the veteran. In granting a waiver of paragraph (b)(1) of this section, the Chief of Staff of the VA medical center of jurisdiction, or designee, must make a finding that the State home has the capability to provide the domiciliary care that the veteran needs.

**§ 51.300 [Amended]**

■ 8. Amend § 51.300 by removing and reserving paragraph (b).

[FR Doc. 2023–18921 Filed 8–31–23; 8:45 am]

**BILLING CODE 8320–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2022–0391; FRL–11368–01–R4]**

### Air Plan Approval; North Carolina; Revisions to Miscellaneous Particulate Matter Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of North Carolina through the North Carolina Division of Air Quality (NCDAQ) via a letter dated April 13, 2021. The SIP revision seeks to modify the State's emission control standards by amending several air quality rules and removing a redundant rule for electric utility boilers. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before October 2, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0391, at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Pearlene Williams-Miles, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303–8960. The telephone number is (404) 562–9144. Ms. Williams-Miles can also be reached via electronic mail at *WilliamsMiles.Pearlene@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Overview

EPA is proposing to approve a SIP revision submitted by North Carolina on April 14, 2021,[1] seeking to amend various air quality rules and to remove one rule from the North Carolina SIP.[2] Specifically, the SIP revision addresses State regulations amended in 15A North Carolina Administrative Code (NCAC) Subchapter 02D. The submission includes changes to multiple rules in Sections .0400 and .0500 of Subchapter 02D and the removal of Rule 02D .0536, *Particulate Emissions from Electric Utility Boilers.*[3] To support the request to remove Rule 02D .0536 from the SIP, the submission includes technical support materials to demonstrate that the removal of the rule would not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA.[4]

EPA's analysis of North Carolina's April 13, 2021, SIP revision is organized into two parts under Section II. Section II.A provides information and analysis relevant to the amended rules, and Section II.B provides the background and analysis for the removal of Rule 02D .0536.

## II. Analysis of North Carolina's April 14, 2021, SIP Revision

### *A. Amended Rules*

North Carolina submitted changes to several rules within Subchapter 2D Sections .0400 and .0500 which do not alter the meaning of or make significant changes to those rules. Specifically, the following rules were submitted with changes to reformat equations and regulatory citations, make minor language edits, correct typographical errors, amend punctuation, and make clarifying edits: Rule 02D .0403, *Total Suspended Particulates;* Rule 02D .0501, *Compliance with Emission Control Standards;* Rule 02D .0504, *Particulates from Wood Burning Indirect Heat Exchangers;* Rule 02D .0506, *Particulates from Hot Mix Asphalt Plants;* Rule 02D .0507, *Particulates from Chemical Fertilizer Manufacturing Plants;* Rule 02D .0508, *Particulates from Pulp and Paper Mills;* Rule 02D .0509, *Particulates from Mica and Feldspar Processing Plants;* Rule 02D .0510, *Particulates from Sand, Gravel, or Crushed Stone Processes;* Rule 02D .0511, *Particulates from Lightweight Aggregate Processes;* 02D .0512, *Particulates from Wood Products Finishing Plants;* Rule 02D .0513, *Particulates from Portland Cement Plants;* Rule 02D .0514, *Particulates from Ferrous Jobbing Foundries;* and Rule 02D .0515, *Particulates from Miscellaneous Industrial Processes.* Certain changes to these rules are described below.

1. Rule 02D .0501, Compliance With Emission Control Standards

Rule 02D .0501, *Compliance with Emission Control Standards,* is revised in paragraph (d)(1)(D) to clarify that the review of an application for the proposed mix of alternative controls and the enforcement of a resulting permit will not require expenditures on the part of the State more than five times that which would otherwise be required for review and enforcement of other permits. Additionally, in paragraph (d)(2), a weblink is added to allow access to the SIP on the DAQ website. Paragraph (e) is revised to clarify that any changes made to the permit of a facility invoking paragraph (d) will be submitted to EPA to consider the changes' approvability.

2. Rule 02D .0504, Particulates From Wood Burning Indirect Heat Exchangers

Rule 02D .0504, *Particulates from Wood Burning Indirect Heat Exchangers,* is revised at paragraph (a) to clarify that Rule 02D .0504 applies only to equipment that burns 100 percent wood and to address text deleted from paragraph (f) by stating that equipment that burns wood and other fuels in combination is subject to Rule 02D .0503, *Particulates from Fuel Burning Indirect Heat Exchangers.*

Rule 02D .0504 is also revised at paragraph (e) to prohibit a change in the allowable emission limit for wood burning indirect heat exchangers with previously established allowable emission limits due to the removal of a wood burning indirect heat exchanger. This change means that the emission limit will remain more stringent in this scenario (*i.e.,* where a wood burning indirect heat exchanger has been removed but not replaced) because whereas a lower heat input (resulting from such removal) would otherwise result in a higher emission limit according to the equation in paragraph (c), the limit is not to be adjusted with such removal. Next, language is added to specify that for indirect heat exchangers constructed after, or in conjunction with, the removal of an existing unit, the maximum heat input of the removed wood burning indirect heat exchanger shall no longer be considered in the determination of the allowable emission limit for any wood burning indirect heat exchanger constructed after or in conjunction with the removal. In this scenario (*i.e.,* where a new unit is constructed either contemporaneously with the removal of an existing unit or after the existing unit has been removed), the emission limit is to be updated in accordance with the equation in paragraph (c). This change clarifies the applicability of the change regarding removed indirect heat exchangers and maintains the stringency of the existing rule with respect to newly constructed indirect heat exchangers.

Paragraph (e) is also revised to add language pertaining to facilities or institutions for which the indirect heat exchanger is utilized primarily for ''comfort heat.'' Specifically, the new language states that for those facilities and institutions, only those wood burning indirect heat exchangers ''located in the same power plant or building or otherwise physically interconnected, such as common flues, steam, or power distribution line'' are used to determine the total heat input to calculate the corresponding PM emission limit. This change aligns Rule 02D .0504 with existing language in Rule 02D .0503(e) (addressing PM emissions from fuel burning indirect heat exchangers), which has always treated units purposed for comfort heat differently. This change is meant to make paragraph (e) consistent with the definition of ''plant site'' at subparagraph .0504(a)(3) for units whose primary wood burning capacity is for comfort heat, such that only those units in the same power plant or building or otherwise physically interconnected are treated as units at the same ''plant site.'' North Carolina

[1] EPA notes that the April 14, 2021, submission was received under a cover letter dated April 13, 2021. For clarity, throughout this document EPA will refer to the April 14, 2021, submission by its cover letter date of April 13, 2021.

[2] The April 13, 2021, submittal contains revisions to other North Carolina SIP-approved rules that are not addressed in this document. EPA will act on those rule changes in separate rulemakings.

[3] EPA will not act on Rule 02D .0503, *Particulates from Fuel Burning Indirect Heat Exchangers,* since this section was withdrawn from EPA consideration in a letter dated January 17, 2023, which is in the docket of this notice of proposed rulemaking (NPRM).

[4] *See* CAA section 110(l).

explained in a clarification letter dated January 17, 2023, which is in the docket for this NPRM, that it added the text to ''clarify instances of when such units whose primary wood burning capacity is for providing comfort heat would be considered 'functionally dependent' in their operations under the definition of plant site in 02D .0504(a)(3)(C).'' NCDAQ notes that units which are otherwise ''interconnected'' would satisfy the criterion of being ''functionally dependent'' at .0504(a)(3)(C). This treatment of these indirect heat exchangers reflects the fact that units primarily used for comfort heat have a more limited purpose and should be treated collectively to the extent they are located together or otherwise interconnected, but not if they are on adjacent properties and are not heating the same buildings or connected to the same power distribution line. Therefore, as explained by NCDAQ,[5] the addition of the text does not change the emission limits set forth in paragraph (c).

3. Rule 02D .0506, Particulates From Hot Mix Asphalt Plants

Rule 02D .0506, *Particulates from Hot Mix Asphalt Plants,* is revised at paragraph (a) to specify that the allowable emissions rates apply to emissions originating from the stack or chimney of hot mix asphalt batch plants regulated by this rule.[6] This is a clarifying amendment meant to recognize that there could be fugitive emissions, which, by definition, would not pass through the stack or chimney. Paragraph (c) in the SIP-approved version of the rule states that any non-process fugitive emissions are covered by Rule 02D .0540, *Particulates from Fugitive Non-Process Dust Emission Sources,* which covers ''particulate matter that is not collected by a capture system and is generated from areas such as pit areas, process areas, haul roads, stockpiles, and plant roads,'' as defined in Rule 02D .0540.

The revision to Rule 02D .0506 also reorders some of the paragraphs. Paragraph (b) is reordered as paragraph (c). A new paragraph (b) is added to establish a 20 percent opacity limit for all hot mix asphalt plants. The requirement that fugitive process dust control systems (for their drying, conveying, classifying, and mixing equipment) be controlled in accordance with the opacity provisions in Rules 02D .0521, *Control of Visible Emissions,* and 02D .0524, *New Source Performance Standards,* is removed from paragraph (c), as reordered, and sources are instead required to be equipped with scavenger process dust control systems that must exhaust through a stack or vent and be operated in a manner to comply with requirements established in paragraphs (a) and (b). Under the SIP, fugitive process dust emissions from hot mix asphalt plants are regulated by Rule 02D .0521, with some sources subject to a 20 percent opacity standard and others a 40 percent opacity standard depending on their date of manufacture, or Rule 02D .0524 which references Federal new source performance standards. The purpose of adding paragraph (b) is to require all hot mix asphalt plants, which are now required to have scavenger process dust control systems for their fugitive process emissions, to comply with an opacity standard of 20 percent, regardless of when they were constructed. The current SIP-approved paragraph (c), which states that fugitive non-process dust emissions are controlled by Rule 02D .0540, *Particulates from Fugitive Dust Emission Sources,* is also reordered as paragraph (d).

In paragraph (c), as reordered, there are changes to the language concerning the process dust control system. First, the SIP-approved version of the paragraph describes the control as a ''fugitive process dust control system,'' and the updated term in the revised version—''scavenger process dust control system''—simply reflects that the dust control system is designed to collect, control, and vent the process dust emissions. Next, the SIP-approved language stating that these systems ''shall be operated and maintained in such a manner as to reduce to a minimum the emission of particulate matter from any point other than the stack outlet'' is updated to say the dust control system ''shall exhaust through a stack or vent and shall be operated and maintained in such a manner as to comply with Paragraphs (a) and (b)'' of 02D .0506. The paragraph, as revised, no longer mentions reducing emissions from any point other than the stack because the dust control system is designed to collect and process these emissions through the stack or vent, thereby specifically reducing any such fugitive emissions. The new requirement that the system be operated to comply with paragraphs (a) and (b) means that the system must meet both the particulate matter (PM) emission limit and visibility requirements of the rule.

The revised version of Rule 02D .0506 also includes a new paragraph (e), which provides that any fugitive emissions not otherwise covered by 02D .0506 are not to exceed 20 percent opacity. EPA is not acting on the removal of the word ''elsewhere,'' in paragraph (e), however, the Agency is acting on the remaining text in the paragraph.[7]

4. Rule 02D .0510, Particulates From Sand, Gravel or Crushed Stone Processes

Rule 02D .0510, *Particulates from Sand, Gravel or Crushed Stone Processes,* is revised to provide examples of measures that owners or operators of sand, gravel, or crushed stone operations could make to ''reduce to a minimum any PM becoming airborne.'' Specifically, paragraph (a) is revised to include examples of possible control measures: ''such as application of a dust or wet suppressant, soil stabilizers, covers, or add-on particulate control devices.'' This is a noncomprehensive, illustrative list of possible controls to meet the requirement to minimize PM emissions. As such, this additional language clarifies but does not change the meaning of the rule.

5. Rule 02D .0511, Particulates From Lightweight Aggregate Processes

Rule 02D .0511, Particulates From Lightweight Aggregate Processes, is revised at paragraph (a) to provide one example of a measure—wet suppression—that owners or operators of a lightweight aggregate process could take to ''reduce to a minimum any PM becoming airborne.'' As such, this additional language clarifies but does not change the meaning of the rule. Paragraph (d) is also revised to remove the statement that ''[t]he 95 percent reduction shall be by air pollution control devices.'' This paragraph requires that PM from any stack serving lightweight aggregate kilns or dryers ''shall be reduced by at least 95 percent by weight before being discharged to the atmosphere.'' This reduction requirement remains in place; only the specification as to the means of reduction, not the control requirement itself, is changing.

[5] See the January 17, 2023, clarification letter from NCDAQ, which is included in the docket for this NPRM.

[6] In addition to the changes outlined in this Section II.A.3, the State also removed paragraph (f) in the November 1, 2020, state-effective rule amendments at Rule 02D .0506. EPA never approved paragraph (f) into the North Carolina SIP, therefore, there is no EPA action requested with respect to this paragraph.

[7] EPA will not act on the removal of the term ''elsewhere,'' in Rule 02D .0506(e) since the removal of this word was withdrawn from EPA consideration in a letter dated January 17, 2023, which is in the docket for this NPRM.

6. Rule 02D .0512, Particulates From Wood Products Finishing Plants

Rule 02D .0512, *Particulates from Wood Products Finishing Plants,* is revised to clarify that collectors and duct work must be properly designed and adequate to collect PM to the maximum extent practicable and that Commission approval of other devices proposed for meeting the requirements of Rule 02D .0512 shall occur on a case-by-case basis. The SIP-approved language states that ''such other devices as approved by the Commission'' can be utilized to collect and vent PM. Therefore, this additional language regarding other devices clarifies, but does not change, the meaning of the rule.

7. Rule 02D .0513, Particulates From Portland Cement Plants

Rule 02D .0513, *Particulates from Portland Cement Plants,* is revised at paragraph (a)(1) to remove the statement that ''the 99.7 percent reduction shall be by air pollution control devices.'' This paragraph requires that PM from any Portland cement kiln ''shall be reduced by at least 99.7 percent by weight before being discharged to the atmosphere.'' This reduction requirement remains in place; only the specification as to the means of reduction, not the control requirement itself, is changing.

For the reasons discussed above, the changes described in this Section II.A would not interfere with any applicable requirement concerning attainment and RFP or any other applicable CAA requirement, consistent with section 110(l) of the CAA.

*B. Removal of 02D .0536, Particulate Emissions From Electric Utility Boilers*

On January 24, 1983, and February 21, 1983, North Carolina submitted Rule 02D .0536, *Particulate Emissions from Electric Utility Boilers,* to EPA for incorporation into the SIP. Subsequently, North Carolina supplemented the submissions on December 17, 1985, and June 19, 1987. The regulation prescribes PM emission limits for thirteen electric utility power plants in the State belonging to Duke Power Company (Duke) and Carolina Power and Light (CP&L) relative to Rule 02D .0503, *Particulates from Fuel-Burning Indirect Heat Exchangers.* EPA approved portions of and disapproved other portions of Rule 02D .0536 in 1988.[8] *See* 53 FR 11068 (April 5, 1988). The approved portions of the regulation set new: relaxed short-term emission limits for eight of the plants, retaining, although recodifying, the emission limit for one additional plant; stack testing requirements; and requirements for submittal of malfunction abatement plans.[9]

On July 9, 2020, North Carolina repealed Rule 02D .0536 to remove from its rules requirements that had become obsolete. EPA is proposing to approve NCDAQ's request in the April 14, 2021, submission to remove the Rule from the North Carolina SIP. Further analysis is provided below.

1. EPA's Analysis of North Carolina's Non-Interference Demonstration

i. Particulate Matter

In North Carolina's April 14, 2021, SIP revision, the State concluded that the removal of the Rule 02D .0536, *Particulate Emissions from Electric Utility Boilers,* would not interfere with any applicable requirement concerning attainment of the National Ambient Air Quality Standards. Rule 02D .0536 contains requirements less stringent than other sections of the North Carolina SIP. Specifically, paragraph (c) of Rule 02D .0503 contains PM emission limitations that are at least as stringent as those of Rule 02D .0536. NCDAQ confirms in its submittal that many units subject to Rule 02D .0536 have been permanently shut down, which include five units at the Buck facility, four units at the Cliffside facility, three units at the Dan Rivers facility, four units at the Riverbend facility, and two units at the Cape Fear facility.[10] The remaining units are subject to the more or equally stringent PM emission limits of Rule 02D .0503(c), as described in North Carolina's April 13, 2021, SIP submittal and shown in the table below.

| Unit identification | PM emission limits in Rule 02D .0536 (lb/MMBtu) | PM emission limits in Rule 02D .0503 (lb/MMBtu) |
|---|---|---|
| Allen 1 | 0.25 | 0.15 |
| Allen 2 | 0.25 | 0.15 |
| Allen 3 | 0.25 | 0.13 |
| Allen 4 | 0.25 | 0.13 |
| Allen 5 | 0.25 | 0.13 |
| Belews Creek 1 | 0.15 | 0.10 |
| Belews Creek 2 | 0.15 | 0.10 |
| Cliffside 5 | 0.25 | 0.11 |
| Marshall 1 | 0.20 | 0.12 |
| Marshall 2 | 0.20 | 0.12 |
| Marshall 3 | 0.18 | 0.11 |
| Marshall 4 | 0.18 | 0.11 |
| Roxboro 1 | 0.25 | 0.12 |
| Roxboro 2 | 0.16 | 0.11 |
| Roxboro 3 | 0.10 | 0.10 |

EPA has evaluated the State's analysis and proposes to agree with North Carolina's conclusion that removal of Rule 02D .0536, *Particulate Emissions from Electric Utility Boilers,* from the SIP would not interfere with any applicable requirement concerning attainment and RFP or any other applicable CAA requirement.

[8] EPA approved changes to Rule 02D .0536 in 1996 and 2019. *See* 61 FR 5689 (February 14, 1996) and 84 FR 14019 (April 9, 2019).

[9] The portions not approved in the 1988 action included emission and opacity limits for four plants—CP&L's Asheville, Lee, Sutton, and Weatherspoon facilities—which were to be acted upon in a separate rulemaking, and the annual opacity limits for all plants, which were disapproved.

[10] EPA notes that the removal of the Rule 02D .0536 emission limits for CP&L's Asheville, Lee, Sutton, and Weatherspoon facilities is not before EPA for consideration because these emission limits were disapproved by EPA on June 16, 1988, and are therefore not part of the North Carolina SIP. *See* 53 FR 22486 and 40 CFR 52.1781(c). EPA also notes that each of these units has since shut down, as reflected in the April 13, 2021, submittal.

ii. Quality Assurance Measures

Rule 02D .0536 also addresses measures required for development and implementation of a quality assurance program. The program covers the requirements for opacity monitoring systems and measuring opacity. In North Carolina's April 14, 2021, SIP revision, the State notes that the removal of Rule 02D .0536 does not constitute a relaxation of requirements for electric generating units since the affected units are still regulated by Rule 02D .0613, *Quality Assurance Program,* which is also SIP-approved. Like Rule 02D .0536, Rule 02D .0613 establishes that the Director may require the submission of a quality assurance program under certain conditions. The quality assurance program must consist of procedures and frequencies for calibration, standards, traceability, operational checks, maintenance, auditing, data validation, and a schedule for implementing the quality assurance program. Accordingly, EPA proposes that removal of the Rule 02D .0536 does not alter the requirements of the SIP in this regard.

iii. Malfunction Abatement Plans

North Carolina's repeal of Rule 02D .0536 removes requirements at paragraph (h) for malfunctions or equipment failures. Because the associated PM limits of Rule 02D .0536 are proposed for removal from the SIP, as described above, these malfunction abatement plan provisions would no longer serve their original intended purpose and are not necessary. Therefore, EPA agrees with North Carolina's analysis that removal of paragraph (h) would not interfere with any applicable requirement concerning attainment, RFP, or any other applicable CAA requirement.

iv. Stack Testing Requirements

NCDAQ explains that the stack testing provision in Rule 02D .0536(d) provided the most practicable approach to demonstrating compliance when it was adopted on March 1, 1983, based on factors such as cost and time. However, to meet State and Federal requirements,[11] the emitting units affected by the repeal of Rule 02D .0536 have since undergone updates to more advanced monitoring systems that provide real-time emissions data; NCDAQ confirms in its SIP revision that all subject units have installed PM continuous emission monitoring systems. Furthermore, as noted above, because the PM limits of Rule 02D .0536 are proposed for removal from the SIP, these associated stack testing requirements would no longer serve their original intended purpose and are not necessary. Therefore, EPA is proposing to agree with the State's analysis that the removal of the stack testing provision with the repeal of Rule 02D .0536 will not interfere with any applicable requirement concerning attainment, RFP, or any other CAA requirement.

[11] *See* 15A NCAC 02D .0530, Prevention of Significant Deterioration, and 40 Code of Federal Regulations Part 63, Subpart UUUUU—National Emission Standards for Hazardous Air pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units identified in the SIP revision at Attachment 2—Supplemental Information.

## III. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Section II of this preamble, EPA is proposing to incorporate by reference the following air quality rules under 15A NCAC 02D, Air Pollution Control Requirements, state effective on November 1, 2020: Rules 02D .0403, *Total Suspended Particulates;* 02D .0501, *Compliance with Emission Control Standards;* 02D .0504, *Particulates from Wood Burning Indirect Heat Exchangers;* 02D .0506, *Particulates from Hot Mix Asphalt Plants;*[12] 02D .0507, *Particulates from Chemical Fertilizer Manufacturing Plants;* 02D .0508, *Particulates from Pulp and Paper Mills;* 02D .0509, *Particulates from Mica and Feldspar Processing Plants;* 02D .0510, *Particulates from Sand, Gravel or Crushed Stone Processes;* 02D .0511, *Particulates from Lightweight Aggregate Processes;* 02D .0513, *Particulates from Portland Cement Plants;* 02D .0514, *Particulates from Ferrous Jobbing Foundries;* and 02D .0515, *Particulates from Miscellaneous Industrial Processes.* Also in this document, EPA is proposing to remove Rule 02D .0536, *Particulate Emissions from Electric Utility Boilers,* from the North Carolina SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, the SIP generally available at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

[12] EPA is not proposing to act on the removal of the term ''elsewhere,'' in Rule 02D .0506(e) since the removal of this word was withdrawn from EPA consideration in a letter dated January 17, 2023, which is in the docket for this NPRM.

## IV. Proposed Action

For the reasons explained above, EPA is proposing to approve North Carolina's April 14, 2021, SIP revision seeking to amend various air quality rules and to remove Rule 02D .0536 from North Carolina's SIP.

## V. 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. *See* 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 proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 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 (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 NCDAQ did not evaluate EJ 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 EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed 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 proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 25, 2023.

**Carol Kemker,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2023–18707 Filed 8–31–23; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register
Vol. 88, No. 169
Friday, September 1, 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 required 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 October 2, 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.

**Farm Service Agency**

*Title:* Farm Loan Program (FLP)—Guaranteed Farm Loans.

*OMB Control Number:* 0560–0155.

*Summary of Collection:* FLP administers to make and service loans guaranteed to the eligible farmers and ranchers to comply with the regulations of 7 CFR part 762, Guaranteed Farm Loans and 7 CFR part 763, Land Contract Guaranteed Loans. The loans made and serviced include farm operating and farm ownership loans. FSA also provides guarantees of loans made by private sellers of a farm or ranch on a land contract sales basis; although this program is rarely used. The reporting requirements imposed on the public by the regulations at 7 CFR part 762 and 7 CFR part 763 are necessary to administer the Farm Loan Program guaranteed loan program.

*Need and Use of the Information:* FSA uses the forms and written evidence to collect needed information. The basis objective of the guaranteed loan program is to provide credit to applicants who are unable to obtain credit from lending institutions without a guarantee. The information collected is used to determine lender and loan applicant eligibility for farm loan guarantees, and to ensure the lender protects the Government's financial interest. The information FSA collects is needed to effectively administer the FSA guaranteed farm loan programs. The information is collected by the FSA loan official in consultation with participating lenders.

*Description of Respondents:* Farms; Business or other for-profit.

*Number of Respondents:* 9,063.

*Frequency of Responses:* Reporting: Other (when applying for loans).

*Total Burden Hours:* 154,631.

**Farm Service Agency**

*Title:* Farm Loan Program, General Program Administration.

*OMB Control Number:* 0560–0238.

*Summary of Collection:* Farm Loan Program (FLP) in the Farm Service Agency provides loans to family farmers to purchase real estate and equipment and finance agricultural production to comply the regulation of 7 CFR part 761, General Program Administration.

*Need and Use of the Information:* Information collections are submitted by applicants and borrowers to the local FSA office serving the county in which their business is headquartered. The information is necessary to provide supervised credit as legislatively mandated and is used by FSA to:

- Ensure that when loan funds or insurance proceeds are used for construction and development projects, work is completed according to applicable State and local requirements, and in a manner that protects the Government's financial interest.
- Ensure that the loan repayment plan is developed using realistic data, based on the operation's actual history and any planned improvements.
- Identify potential concerns limiting the success of the operation and develop a loan assessment outlining the course of action to be followed, to improve the operation so that commercial credit is available.

The general nature of a loan from FSA is very similar to that of any conventional commercial creditor. However, FSA applicants and borrowers tend to pose more of an economic risk of loss than those operations financed by commercial credit sources, as applicants must document that no other source of credit is available at the time of application. Legislation requires FSA to actively supervise these borrowers and provide credit counseling, management advice, and financial guidance. Also, FLP provides either a prompt payment or standard guarantee plan to sellers who enter into a land contract with a beginning or socially disadvantaged farmers to comply with the regulation of 7 CFR part 763, Land Contract Guarantee Loan but have not received any requests for land contract.

FLP is mandated to provide supervised credit; therefore, failure to collect the information, or collecting it less frequently, could result in the failure of the farm operation or loss of agency security property.

*Description of Respondents:* Business or other for-profit; farms.

*Number of Respondents:* 64,802.

*Frequency of Responses:* Reporting: On occasion; annually.

*Total Burden Hours:* 149,426.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2023–18965 Filed 8–31–23; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 2, 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.

**Foreign Agricultural Service**

*Title:* Quality Samples Program.

*OMB Control Number:* 0551–0047.

*Summary of Collection:* The Quality Samples Program is authorized by Section 5 of the Commodity Credit Corporation Charter Act, 15 U.S.C. 714c (f), which became effective on November 15, 1999. Section 5 provides that in the fulfillment of its purposes and in carrying out its annual budget programs submitted to and approved by the Congress pursuant to Chapter 91 of Title 31, the Corporation is authorized to use its general powers only to export or cause to be exported, or aid in the development of foreign markets for, agricultural commodities (other than tobacco), including fish and fish products, without regard to whether such fish are harvested in aquacultural operations. By this authority the program pays for U.S. commodity samples and shipping to foreign ports in order to demonstrate the quality of the U.S. product to industrial users who are unfamiliar with the product.

*Need and Use of the Information:* Under the USDA Quality Samples Program, information will be gathered from applicants desiring to receive grants under the program to determine the viability of request for resources to implement activities in foreign countries. The collected information will be used to develop effective grant agreements and assure that statutory requirements and program objectives are met.

*Description of Respondents:* Not-for-profit institutions; business or other for-profit; Federal Government.

*Number of Respondents:* 10.

*Frequency of Responses:* Recordkeeping; reporting: annually.

*Total Burden Hours:* 1,200.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2023–18974 Filed 8–31–23; 8:45 am]

**BILLING CODE 3410–10–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Census Scientific Advisory Committee

**AGENCY:** Census Bureau, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Census Bureau is giving notice of a meeting of the Census Scientific Advisory Committee (CSAC or Committee). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including decennial, economic, field operations, information technology, and statistics. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

**DATES:** The virtual meeting will be held on:

- Thursday, September 21, 2023, from 8:30 a.m. to 5 p.m. EDT, and
- Friday, September 22, 2023, from 8:30 a.m. to 2:30 p.m. EDT.

**ADDRESSES:** Please visit the Census Advisory Committee website at *https://www.census.gov/about/cac/sac/meetings/2023-09-meeting.html,* for the CSAC meeting information, including the agenda, and how to view the meeting.

**FOR FURTHER INFORMATION CONTACT:** Shana Banks, Advisory Committee Branch Chief, Office of Program, Performance and Stakeholder Integration (PPSI), *shana.j.banks@census.gov,* Department of Commerce, Census Bureau, telephone 301–763–3815. For TTY callers, please use the Federal Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Committee provides scientific and technical expertise to address Census Bureau program needs and objectives. The members of the CSAC are appointed by the Director of the Census Bureau. The Committee has been established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. app.

All meetings are open to the public. Public comments will be accepted in writing only to *shana.j.banks@census.gov* (subject line ''2023 CSAC Fall Meeting Public Comment''). A brief period will be set aside during the meeting to read public comments received in advance of 12 p.m. EDT, September 21, 2023. Any public comments received after the deadline will be posted to the website listed in the **ADDRESSES** section.

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: August 24, 2023.

**Shannon Wink,**

*Program Analyst, Policy Coordination Office, U.S. Census Bureau.*

[FR Doc. 2023–18927 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–840]**

### Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; 2021–2022

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) determines that producers and/or exporters of certain frozen warmwater shrimp (shrimp) from India made sales at less than normal value during the period of review (POR)

February 1, 2021, through January 31, 2022.

**DATES:** Applicable September 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Terre Keaton Stefanova or Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–6172, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

This review covers 187 producers and/or exporters of the subject merchandise. Commerce selected two mandatory respondents for individual examination: Megaa Moda Pvt Ltd. (Megaa Moda) and NK Marine Exports LLP (NK Marine).[1] The producers/exporters not selected for individual examination are listed in Appendix II.

On March 3, 2023, Commerce published the *Preliminary Results* and invited interested parties to comment.[2] For a complete description of the events that occurred since the *Preliminary Results,* see the Issues and Decision Memorandum.[3]

## Scope of the Order [4]

The merchandise subject to the *Order* is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.04, 0306.17.00.05, 0306.17.00.07, 0306.17.00.08, 0306.17.00.09, 0306.17.00.10, 0306.17.00.11, 0306.17.00.13, 0306.17.00.14, 0306.17.00.16, 0306.17.00.17, 0306.17.00.19, 0306.17.00.20, 0306.17.00.22, 0306.17.00.23, 0306.17.00.25, 0306.17.00.26, 0306.17.00.28, 0306.17.00.29, 0306.17.00.41, 0306.17.00.42, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.[5]

## Analysis of Comments Received

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

## Changes Since the Preliminary Results

Based on the comments received from interested parties, we made no changes to the margin calculations in the *Preliminary Results* for Megaa Moda and NK Marine. However, we did make changes to our calculation of the review-specific average rate assigned to the companies not selected for individual review.[6]

## Final Results of the Review

As a result of this review, we determine the following weighted-average dumping margins for the period February 1, 2021, through January 31, 2022:

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Megaa Moda Pvt Ltd | 7.92 |
| NK Marine Exports LLP | 1.43 |
| Companies Not Selected for Individual Review [7] | 3.88 |

## Review-Specific Rate for Companies Not Selected for Individual Review

The exporters or producers not selected for individual review are listed in Appendix II.

## Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), because Megaa Moda and NK Marine reported the entered value for their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by Megaa Moda or NK Marine for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[8]

For the companies that were not selected for individual review, we assigned an assessment rate based on the review-specific average rate, calculated as noted in the ''Final Results of the Review'' section, above. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[9]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

## Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse,

[1] *See* Memorandum, ''Selection of Additional Respondents for Individual Review,'' dated July 21, 2022.

[2] *See Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 13430 (March 3, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (February 1, 2005) (*Order*).

[5] For a complete description of the scope of the *Order, see* the *Preliminary Results* PDM.

[6] For further discussion, *see* Issues and Decision Memorandum at Comment 5.

[7] *See* Appendix II for a full list of these companies.

[8] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[9] *See* section 751(a)(2)(C) of the Act.

for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all-other manufacturers or exporters will continue to be 10.17 percent, the all-others rate established in the LTFV investigation.[10] These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Order**

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

[10] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 70 FR 5147, 5148 (February 1, 2005).

**Notification to Interested Parties**

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 25, 2023.

**Abdelali Elouaradia,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

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

I. Summary
II. Background
III. Discussion of the Issues
Comment 1: Calculating the Review-Specific Average Rate for Companies Not Selected for Review
Comment 2: Calculating Comparison Market Net Price for NK Marine
Comment 3: Excluding Certain Sales from the Home Market for Megaa Moda
Comment 4: Treating Certain Home Market Sales and Sales to the United States for Megaa Moda
Comment 5: Offsetting Interest Expenses with Short-Term Interest Income for Megaa Moda
IV. Recommendation

**Appendix II—Review-Specific Average Rate Applicable to Companies Not Selected for Individual Review**

1. Abad Fisheries
2. Accelerated Freeze Drying Co.
3. ADF Foods Ltd.
4. Albys Agro Private Limited
5. Al-Hassan Overseas Private Limited
6. Allana Frozen Foods Pvt. Ltd.
7. Allanasons Ltd.
8. Alps Ice & Cold Storage Private Limited
9. Amaravathi Aqua Exports Private Limited
10. Amarsagar Seafoods Private Limited
11. Amulya Seafoods
12. Anantha Seafoods Private Limited
13. Anjaneya Seafoods
14. Asvini Agro Exports
15. Ayshwarya Seafood Private Limited
16. B R Traders
17. Baby Marine Eastern Exports
18. Baby Marine Exports
19. Baby Marine International
20. Baby Marine Sarass
21. Baby Marine Ventures
22. Balasore Marine Exports Private Limited
23. BB Estates & Exports Private Limited
24. Bell Exim Private Limited
25. Bhatsons Aquatic Products
26. Bhavani Seafoods
27. Bhimraj Exports Private Limited
28. Bijaya Marine Products
29. Blue-Fin Frozen Foods Pvt. Ltd.
30. Blue Water Foods & Exports P. Ltd.
31. Blue Park Seafoods Pvt. Ltd.
32. Britto Seafood Exports Pvt Ltd.
33. Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co.
34. Canaan Marine Products
35. Capithan Exporting Co.
36. Cargomar Private Limited
37. Chakri Fisheries Private Limited
38. Chemmeens (Regd)
39. Cherukattu Industries (Marine Div)
40. Cochin Frozen Food Exports Pvt. Ltd.
41. Cofoods Processors Private Limited
42. Continental Fisheries India Private Limited
43. Coreline Exports
44. Corlim Marine Exports Pvt. Ltd.
45. CPF (India) Private Limited
46. Crystal Sea Foods Private Limited
47. Danica Aqua Exports Private Limited
48. Datla Sea Foods
49. Deepak Nexgen Foods and Feeds Private Limited
50. Delsea Exports Pvt. Ltd.
51. Devi Sea Foods Limited [11]
52. Dwaraka Sea Foods
53. Empire Industries Limited
54. Entel Food Products Private Limited
55. Esmario Export Enterprises
56. Everblue Sea Foods Private Limited
57. Febin Marine Foods Private Limited
58. Fedora Sea Foods Private Limited
59. Food Products Pvt., Ltd./Parayil Food Products Pvt., Ltd.
60. Fouress Food Products Private Limited
61. Frontline Exports Pvt. Ltd.
62. G A Randerian Ltd.
63. Gadre Marine Exports (AKA Gadre Marine Exports Pvt. Ltd.)
64. Galaxy Maritech Exports P. Ltd.
65. Geo Aquatic Products (P) Ltd.
66. Grandtrust Overseas (P) Ltd.
67. GVR Exports Pvt. Ltd.
68. Hari Marine Private Limited
69. Haripriya Marine Export Pvt. Ltd.
70. HIC ABF Special Foods Pvt. Ltd.
71. Highland Agro
72. Hiravati Exports Pvt. Ltd.
73. Hiravati International Pvt. Ltd.
74. Hiravati Marine Products Private Limited
75. HMG Industries Ltd.
76. HN Indigos Private Limited
77. Hyson Exports Private Limited
78. Hyson Logistics and Marine Exports Private Limited
79. Indian Aquatic Products
80. Indo Aquatics
81. Indo Fisheries
82. Indo French Shellfish Company Private Limited
83. International Freezefish Exports
84. Jinny Marine Traders
85. Jude Foods India Private Limited
86. K.V. Marine Exports
87. Karunya Marine Exports Private Limited
88. Kaushalya Aqua Marine Product Exports Pvt. Ltd.
89. Kay Kay Exports
90. Kings Infra Ventures Limited
91. Kings Marine Products
92. Koluthara Exports Ltd.
93. Libran Foods
94. Lito Marine Exports Private Limited
95. Mangala Sea Products
96. Marine Harvest India
97. Milsha Agro Exports Pvt. Ltd.
98. Milsha Sea Products
99. Minaxi Fisheries Private Limited

[11] Shrimp produced and exported by Devi Sea Foods Limited (Devi) was excluded from the order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp from India: Final Results of the Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813, 41814 (July 19, 2010). Accordingly, we initiated this administrative review with respect to Devi only for shrimp produced in India where Devi acted as either the manufacturer or exporter (but not both).

100. Mindhola Foods LLP
101. Minh Phu Group
102. MMC Exports Limited
103. MTR Foods
104. Naik Frozen Foods Private Limited
105. Naik Oceanic Exports Pvt. Ltd./Rafiq Naik Exports Pvt. Ltd
106. Naik Seafoods Ltd.
107. NAS Fisheries Pvt. Ltd
108. Nine Up Frozen Foods
109. Nutrient Marine Foods Limited
110. Oceanic Edibles International Limited
111. Paragon Sea Foods Pvt. Ltd.
112. Paramount Seafoods
113. Pesca Marine Products Pvt., Ltd.
114. Pijikay International Exports P Ltd.
115. Poyilakada Fisheries Private Limited
116. Pravesh Seafood Private Limited
117. Premier Exports International
118. Premier Marine Foods
119. Premier Seafoods Exim (P) Ltd.
120. Protech Organo Foods Private Limited
121. Raju Exports
122. Rajyalakshmi Marine Exports
123. Ram's Assorted Cold Storage Limited
124. Raunaq Ice & Cold Storage
125. RDR Exports
126. RF Exports Private Limited
127. Rising Tide
128. Riyarchita Agro Farming Private Limited
129. Rupsha Fish Private Limited
130. R V R Marine Products Private Limited
131. S Chanchala Combines Private Limited
132. Safera Food International
133. Sagar Samrat Seafoods
134. Sahada Exports
135. Sai Aquatechs Private Limited
136. Salet Seafoods Pvt. Ltd.
137. Samaki Exports Private Limited
138. Sanchita Marine Products Private Limited
139. Sasoondock Matsyodyog Sahakari Society Ltd.
140. Sea Doris Marine Exports
141. Seagold Overseas Pvt. Ltd.
142. Seasaga Enterprises Private Limited/ Seasaga Group
143. Shimpo Exports Private Limited
144. Shimpo Seafoods Private Limited
145. Shiva Frozen Food Exp. Pvt. Ltd.
146. Shroff Processed Food & Cold Storage P Ltd.
147. Sigma Seafoods
148. Silver Seafood
149. Sita Marine Exports
150. Sonia Fisheries
151. Sreeragam Exports Private Limited
152. Sri Sakkthi Cold Storage
153. Srikanth International
154. SSF Ltd.
155. Star Agro Marine Exports Private Limited
156. Star Organic Foods Private Limited
157. Stellar Marine Foods Private Limited
158. Sterling Foods
159. Sun Agro Exim
160. Supran Exim Private Limited
161. Suvarna Rekha Exports Private Limited
162. Suvarna Rekha Marines P Ltd.
163. TBR Exports Private Limited
164. Teekay Marines Private Limited
165. Tej Aqua Feeds Private Limited
166. The Waterbase Limited
167. Torry Harris Seafoods Ltd.
168. Triveni Fisheries P Ltd.
169. U & Company Marine Exports
170. Ulka Sea Foods Private Limited
171. Uniloids Biosciences Private Limited
172. Uniroyal Marine Exports Ltd.
173. Unitriveni Overseas Private Limited
174. Vaisakhi Bio-Marine Private Limited
175. Varma Marine
176. Vasai Frozen Food Co.
177. Veronica Marine Exports Private Limited
178. Victoria Marine & Agro Exports Ltd.
179. Vinner Marine
180. Vitality Aquaculture Pvt. Ltd.
181. VKM Foods Private Limited
182. VRC Marine Foods LLP
183. West Coast Fine Foods (India) Private Limited
184. West Coast Frozen Foods Private Limited
185. Zeal Aqua Limited

[FR Doc. 2023–18915 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Notice of Scope Rulings

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) hereby publishes a list of scope rulings and circumvention determinations made during the period April 1, 2023, through June 30, 2023. We intend to publish future lists after the close of the next calendar quarter.

**DATES:** Applicable September 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Marcia E. Short, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–1560.

**SUPPLEMENTARY INFORMATION:**

### Background

Commerce regulations provide that it will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on May 22, 2023.[2] This current notice covers all scope rulings made by Enforcement and Compliance between April 1, 2023, and June 30, 2023.

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 88 FR 32731 (May 22, 2023).

*Scope Rulings Made April 1, 2023, Through June 30, 2023*

India

A–533–889 and C–533–890: Quartz Surface Products From India

*Requestor:* Pokarna Engineering Stone Ltd. (Pokarna). Certain sinks and basins produced and exported by Pokarna are not covered by the scope of the antidumping duty (AD) and countervailing duty (CVD) orders based on the plain language that excludes these products from the scope. Certain shower trays produced and exported by Pokarna are covered by the scope of the AD/CVD orders as they correspond to products listed in the plain language of the scope. Certain integrated vanity tops are covered by the scope of the AD/CVD orders because the totality of evidence establishes that the integrated vanity tops have similar physical characteristics, expectations of the ultimate purchaser, ultimate use, and channels of trade to in-scope quartz surface products; June 22, 2023.

People's Republic of China (China)

A–570–090 and C–570–091: Certain Steel Wheels 12 to 16.5 Inches in Diameter From China

*Requestor:* Asia Wheel Co., Ltd. (Asia Wheel). Certain models of trailer wheels that Asia Wheel processes in Thailand using discs produced in Thailand from circular steel plates from China or a third country and rims produced in Thailand from rectangular steel plates from China or a third country and exported by Asia Wheel to the United States are not covered by the AD/CVD orders based on the plain language of the scope, because the Chinese steel plate components are neither finished nor unfinished rims, discs, or steel wheels. Further, certain models of trailer wheels that Asia Wheel processes in Thailand using discs from China and rims produced in Thailand from rectangular steel plates from China or a third country and certain models of dual wheel trailer wheels which Asia Wheel processes in Thailand using discs produced in Thailand from disc blanks from China and rims from China, which Asia Wheel exports to the United States, are covered by the scope of the AD/CVD orders based on a finding that the products are not substantially transformed by the third-country processing in Thailand; April 11, 2023.

A–570–891: Hand Trucks and Certain Parts Thereof From China

*Requester:* HKC–US, LLC. (HKC–US). The mobile utility fan imported by HKC–US is not covered by the scope of

the AD order because it lacks a toeplate or horizontal projecting edge capable of sliding under a load for the purposes of lifting and/or moving the load; April 12, 2023.

A–570–831: Fresh Garlic From China

*Requestor:* Green Garden Produce LLC (Green Garden Produce). The large and small garlic chunks imported by Green Garden Produce are not covered by the scope of the AD order because they have been reduced in size beyond peeling and are no longer whole or separated into constituent cloves; June 1, 2023.

A–570–082 and C–570–083: Certain Steel Wheels 22.5 to 24.5 Inches in Diameter From China

*Requestor:* Asia Wheel. Certain truck wheels that Asia Wheel exports to the United States that are assembled in Thailand from Chinese-origin discs and rims produced in Thailand from Chinese-origin (or another foreign country) steel sheet plates are subject to the scope of the AD/CVD orders because the Chinese wheel parts are not substantially transformed in Thailand; June 7, 2023.

A–570–104 and C–570–105: Alloy and Certain Carbon Steel Threaded Rod From China

*Requestor:* Chun Yu Works USA Inc. (Chun Yu Works USA). The hex nut sleeve anchors imported by Chun Yu Works USA are outside the scope of the AD/CVD orders based on the plain language of the orders because the hex nut sleeve anchors include a headed bolt; June 9, 2023.

A–570–104 and C–570–105: Alloy and Certain Carbon Steel Threaded Rod From China

*Requestor:* Chun Yu Works USA. The carbon steel wedge anchors imported by Chun Yu Works USA are outside the scope of the AD/CVD orders based on the plain language of the orders because the wedge anchors include a headed bolt; June 9, 2023.

A–570–932: Certain Steel Threaded Rod From China

*Requestor:* Chun Yu Works USA. The hex nut sleeve anchors imported by Chun Yu Works USA are outside the scope of the AD order based on the plain language of the order because the hex nut sleeve anchors include a headed bolt; June 9, 2023.

A–570–932: Certain Steel Threaded Rod From China

*Requestor:* Chun Yu Works USA. The carbon steel wedge anchors imported by Chun Yu Works USA are outside the scope of the AD order based on the plain language of the order because the wedge anchors include a headed bolt; June 9, 2023.

A–570–890: Woodend Bedroom Furniture From China

*Requestor:* Amini Innovation Corporation (Amini Innovation). The following products are covered by the scope of the AD order because each product is consistent with a type of wooden bedroom furniture that is covered by the scope: (1) Glimmering Heights Upholstered Accent Cabinet/Nightstand/End Table (SKU 9011040–111); (2) Glimmering Heights Storage Console/Dresser/Sideboard/Credenza (SKU 9011050–111); (3) Glimmering Heights 5 Drawer Vertical Storage Cabinet/Chest of Drawers (SKU 9011070–111); (4) Glimmering Heights Upholstered Swivel Chiffonier/Lingerie Chest/Living Room Storage Cabinet (SKU 9011062–111); (5) Glimmering Heights Upholstered Vanity/Desk (SKU 9011058–111); (6) Glimmering Heights Upholstered Mirror (SKU 9011260–111); (7) Melrose Plaza Upholstered Accent Cabinet/Nightstand/End Table (SKU 9019040–118); (8) Melrose Plaza Upholstered Storage Console/Dresser/Sideboard/Credenza (SKU 9019050–118); (9) Melrose Plaza 5 Drawer Vertical Storage Cabinet/Chest of Drawers (SKU 9019070–118); (10) Melrose Plaza Upholstered Swivel Chiffonier/Lingerie Chest/Living Room Storage Cabinet (SKU 9019062–118); (11) Melrose Plaza Upholstered Vanity/Desk (SKU 9019058–118); (12) Melrose Plaza Upholstered Mirror (SKU 9019260–118); (13) Hollywood Swank Upholstered Accent Cabinet/Nightstand/End Table (SKU 03040–09); (14) Hollywood Swank Upholstered Storage Console/Dresser/Sideboard/Credenza (SKU 03050–09); (15) Hollywood Swank Vertical Storage Cabinet/Chest of Drawers (SKU 03070–09); (16) Hollywood Swank Upholstered Swivel Chiffonier/Lingerie Chest/Living Room Storage Cabinet (SKU 03062–09 and 03062–81); (17) Hollywood Swank Upholstered Vanity/Desk (SKU 03058–09 and 03058–81); (18) Hollywood Swank Upholstered Mirror (SKU 03060R–09); (19) Hollywood Loft Upholstered Accent Cabinet/Nightstand/End Table (SKU 9001640–104); (20) Hollywood Loft Upholstered Storage Console/Dresser/Sideboard/Credenza (SKU 9001650–104); (21) Hollywood Loft 5 Drawer Vertical Storage Cabinets/Chest of Drawers (SKU 9001670–104); and (22) Hollywood Loft Upholstered Mirror (SKU 9001660–08). The following mirror products are not subject to the scope of the AD order because they are paired with vanities, not dressers, and are therefore explicitly excluded from the order: (1) Glimmering Heights Upholstered Mirror (SKU 9011068–111); (2) Melrose Plaza Upholstered Mirror (SKU 9019068–118); and (3) and Hollywood Swank Upholstered Mirror (SKU 03068RN–09/81); April 18, 2023.

A–570–890: Woodend Bedroom Furniture From China

*Requestor:* Teamson, U.S., Inc. (Teamson). The following wooden floor cabinets are not covered by the scope of the AD order because the products, as described by Teamson, were designed and manufactured as bathroom storage furniture, not bedroom furniture, and each cabinet is part of a coordinated group of non-bedroom furniture, rather than bedroom furniture: (1) Avery Floor Cabinet with Two Doors (model ELG–542); (2) Free Standing Versailles Double Floor Cabinet—White (model ELG–550) and Espresso (model ELG–571); (3) Freestanding Rain Glass Floor Cabinet—Two Doors—White (model ELG–580); and (4) Freestanding St. James Linen Tower Two Door Two Drawers Top (model 592C1) and Bottom (model 592C2)—White; June 28, 2023.

A–570–084 and C–570–085: Certain Quartz Surface Products From China

*Requestor:* Golden Spectrum LLC. (Golden Spectrum) Certain crushed glass surface products are excluded from the AD/CVD orders if they meet four criteria: (1) the crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than one centimeter wide as measured at their widest cross-section (glass pieces); and (4) the distance between any single glass piece and the closest separate glass piece does not exceed three inches. Golden Spectrum's crushed glass surface products met these criteria and are, thus, excluded from the scope of the AD/CVD orders; June 29, 2023.

**Notification to Interested Parties**

Interested parties are invited to comment on the completeness of this list of completed scope inquiries and scope/circumvention inquiry combinations made during the period April 1, 2023, through June 30, 2023. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade

Administration, via email to *CommerceCLU@trade.gov.*

This notice is published in accordance with 19 CFR 351.225(o).

Dated: August 24, 2023.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2023–18958 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

### Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under sections 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

### Upcoming Sunset Reviews for October 2023

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in October 2023 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

| | Department contact |
|---|---|
| **Antidumping Duty Proceedings** | |
| Sodium Gluconate, Gluconic Acid, and Derivative Products from China A–570–071 (1st Review) | Thomas Martin, (202) 482–3936. |
| Xanthan Gum from China A–570–985 (2nd Review) | Thomas Martin, (202) 482–3936. |
| **Countervailing Duty Proceedings** | |
| Sodium Gluconate, Gluconic Acid, and Derivative Products from China C–570–072 (1st Review) | Thomas Martin, (202) 482–3936. |

### Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in October 2023.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year* (*Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

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

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 14, 2023.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2023–18959 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Environmental Technologies Trade Advisory Committee

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice of an open meeting of a Federal advisory committee.

**SUMMARY:** The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a hybrid meeting, accessible in-person and online, on Tuesday September 26, 2023 at the U.S. Department of Commerce in Washington, DC The meeting is open to the public with registration instructions provided below. This notice sets forth the schedule and proposed topics for the meeting.

**DATES:** The meeting is scheduled for Tuesday, September 26, 2023 from 8:45 a.m. to 3:30 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EDT on Friday, September 15, 2023.

**ADDRESSES:** The meeting will be held virtually as well as in-person in the Research Library at the U.S. Department of Commerce Herbert Clark Hoover building, 1401 Constitution Avenue NW, Washington, DC 20230. Requests to register to participate in-person or virtually (including to speak or for auxiliary aids) and any written comments should be submitted via email to Ms. Megan Hyndman, Office of Energy & Environmental Industries, International Trade Administration, at *Megan.Hyndman@trade.gov.* This meeting has a limited number of spaces for members of the public to attend in-person. Requests to participate in-person will be considered on a first-come, first-served basis.

**FOR FURTHER INFORMATION CONTACT:** Ms. Megan Hyndman, Office of Energy & Environmental Industries, International Trade Administration (Phone: 202–823–1839; email: *Megan.Hyndman@trade.gov*).

**SUPPLEMENTARY INFORMATION:** The ETTAC is mandated by section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the

development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was most recently re-chartered through August 16, 2024.

On Tuesday, September 26, 2023 from 8:45 a.m. to 3:30 p.m. EDT, the ETTAC will hold the third meeting of its current charter term. The Committee, with officials from the U.S. Department of Commerce and other agencies, will discuss U.S. government resources and programs to support U.S. environmental technology exporters, including the U.S. National Export Strategy, ITA trade promotion activities at the Water Environment Federation's Technical Exhibition and Conference, (WEFTEC), ITA programming at COP28, and other matters based on ETTAC member interests. An agenda will be made available one week prior to the meeting upon request to Megan Hyndman.

The meeting will be open to the public and time will be permitted for public comment before the close of the meeting. Members of the public seeking to attend the meeting are required to register by Friday, September 15, 2023, at 5:00 p.m. EDT, via the contact information provided above. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at *Megan.Hyndman@trade.gov* or (202) 823–1839 no less than one week prior to the meeting. Requests received after this date will be accepted, but it may not be possible to accommodate them.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Friday, September 15, 2023, at 5:00 p.m. EDT to ensure transmission to the members before the meeting. Draft minutes will be available within 30 days of this meeting.

Dated: August 25, 2023.

**Man K. Cho,**

*Deputy Director, Office of Energy and Environmental Industries.*

[FR Doc. 2023–18888 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) received scope ruling applications, requesting that scope inquiries be conducted to determine whether identified products are covered by the scope of antidumping duty (AD) and/or countervailing duty (CVD) orders and that Commerce issue scope rulings pursuant to those inquiries. In accordance with Commerce's regulations, we are notifying the public of the filing of the scope ruling applications listed below in the month of July 2023.

**DATES:** Applicable September 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Terri Monroe, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–1384.

**SUPPLEMENTARY INFORMATION:**

### Notice of Scope Ruling Applications

In accordance with 19 CFR 351.225(d)(3), we are notifying the public of the following scope ruling applications related to AD and CVD orders and findings filed in or around the month of July 2023. This notification includes, for each scope application: (1) identification of the AD and/or CVD orders at issue (19 CFR 351.225(c)(1)); (2) concise public descriptions of the products at issue, including the physical characteristics (including chemical, dimensional and technical characteristics) of the products (19 CFR 351.225(c)(2)(ii)); (3) the countries where the products are produced and the countries from where the products are exported (19 CFR 351.225(c)(2)(i)(B)); (4) the full names of the applicants; and (5) the dates that the scope applications were filed with Commerce and the name of the ACCESS scope segment where the scope applications can be found.[1] This notice does not include applications which have been rejected and not properly resubmitted. The scope ruling applications listed below are available on Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), at *https://access.trade.gov*.

*Scope Ruling Applications*

Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China (China) (A–570–090/C–570–091); on-the-road steel wheels with a nominal wheel diameter of 12 to 16 inches that are assembled in Vietnam from wheel parts that are made in China (certain steel wheels), wheel parts (disc and/or rim) are produced in China, final assembly of the certain steel wheels occurs in Vietnam, and export of the certain steel wheels is from Vietnam and exported from China; [2] submitted by Dexstar Wheel Division of Americana Development Inc. (Dexstar); July 7, 2023; ACCESS scope segment ''Vietnam Assembly.''

Multilayered Wood Flooring from China (A–570–970/C–570–971); two-layered wood flooring panel called ''True 2 Ply''; [3] produced in and exported from China; submitted by Dalian Kemian Wood Industry Co., Ltd.; July 14, 2023; ACCESS scope segment ''Dalian Kemian Wood Flooring.''

Wood Mouldings and Millwork Products from China (A–570–117/C–570–118); small diameter birch wood dowels for food products, including lollipops (lollipop sticks); [4] produced in and exported from China; submitted by Chicago Dowel Company, Inc.; July 17, 2023; ACCESS scope segment ''SCO—Chicago Dowel Lollipop Sticks.''

[1] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300, 52316 (September 20, 2021) (*Final Rule*) (''It is our expectation that the **Federal Register** list will include, where appropriate, for each scope application the following data: (1) identification of the AD and/or CVD orders at issue; (2) a concise public summary of the product's description, including the physical characteristics (including chemical, dimensional and technical characteristics) of the product; (3) the country(ies) where the product is produced and the country from where the product is exported; (4) the full name of the applicant; and (5) the date that the scope application was filed with Commerce.'').

[2] The product is certain steel wheels, which are generally for trailers. The scope application covers all steel trailer wheels that fall within the merchandise described in the scope language of the AD/CVD orders on steel trailer wheels from China where the production of the wheel is begun in China and is finished in Vietnam.

[3] The product is engineered wood flooring panels that are constructed with two layers: a wood veneer top layer approximately 3–4mm in thickness glued to a wood bottom layer approximately 11–12mm in thickness. The wood bottom layer is composed of two vertical battens and several horizontal battens.

[4] The product is lollipop sticks that are round, plain, and not sanded, grooved, or otherwise advanced in condition. The diameter size ranges from 1/4 to 5/16 inch and the stock length ranges from 8 to 48 inches. The products are produced in, and exported from, China with China declared as the country of origin.

*Notification to Interested Parties*

This list of scope ruling applications is not an identification of scope inquiries that have been initiated. In accordance with 19 CFR 351.225(d)(1), if Commerce has not rejected a scope ruling application nor initiated the scope inquiry within 30 days after the filing of the application, the application will be deemed accepted and a scope inquiry will be deemed initiated the following day—day 31.[5] Commerce's practice generally dictates that where a deadline falls on a weekend, Federal holiday, or other non-business day, the appropriate deadline is the next business day.[6] Accordingly, if the 30th day after the filing of the application falls on a non-business day, the next business day will be considered the ''updated'' 30th day, and if the application is not rejected or a scope inquiry initiated by or on that particular business day, the application will be deemed accepted and a scope inquiry will be deemed initiated on the next business day which follows the ''updated'' 30th day.[7]

In accordance with 19 CFR 351.225(m)(2), if there are companion AD and CVD orders covering the same merchandise from the same country of origin, the scope inquiry will be conducted on the record of the AD proceeding. Further, please note that pursuant to 19 CFR 351.225(m)(1), Commerce may either apply a scope ruling to all products from the same country with the same relevant physical characteristics, (including chemical, dimensional, and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter, or importer of those products, or on a company-specific basis.

For further information on procedures for filing information with Commerce through ACCESS and participating in scope inquiries, please refer to the Filing Instructions section of the Scope Ruling Application Guide, at *https://access.trade.gov/help/Scope_Ruling_Guidance.pdf.* Interested parties, apart from the scope ruling applicant, who wish to participate in a scope inquiry and be added to the public service list for that segment of the proceeding must file an entry of appearance in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.225(n)(4). Interested parties are advised to refer to the case segment in ACCESS as well as 19 CFR 351.225(f) for further information on the scope inquiry procedures, including the timelines for the submission of comments.

Please note that this notice of scope ruling applications filed in AD and CVD proceedings may be published before any potential initiation, or after the initiation, of a given scope inquiry based on a scope ruling application identified in this notice. Therefore, please refer to the case segment on ACCESS to determine whether a scope ruling application has been accepted or rejected and whether a scope inquiry has been initiated.

Interested parties who wish to be served scope ruling applications for a particular AD or CVD order may file a request to be included on the annual inquiry service list during the anniversary month of the publication of the AD or CVD order in accordance with 19 CFR 351.225(n) and Commerce's procedures.[8]

Interested parties are invited to comment on the completeness of this monthly list of scope ruling applications received by Commerce. Any comments should be submitted to James Maeder, Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to *CommerceCLU@trade.gov.*

This notice of scope ruling applications filed in AD and CVD proceedings is published in accordance with 19 CFR 351.225(d)(3).

Dated: August 28, 2023,

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2023–18936 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

## International Trade Administration

## Initiation of Five-Year (Sunset) Reviews

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

**SUMMARY:** In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping duty and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

**DATES:** Applicable September 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

### Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

### Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following AD and CVD order(s) and suspended investigation(s):

[5] In accordance with 19 CFR 351.225(d)(2), within 30 days after the filing of a scope ruling application, if Commerce determines that it intends to address the scope issue raised in the application in another segment of the proceeding (such as a circumvention inquiry under 19 CFR 351.226 or a covered merchandise inquiry under 19 CFR 351.227), it will notify the applicant that it will not initiate a scope inquiry, but will instead determine if the product is covered by the scope at issue in that alternative segment.

[6] *See Notice of Clarification: Application of* ''*Next Business Day*'' *Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[7] This structure maintains the intent of the applicable regulation, 19 CFR 351.225(d)(1), to allow day 30 and day 31 to be separate business days.

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

| DOC case No. | ITC case No. | Country | Product | Commerce contact |
|---|---|---|---|---|
| A–570–601 | 731–TA–344 | China | Tapered Roller Bearings (5th Review) | Mary Kolberg, (202) 482–1785. |
| A–533–810 | 731–TA–679 | India | Stainless Steel Bar (5th Review) | Mary Kolberg, (202) 482–1785. |
| A–580–867 | 731–TA–1189 | South Korea | Large Power Transformers (2nd Review) | Jacky Arrowsmith, (202) 482–5255. |

**Filing Information**

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

**Letters of Appearance and Administrative Protective Orders**

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

**Information Required From Interested Parties**

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

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

[2] *See* 19 CFR 351.218(d)(1)(iii).

Dated: August 14, 2023.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2023–18957 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD309]**

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The MAFMC will hold a public joint meeting (webinar) of its Mackerel, Squid, and Butterfish (MSB) Committee and Advisory Panel to develop recommendations on preferred alternatives in a framework adjustment to the MSB Fishery Management Plan that could implement a volumetric vessel hold baseline requirement and vessel hold upgrade restriction for *Illex* limited access permits.

**DATES:** The meeting will be held on Monday, September 18, 2023, from 10:30 a.m. to 1 p.m.

**ADDRESSES:** Webinar connection information will be posted to the calendar prior to the meeting at *www.mafmc.org.*

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** In September 2022, NOAA Fisheries disapproved an Amendment to the MSB fishery management plan that would have reduced directed limited access permits to address excess capacity in the *Illex* fishery. The Council subsequently voted to initiate and develop a framework action to consider a volumetric vessel hold baseline

requirement and upgrade restriction for all *Illex* limited access permits. This action is intended to control future increases in capacity. There are also alternatives to require a non-binding processing-type intent declaration (fresh, frozen, refrigerated sea water, etc.) when renewing limited access squid permits. The Council is planning on taking final action at its October 2023 Council meeting, so the Committee will develop recommendations on preferred alternatives.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: August 29, 2023.

**Rey Israel Marquez,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2023–18985 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD303]**

### North Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a hybrid meeting.

**SUMMARY:** The North Pacific Fishery Management Council's (Council) Partial Coverage Fishery Monitoring Advisory Committee (PCFMAC) will hold a meeting. See **SUPPLEMENTARY INFORMATION** for agenda.

**DATES:** The meeting will be held on Thursday, September 14, 2023, from 8:30 a.m. to 4:30 p.m., Alaska Time.

**ADDRESSES:** The meeting will be a hybrid meeting. For members attending in Seattle, the in-person component of the meeting will be held at the Alaska Fishery Science Center in room 2079, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115, if you plan to attend in-person you need to notify Sara Cleaver (*sara.cleaver@noaa.gov*) at least two days prior to the meeting (or two weeks prior if you are a foreign national). You will also need a valid U.S. Identification Card. For members attending in Anchorage, the in-person component of the meeting will be held at the North Pacific Fishery Management Council office, 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501. If you are attending virtually, join the meeting online through the link at *https://meetings.npfmc.org/Meeting/Details/3007.*

*Council address:* North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

**FOR FURTHER INFORMATION CONTACT:** Sara Cleaver, Council staff; telephone: (907) 271–2809; email: *sara.cleaver@noaa.gov.* For technical support, please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Agenda**

*Thursday, September 14, 2023*

The PCFMAC agenda will include: (a) review draft 2024 ADP; (b) proposals on multiple observer provider options; (c) public comment; and (d) other issues and future scheduling. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/3007* prior to the meeting, along with meeting materials.

**Connection Information**

You can attend the meeting online using a computer, tablet, or smartphone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/3007.*

**Public Comment**

Public comment letters should be submitted electronically via the electronic agenda at *https://meetings.npfmc.org/Meeting/Details/3007.*

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

Dated: August 29, 2023.

**Rey Israel Marquez,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2023–18983 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Vessel Monitoring System Requirements for the Pacific Islands Fisheries

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** To ensure consideration, written or on-line comments must be submitted on or before October 31, 2023.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0441 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, Fishery Information Specialist, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818; (808) 725–5175; or *walter.ikehara@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This request is for extension of a currently approved information collection. National Oceanic and Atmospheric Administration (NOAA) Fisheries, Pacific Islands Region, and the NOAA Office of Law Enforcement (OLE), Pacific Islands Division, collect vessel tracking information through a Vessel Monitoring System (VMS). The authority for this collection is specified at 50 CFR 665.19.

As part of fishery ecosystem plans developed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, owners of commercial fishing vessels in the Hawaii pelagic longline fishery, American Samoa pelagic longline fishery (only vessels longer than 50 feet), Northwestern Hawaiian Islands lobster fishery (currently inactive), and

Northern Mariana Islands bottomfish fishery (only vessels longer than 40 feet) must allow NOAA to install VMS units on their vessels when directed by OLE personnel. VMS units automatically send periodic reports on the position of the vessel to OLE. NOAA uses the reports to monitor the vessel's location and activities, primarily to enforce regulated fishing areas. NOAA pays for all costs related to the VMS systems for the aforementioned fisheries. There is no public burden for the automatic messaging; however, VMS installation and maintenance are considered public burden.

Aside from updates to the burden estimates, there are no changes to the collection.

**II. Method of Collection**

Automatic electronic submission via satellite.

**III. Data**

*OMB Control Number:* 0648–0441.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Estimated Number of Respondents:* 69.

*Estimated Time per Response:* 4 hours for installation of a VMS unit; 2 hours for VMS unit replacement, and 1.5 hours for annual maintenance.

*Estimated Total Annual Burden Hours:* 131.

*Estimated Total Annual Cost to Public:* $0 in VMS system installation and maintenance, recordkeeping, or reporting costs.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* 50 CFR 665.19.

**IV. Request for Comments**

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–18916 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD272]**

### Adjustment of Fees for Seafood Inspection Services

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

**ACTION:** Notice of fee schedule for seafood inspection services.

**SUMMARY:** The NMFS Seafood Inspection Program is notifying program participants that its fee schedule for fiscal year 2024 will remain as established on November 1, 2022.

**DATES:** The fee schedule applies to services rendered as of October 1, 2023, until notified otherwise.

**FOR FURTHER INFORMATION CONTACT:** Steven Wilson, Office of International Affairs, Trade, and Commerce, 301–427–8350 or at *steven.wilson@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The National Marine Fisheries Service (NMFS) operates a fee-for-service Seafood Inspection Program (Program) under the authorities of the Agricultural Marketing Act of 1946, as amended, the Fish and Wildlife Act of 1956, and the Reorganization Plan No. 4 of 1970. The regulations implementing the Program are contained in 50 CFR parts 260 and 261. The Program offers inspection, grading, and certification services, including the use of official quality grade marks which indicate that specific products have been federally inspected. Those wishing to participate in the program must request the services and submit specific compliance information. Since 1992, NMFS implemented inspection services based on guidelines recommended by the National Academy of Sciences, known as Hazard Analysis Critical Control Point (HACCP).

Under the implementing regulations for the Program, fees are reviewed at least annually to ascertain that the hourly fees charged are adequate to recover the costs of the services rendered. Any necessary adjustments to fees are made in accordance with the requirements of 50 CFR 260.81 and are notified to program participants as stipulated at 50 CFR 260.70. This **Federal Register** notice serves to inform program participants of the fee schedule, which remains unchanged.

Seafood Inspection Program (SIP) costs used for the calculation of user fees include all relevant direct and indirect costs to the program, and applicable administrative overhead and surcharges. SIP fees must be set to promote full cost recovery of the program absent other appropriations.

Program costs include all field operations, program administrative overhead, and management, and include expenses for labor for inspectors, facilities, information technology infrastructure, and other operational costs. SIP fees are set to recover those costs based on revenue projections from expected billable service hours and the number of certificates requests. Forecasts of demand for services use historical data on actual billed services that are adjusted annually for inflation, known events that might affect the predicted output of billable services, and seasonality of when forecasted services will take place throughout the year.

NMFS will assess its fees as outlined in this notice, which will apply until notified otherwise. Fees will be charged to contract and non-contract customers requesting services as listed below. The cost of other applicable services rendered will be recovered through fee collection using the base rate of $238 per hour.

**Fees and Charges for the U.S. Department of Commerce (USDC) Seafood Inspection Program**

The per hour fees and charges for fishery products inspection services are not being revised and will remain as established on November 1, 2022 for Fiscal Year 2024 and will be assessed as follows. Any travel associated with a billable service will be an additional charge.

**Contract Rates**

*Regular Time:* Services provided during any 8-hour shift.

*Overtime:* Services provided outside the inspector's normal work schedule.

In addition to any hourly service charge, a night differential fee equal to 10 percent of the employee's hourly salary will be charged for each hour of service provided after 6:00 p.m. and before 6:00 a.m. A guarantee of payment is required for all contracts equal to three months of service or $10,000, whichever is greater.

**Non-Contract Rates**

*Regular time:* Services provided within the inspector's normal work schedule, Monday through Friday.

*Overtime:* Services provided outside the inspector's normal work schedule.

Any services under contract in excess of the contracted hours will be charged at the non-contract rate.

**Contract Rates**

**Non-HACCP Contracts**

REGULAR TIME $238
OVERTIME $357
SUNDAY & HOLIDAYS $476

**HACCP/QMP Contracts**

HACCP REGULAR $238
HACCP OVERTIME $357
HACCP SUNDAY & HOLIDAYS $476

**All Non-Contract Work Rates**

REGULAR TIME $357
OVERTIME $536
SUNDAY & HOLIDAYS $714

**Certificates**

All certificate requests, whether or not a product inspection was conducted, will be billed at a set flat rate of $97 per request.

Additional information about, and applications for, Program services and fees may be obtained from NMFS (see **FOR FURTHER INFORMATION CONTACT**).

Dated: August 28, 2023.

**Alexa Cole,**

*Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.*

[FR Doc. 2023–18886 Filed 8–31–23; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 9:00 a.m. EDT, Friday, September 8, 2023.

**PLACE:** Virtual meeting.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

**CONTACT PERSON FOR MORE INFORMATION:** Christopher Kirkpatrick, 202–418–5964.

*Authority:* 5 U.S.C. 552b.

Dated: August 30, 2023.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

[FR Doc. 2023–19077 Filed 8–30–23; 4:15 pm]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0075]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the DoD is establishing a new Department-wide system of records titled, ''Information Technology Access and Audit Records,'' DoD–0019. This system of records covers DoD's maintenance of records related to requests for user access, attempts to access, granting of access, records of user actions for DoD information technology (IT) systems, and user agreements. This includes details of programs, databases, functions, and sites accessed and/or used, and the information products created, received, or altered during the use of IT systems. This new system of records will be included in the DoD's inventory of record systems.

**DATES:** This system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before October 2, 2023. The Routine Uses are effective at the close of the comment period.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rahwa Keleta, Privacy and Civil Liberties Division, Directorate for Privacy, Civil Liberties, and Freedom of Information, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil;* (703) 571–0070.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is establishing ''Information Technology Access and Audit Records (ITAAR)'', DoD–0019, as a DoD-wide Privacy Act system of records. A DoD-wide System of Records Notice (SORN) supports multiple DoD paper or electronic recordkeeping systems operated by more than one DoD component that maintain the same kind of information about individuals for the same purpose. Establishment of DoD-wide SORNs helps DoD standardize the rules governing the collection, maintenance, use, and sharing of personal information in key areas across the enterprise. DoD-wide SORNs also reduce duplicative and overlapping SORNs published by separate DoD components. The creation of DoD-wide SORNs is expected to make locating relevant SORNs easier for DoD personnel and the public, and create efficiencies in the operation of the DoD privacy program.

The purpose of this system is to control and track individual user access to and activity on networks, computer systems, applications, databases, or other digital technologies controlled by DoD Offices and Components. DoD may use the records in this system to investigate potential or alleged improper use or other improper activity by a system user, which may be a DoD employee, contractor, or other individual. Records from this system may be shared with or used by the appropriate investigative or cybersecurity organizations within the Office or Component with which the individual user is affiliated, other DoD

Components, and other agencies with investigative and cybersecurity authority. The records may also be used for statistical data and reporting purposes, to inform decisions concerning hardware or software upgrades, and communications technology requirements.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Privacy, Civil Liberties, and Freedom of Information Directorate website at *https://dpcld.defense.gov.*

## II. Privacy Act

Under the Privacy Act, a ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, DoD has provided a report of this system of records to the OMB and to Congress.

Dated: August 24, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**SYSTEM NAME AND NUMBER:**

Information Technology Access and Audit Records (ITAAR), DoD–0019.

**SECURITY CLASSIFICATION:**

Unclassified and classified.

**SYSTEM LOCATION:**

Department of Defense (Department or DoD), located at 1000 Defense Pentagon, Washington, DC 20301–1000, and other Department installations, offices, or mission locations. Information may also be stored within a government-certified cloud, implemented and overseen by the Department's Chief Information Officer (CIO), 6000 Defense Pentagon, Washington, DC 20301–6000.

**SYSTEM MANAGER(S):**

The system managers are as follows:

A. Principal Director for Resources, Department of Defense, Chief Information Officer, 6000 Defense Pentagon, Washington, DC 20301–6000, *osd.pentagon.dod-cio.mbx.dod-records-officer@mail.mil.*

B. To obtain information on the system managers at the Military Departments, Combatant Commands, Defense Agencies, Field Activities, or other DoD components with oversight of the records, please visit *www.FOIA.gov* to contact the component's Freedom of Information Act (FOIA) office.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Public Law 113–283, The Federal Information Security Modernization Act of 2014, as amended (44 U.S.C. Chapter 35, Subch. II); 10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 142, Chief Information Officer; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C Section 164, Commanders of Combatant Commands: Assignment; Powers and Duties; 18 U.S.C. 1029, Fraud and Related Activity in Connection with Access Devices; 18 U.S.C. 1030, Fraud and Related Activity in Connection with Computers; Section 922 of the National Defense Authorization Act for FY 2012 (Pub. L. 112–81), ''Insider Threat Detection''; Executive Order (E.O.) 10450, Security Requirements for Government Employees, as amended; E.O. 14028, Improving the Nation's Cybersecurity; E.O. 13526, ''Classified National Security Information''; E.O. 13587, ''Structural Reforms To Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information''; DoD Directive 5205.16, ''The DoD Insider Threat Program''; DoD Instruction (DoDI) 8500.01, ''Cybersecurity,''; DoDI 8530.01, ''Cybersecurity Activities Support to DoD Information Network Operations,'' and E.O. 9397 (SSN), as amended.

**PURPOSE(S) OF THE SYSTEM:**

The purpose of this system is to:

A. Control and to track individuals' access to and use of classified and unclassified DoD networks, information systems, devices, applications, databases, and other digital technologies (collectively, technologies) controlled by DoD Offices and Components; ensure the ongoing confidentiality, availability, and integrity of DoD technologies and data; ensure no conflicts of interest defend DoD technologies and data from adverse actors; and detect and report threats or vulnerabilities;

B. Review DoD-funded award applicants'/recipients' information to monitor individual user compliance with applicable Terms of Use;

C. Maintain information necessary to support investigations into or adverse actions resulting from alleged or possible improper use or other improper activity by an employee, contractor or other individual relating to use or access to DoD Office, Component and common technologies and data;

D. Refer record(s) that appear to indicate a violation or potential violation of law to the appropriate disciplinary, law enforcement, intelligence, counterintelligence, security or cybersecurity organization within or outside of DoD for investigation or other action;

E. Using statistical data from this system: assess system or network efficiency; calculate workloads; make business decisions regarding upgrading hardware, software, and communications technology to meet changing use requirements; and

F. Generate reports related to the purposes above.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Civilian and military personnel, contractor employees, and other individuals who request or are granted access to DoD Office, Component, and common technologies and data.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records include:

A. Access Request Records: Records created as part of the process of determining user eligibility and need for access to specific technologies, such as requests for access to DoD Office, Component, and common technologies and data; grants or denials of such requests; justifications and other information supporting requests for access; and records documenting the suspension or revocation of access for misuse, non-use, or other reasons.

B. Identity records: Identifying, status, and contact information about the individual, such as the individual's name, date of birth, DoD identification (ID) Number/Electronic Data Exchange Personal Identifier (EDIPI), citizenship, work addresses and telephone numbers, office symbol, computer and Voice Over Internet Protocol (VOIP) logon addresses, contractor/employee status, verification of need-to-know, training status, and security clearance data.

C. System Access Records: Records created as part of the user identification and authorization process to gain access to systems, such as user agreements; user profiles; login files; password files; audit trail files and extracts; system usage files; and cost-back files used to assess charges for system use.

D. email addresses.

E. Internet Protocol (IP) addresses.

F. Machine Access Control (MAC) addresses.

G. Audit trails of user activities.

H. Technical support data.

I. Telework status, activity, and location (*e.g.,* city/state).

J. Contractors: information may also include company name, contract number, contract value, and contract expiration date.

K. Funding award holders: information may also include name, email, digital persistent identifier, grant or award number, funding value, and award expiration date.

**RECORD SOURCE CATEGORIES:**

Typically, information in the record is originally supplied by the record subject, their supervisors, and personnel security staff. Some data, such as user identification codes, are assigned or supplied by the Information Technology staff. Details about system access and use are typically supplied by the Information Technology system, which includes applications, networks, and databases.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as a Routine Use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

I. To another Federal, State or local agency for the purpose of comparing to the agency's system of records or to non-Federal records, in coordination with an Office of Inspector General in conducting an audit, investigation, inspection, evaluation, or other review as authorized by the Inspector General Act of 1978, as amended.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute, treaty, or other international agreement.

K. To Federal, state, or local agencies or professional organizations or associations, maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, or administrative or disciplinary information, or disciplinary records related to suspended or revoked licenses, if necessary to obtain information relevant to a DoD component or agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

L. To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, funding awards, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

M. To foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

N. To foreign or non-DoD law enforcement for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records may be stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records may be stored locally on digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP).

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records may be retrieved by individual's name, DoD ID number/EDIPI, digital persistent identifier, or date of action. In some instances, records may be retrieved by other identifiers assigned by the DoD Office or Component.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

User identification records generated according to preset requirements are retained in accordance with General Records Schedule (GRS) 3.2, Item 30. Records may be destroyed when no longer needed for business use.

User identification records associated with systems that are highly sensitive or potentially vulnerable are retained in accordance with GRS 3.2, Item 31. Records may be destroyed 6 years after the password is altered or the user account is terminated. These records may be retained longer if required for business use.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

DoD safeguards records in this system of records according to applicable rules,

policies, and procedures, including all applicable DoD automated systems security and access policies. DoD policies require the use of controls to minimize the risk of compromise of personally identifiable information (PII) in paper and electronic form and to enforce access by those with a need to know and with appropriate clearances. Additionally, DoD has established security audit and accountability policies and procedures which support the safeguarding of PII and detection of potential PII incidents. DoD routinely employs safeguards such as the following to information systems and paper recordkeeping systems: Multifactor log-in authentication including Common Access Card (CAC) authentication and password; physical token as required; physical and technological access controls governing access to data; network encryption to protect data transmitted over the network; disk encryption securing disks storing data; key management services to safeguard encryption keys; masking of sensitive data as practicable; mandatory information assurance and privacy training for individuals who will have access; identification, marking, and safeguarding of PII; physical access safeguards including multifactor identification physical access controls, detection and electronic alert systems for access to servers and other network infrastructure; and electronic intrusion detection systems in DoD facilities. Contractor personnel must pass a background investigation and receive a security clearance. Contractors must also sign nondisclosure documents.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to their records should follow the procedures in 32 CFR part 310. Individuals should address written inquiries to the DoD component with oversight of the records, as the component has Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system of records. The public may identify the contact information for the appropriate DoD office through the following website: *www.FOIA.gov.* Signed written requests should contain the name and number of this system of records along with the full name, current address, and email address of the individual. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

**CONTESTING RECORD PROCEDURES:**

Individuals seeking to amend or correct the content of records about them should follow the procedures in 32 CFR part 310.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

DoD has exempted records maintained in this system from 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1), (e)(4)(G), (H), and (I); and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1) and (k2). In addition, when exempt records received from other systems of records become part of this system, the DoD also claims the same exemptions for those records that are claimed for the system(s) of records from which they originated and claims any additional exemptions set forth here. An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), and (c), and published in 32 CFR part 310.

**HISTORY:**

None.

[FR Doc. 2023–18682 Filed 8–31–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2023–SCC–0156]**

### Agency Information Collection Activities; Comment Request; Charter Online Management and Performance System (COMPS) SE Grant Profile

**AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before October 31, 2023.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0156. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Stephanie Jones, (202) 453–7835.

**SUPPLEMENTARY INFORMATION:** The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the

respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Charter Online Management and Performance System (COMPS) SE Grant Profile.

*OMB Control Number:* 1810–NEW.

*Type of Review:* New ICR.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 40.

*Total Estimated Number of Annual Burden Hours:* 320.

*Abstract:* This request is for a new OMB approval to collect the Grant Profile data from Charter School Programs (CSP) State Entity (SE) grantees. The Charter School Programs (CSP) was originally authorized under Title V, Part B, Subpart 1, Sections 5201 through 5211 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind (NCLB) Act of 2001. For fiscal year 2017 and thereafter, ESEA has been amended by the Every Student Succeeds Act (ESSA), (20USC 7221–7221i), which reserves funds to improve education by supporting innovation in public education and to: (2) provide financial assistance for the planning, program design, and initial implementation of charter schools; (3) increase the number of high-quality charter schools available to students across the United States; (4) evaluate the impact of charter schools on student achievement, families, and communities, and share best practices between charter schools and other public schools; (5) encourage States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount States typically provide for traditional public schools; (6) expand opportunities for children with disabilities, English learners, and other traditionally underserved students to attend charter schools and meet the challenging State academic standards; (7) support efforts to strengthen the charter school authorizing process to improve performance management, including transparency, oversight and monitoring (including financial audits), and evaluation of such schools; and (8) support quality, accountability, and transparency in the operational performance of all authorized public chartering agencies, including State educational agencies, local educational agencies, and other authorizing entities.

The U.S. Department of Education (ED) is requesting authorization to collect data from CSP grantees within the SE program through a new online platform. In 2022, ED began development of a new data collection system, the Charter Online Management and Performance System (COMPS), designed specifically to reduce the burden of reporting for users and increase validity of the overall data. This new collection consists of questions responsive to the actions established in the program's final rule published in the **Federal Register** on July 6, 2022, as well as the SE program Notice Inviting Applications (NIA). This collection request is a consolidation of all previously established program data collection efforts and provides a more comprehensive representation of grantee performance.

Dated: August 28, 2023.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–18890 Filed 8–31–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Advanced Scientific Computing Advisory Committee

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces an open virtual meeting of the DOE Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, September 28, 2023; 11:00 a.m. to 4:00 p.m. EDT.

**ADDRESSES:** Teleconference: Remote attendance of the ASCAC meeting will be possible via Zoom. Instructions will be posted on the ASCAC website at *https://science.energy.gov/ascr/ascac/* prior to the meeting and can also be obtained by contacting Christine Chalk by email at *christine.chalk@science.doe.gov* or by telephone at (301) 903–7486. Advanced registration is required.

**FOR FURTHER INFORMATION CONTACT:** Christine Chalk, Office of Advanced Scientific Computing Research; SC–31/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue SW; Washington, DC 20585–1290; Telephone (301) 903–7486; email at *christine.chalk@science.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The purpose of the committee is to provide advice and guidance on a continuing basis to the Office of Science and the Department of Energy on scientific priorities within the field of advanced scientific computing research.

*Purpose of the Meeting:* This meeting is the semi-annual meeting of the Committee.

*Tentative Agenda:*

- View from Germantown
- ASCR Priority Research Directions
- Update on Exascale project activities
- Update on planning for an integrated research infrastructure
- Report from Working Group on collaboration with the National Cancer Institute
- Technical presentations
- Public Comment (10-minute rule)

The meeting agenda includes an update on the budget, accomplishments, and planned activities of the Advanced Scientific Computing Research program and the exascale computing project; technical presentations from funded researchers and industry collaborations; updates from subcommittees, and there will be an opportunity for comments from the public. The meeting will conclude at 4:00 p.m. (eastern time) on September 28, 2023. Agenda updates and presentations will be posted on the ASCAC website prior to the meeting: *https://science.osti.gov/ascr/ascac.*

*Public Participation:* The meeting is open to the public. Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. The time allotted per speaker will depend on the number who wish to speak but will not exceed 10 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should submit their request at least five days before the meeting. Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Christine Chalk, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, email to *Christine.Chalk@science.doe.gov.*

*Minutes:* The minutes of this meeting will be available within 90 days on the Advanced Scientific Computing website at *https://science.osti.gov/ascr/ascac.*

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

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2023–18905 Filed 8–31–23; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER23–2712–000]**

### North Bend Wind Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of North Bend Wind Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 18, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: August 28, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–18961 Filed 8–31–23; 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 exempt wholesale generator filings:

*Docket Numbers:* EG23–264–000.

*Applicants:* North Bend Wind Project, LLC.

*Description:* North Bend Wind Project, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 8/25/23.

*Accession Number:* 20230825–5228.

*Comment Date:* 5 p.m. ET 9/15/23.

*Docket Numbers:* EG23–265–000.

*Applicants:* Five Wells Storage LLC.

*Description:* Five Wells Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 8/28/23.

*Accession Number:* 20230828–5346.

*Comment Date:* 5 p.m. ET 9/18/23.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1728–016.

*Applicants:* The Dayton Power and Light Company.

*Description:* Notice of Change in Status of The Dayton Power and Light Company, et al.

*Filed Date:* 8/24/23.

*Accession Number:* 20230824–5196.

*Comment Date:* 5 p.m. ET 9/14/23.

*Docket Numbers:* ER16–2095–006.

*Applicants:* Midwest Generation, LLC.

*Description:* Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

*Filed Date:* 8/28/23.

*Accession Number:* 20230828–5285.

*Comment Date:* 5 p.m. ET 9/18/23.

*Docket Numbers:* ER22–983–005.

*Applicants:* ISO New England Inc., New England Power Pool Participants Committee.

*Description:* Compliance filing: ISO New England Inc. submits tariff filing per 35: ISO–NE/NEPOOL; One Hundred Eighty-Day Informational Comp. Filing Order 2222 to be effective 3/1/2024.

*Filed Date:* 8/28/23.

*Accession Number:* 20230828–5370.

*Comment Date:* 5 p.m. ET 9/18/23.

*Docket Numbers:* ER23–973–002.

*Applicants:* New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

*Description:* Compliance filing: New York Independent System Operator, Inc. submits tariff filing per 35: NMPC Compliance Filing in response to July 28 Order re: SPC Project to be effective 4/1/2023.

*Filed Date:* 8/28/23.

*Accession Number:* 20230828–5294.

*Comment Date:* 5 p.m. ET 9/18/23.

*Docket Numbers:* ER23–1996–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Compliance filing: Compliance Filing on Update to Definition of Emergency Action in ER23–1996 to be effective 7/30/2023.

*Filed Date:* 8/28/23.

*Accession Number:* 20230828–5336.

*Comment Date:* 5 p.m. ET 9/18/23.

*Docket Numbers:* ER23–2144–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Tariff Amendment: 1883R12 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2023.

*Filed Date:* 8/28/23.
*Accession Number:* 20230828–5308.
*Comment Date:* 5 p.m. ET 9/18/23.
*Docket Numbers:* ER23–2157–001.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Tariff Amendment: 1887R13 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2023.
*Filed Date:* 8/28/23.
*Accession Number:* 20230828–5320.
*Comment Date:* 5 p.m. ET 9/18/23.
*Docket Numbers:* ER23–2159–001.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Tariff Amendment: 1889R12 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2023.
*Filed Date:* 8/28/23.
*Accession Number:* 20230828–5326.
*Comment Date:* 5 p.m. ET 9/18/23.
*Docket Numbers:* ER23–2160–001.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Tariff Amendment: 1891R12 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2023.
*Filed Date:* 8/28/23.
*Accession Number:* 20230828–5333.
*Comment Date:* 5 p.m. ET 9/18/23.
*Docket Numbers:* ER23–2163–001.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Tariff Amendment: 1897R13 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2023.
*Filed Date:* 8/28/23.
*Accession Number:* 20230828–5339.
*Comment Date:* 5 p.m. ET 9/18/23.
*Docket Numbers:* ER23–2612–002.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Errata to Revisions to Cost Responsibility Assignments for RTEP in ER23–2612 to be effective 11/9/2023.
*Filed Date:* 8/25/23.
*Accession Number:* 20230825–5185.
*Comment Date:* 5 p.m. ET 9/15/23.
*Docket Numbers:* ER23–2639–001.
*Applicants:* NRG Business Marketing LLC.
*Description:* Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
*Filed Date:* 8/28/23.
*Accession Number:* 20230828–5275.
*Comment Date:* 5 p.m. ET 9/18/23.
*Docket Numbers:* ER23–2711–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* § 205(d) Rate Filing: 2023–08–25 PLA No. 5 Time Ext—CDWR to be effective 11/1/2023.
*Filed Date:* 8/25/23.
*Accession Number:* 20230825–5181.
*Comment Date:* 5 p.m. ET 9/15/23.
*Docket Numbers:* ER23–2712–000.
*Applicants:* North Bend Wind Project, LLC.
*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 10/25/2023.
*Filed Date:* 8/25/23.
*Accession Number:* 20230825–5206.
*Comment Date:* 5 p.m. ET 9/15/23.
*Docket Numbers:* ER23–2713–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Original ISA, Service Agreement No. 7049; Queue No. AE1–163/AE2–281 to be effective 7/27/2023.
*Filed Date:* 8/28/23.
*Accession Number:* 20230828–5136.
*Comment Date:* 5 p.m. ET 9/18/23.
*Docket Numbers:* ER23–2714–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Revisions to the PJM Tariff, OA and RAA RE GDECS Clean-Up to be effective 10/28/2023.
*Filed Date:* 8/28/23.
*Accession Number:* 20230828–5357.
*Comment Date:* 5 p.m. ET 9/18/23.
*Docket Numbers:* ER23–2715–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: First Revised ISA, Service Agreement No. 4940; Queue No. AE2–034 to be effective 7/27/2023.
*Filed Date:* 8/28/23.
*Accession Number:* 20230828–5364.
*Comment Date:* 5 p.m. ET 9/18/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: August 28, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–18963 Filed 8–31–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* PR23–65–000.
*Applicants:* Northwest Natural Gas Company.
*Description:* § 284.123(g) Rate Filing: Petition of Northwest Natural Gas Company for Approval of Rates to be effective 9/1/2023.
*Filed Date:* 8/25/23.
*Accession Number:* 20230825–5171.
*Comment Date:* 5 p.m. ET 9/15/23.
*Protest Date:* 5 p.m. ET 10/24/23.
*Docket Numbers:* RP23–981–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* Compliance filing: 2023 Operational Entitlements Filing to be effective N/A.
*Filed Date:* 8/28/23.
*Accession Number:* 20230828–5186.
*Comment Date:* 5 p.m. ET 9/11/23.

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.

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Dated: August 28, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–18962 Filed 8–31–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP23–530–000]**

## Trunkline Gas Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on August 18, 2023, Trunkline Gas Company, LLC (Trunkline), 1300 Main Street, P.O. Box 4967, filed in the above referenced docket, a prior notice request pursuant to sections 157.205,157.208, and 157.211 of the Commission's regulations under the Natural Gas Act (NGA), and Trunkline's blanket certificate issued in Docket No. CP83–84–000. Trunkline seeks authorization to construct/relocate/replace, own, operate and maintain certain modifications to an existing interconnection, Trunkline's Metering & Regulation station 81717, between Trunkline's pipeline system and Texas Eastern Transmission, LP's pipeline system, install interconnection piping and related facilities, and install a new compressor booster station on Trunkline's pipeline system. All of the above facilities are located in Beauregard Parish, Louisiana. The project will allow Trunkline to increase the delivery pressure at the Interconnection to effectuate gas flow from Trunkline's pipeline system into Texas Eastern's pipeline system. The estimated cost for the project is $26.3 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to Blair Lichtenwalter, 1300 Main Street, P.O. Box 4967, (713) 989–2605 *Blair.Lichtenwalter@energytransfer.com*.

### Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on October 27, 2023. How to file protests, motions to intervene, and comments is explained below.

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*.

### Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is October 27, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

### Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is October 27, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp*.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

**Comments**

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before October 27, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

**How To File Protests, Interventions, and Comments**

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–530–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. 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; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–530–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 *FercOnlineSupport@ferc.gov*.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: to Blair Lichtenwalter, Senior Director, Certificates 1300 Main Street, P.O. Box 4967, or by email: *Blair.Lichtenwalter@energytransfer.com*.

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

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. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp*.

Dated: August 28, 2023.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2023–18947 Filed 8–31–23; 8:45 am]

**BILLING CODE 6717–01–P**

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OA–2010–0757; FRL–11344–01–OMS]**

## Proposed Information Collection Request; Comment Request; Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (Renewal); EPA ICR No. 2260.08, OMB Control No. 2090–0029

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency, EPA Form 3110–48 (Renewal)'' (EPA ICR No. 2260.08, OMB Control No. 2090–0029) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, 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 June 30, 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.

**DATES:** Comments must be submitted on or before November 8, 2023.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OA–2010–0757, online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

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:** Gina Moore, Office of Resources and Business Operations, Federal Advisory Committee Management Division, Mail Code 1601M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0462; email address: *moore.gina@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, William Jefferson Clinton West, Room 3334, 1301 Constitution Avenue 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 PRA, 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 automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. 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, 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 purpose of this information collection request is to assist the EPA in selecting federal advisory committee members who will be appointed as Special Government Employees (SGEs), mostly to the EPA's scientific and technical committees. To select SGE members as efficiently and cost effectively as possible, the Agency needs to evaluate potential conflicts of interest before a candidate is hired as an SGE and appointed as a member to a committee.

Agency officials developed the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency,'' also referred to as Form 3110–48, for greater inclusion of information to discover any potential conflicts of interest as recommended by the Government Accountability Office.

*Form Number:* EPA Form 3110–48.

*Respondents/affected entities:* Entities potentially affected by this action are approximately 250 candidates for membership as SGEs on EPA federal advisory committees. SGEs are required to file a confidential financial disclosure report (Form 3110–48) when first appointed to serve on EPA advisory committees, and then annually thereafter. Committee members may also be required to update the confidential form before each meeting while they serve as SGEs.

*Respondent's obligation to respond:* Required in order to serve as an SGE on a federal advisory committee at EPA (5 CFR 2634.903).

*Estimated number of respondents:* 250 (total).

*Frequency of response:* When first appointed to serve on an EPA advisory committee and annually thereafter. Committee members may also be required to update the confidential form before each meeting while they serve as SGEs.

*Total estimated burden:* 250 hours per year (1 hour per respondent). Burden is defined at 5 CFR 1320.03(b)

*Total estimated cost:* $22,000 (per year), includes $0 annualized capital or operation & maintenance costs.

*Changes in Estimates:* We anticipate an increase in the total estimated respondent burden compared with the ICR currently approved by OMB. The estimated number of respondents needs to be revised to consider several committees and subcommittees with SGEs that were established since the ICR was last renewed, as well as SGEs who serve as consultants to the committees on an ad-hoc basis.

**Kimberly Y. Patrick,**

*Principal Deputy Assistant Administrator, Office of Mission Support.*

[FR Doc. 2023–18967 Filed 8–31–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL OP–OFA–084]**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed August 21, 2023 10 a.m. EST

Through August 28, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

*Notice:* Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

*EIS No. 20230108, Final, USDA, OR,* Predator Damage Management in Oregon, *Review Period Ends:* 10/02/2023, *Contact:* Kevin Christnesen 503–820–2851.

*EIS No. 20230109, Draft, NOAA, CA,* Proposed Chumash Heritage National Marine Sanctuary, *Comment Period Ends:* 10/25/2023, *Contact:* Paul Michel 831–647–4201.

*EIS No. 20230110, Final, TxDOT, TX,* I–35 Capital Express Central Project, *Contact:* Doug Booher 512–416–2663.

Under 23 U.S.C. 139(n)(2), TxDOT has issued a single document that consists of a final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

Dated: August 28, 2023.

**Cindy S. Barger,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2023–18938 Filed 8–31–23; 8:45 am]

**BILLING CODE 6560–50–P**

## FARM CREDIT ADMINISTRATION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m., Thursday, September 14, 2023.

**PLACE:** You may observe this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to observe, at least 24 hours in advance, visit *FCA.gov,* select ''Newsroom,'' then select ''Events.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:** The following matters will be considered:

- Approval of Minutes for August 10, 2023
- Quarterly Report on Economic Conditions and Farm Credit System Condition and Performance

**CONTACT PERSON FOR MORE INFORMATION:** If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

**Ashley Waldron,**

*Secretary to the Board.*

[FR Doc. 2023–19100 Filed 8–30–23; 4:15 pm]

**BILLING CODE 6705–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FR ID: 167779]**

### Privacy Act System of Records

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** The Federal Communications Commission (FCC, Commission, or Agency) proposes to modify an existing system of records, FCC/CGB–3, National

Deaf-Blind Equipment Distribution Program (NDBEDP), subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The Commission uses the information, including personally identifiable information (PII), that is submitted by the certified equipment distribution program in each state, as required by the NDBEDP, to maintain each state's certification to participate in the NDBEDP to support the distribution of specialized customer premises equipment (CPE) and the provision of associated services. State equipment distribution programs, other public programs, and private entities may apply to the Commission for certification for the state to participate in the NDBEDP and receive reimbursement for its activities. This modification makes various necessary changes and updates, including formatting changes required by the Office of Management and Budget (OMB) Circular A–108 since its previous publication, the addition of new routine uses, as well as the revision of existing routine uses.

**DATES:** This modified system of records will become effective on September 1, 2023. Written comments on the routine uses are due by October 2, 2023. The new or revised routine uses in this action will become effective on October 2, 2023 unless comments are received that require a contrary determination.

**ADDRESSES:** Send comments to Katherine C. Clark, FCC, 45 L Street NE, Washington, DC 20554, or to *privacy@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Katherine C. Clark, (202) 418–1773 or *privacy@fcc.gov* (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the proposed alterations to this system of records).

**SUPPLEMENTARY INFORMATION:** As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed modification of a system of records maintained by the FCC. The FCC previously provided notice of the system of records FCC/CGB–3 by publication in the **Federal Register** on January 19, 2012 (77 FR 2721). This notice serves to modify FCC/CGB–3 to make various necessary changes and updates, including clarification of the purpose of the system, format changes required by OMB Circular A–108 since its previous publication, the addition of new routine uses and the revision of existing routine uses, which include converting a single existing routine use into multiple revised routine uses. The substantive changes and modifications to the previously published version of the FCC/CGB–3 system of records include:

1. Updating the language in the Security Classification to follow OMB guidance;

2. Modifying the language in the Categories of Individuals and Categories of Records to be consistent with the language and phrasing now used in FCC SORNs;

3. Updating and/or revising language in the following routine uses: (4) Law Enforcement and Investigation; (5) Litigation; (6) Adjudication; (7) Congressional Inquiries; (8) Government-wide Program Management and Oversight; and (9) Breach Notification, the revision of which is as required by OMB Memorandum No. M–17–12;

4. Adding two new routine uses: (10) Assistance to Federal Agencies and Entities Related to Breaches—to assist with other Federal agencies' data breach situations, which is required by OMB Memorandum No. M–17–12; and (11) Non-Federal Personnel—to allow access to information to contractors, other vendors, grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract, service, grant, or cooperative agreement; and

5. Deleting former routine use (6) Department of Justice, which is duplicative of current routine use (5) Litigation.

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

**SYSTEM NAME AND NUMBER:**

FCC/CGB–3, National Deaf-Blind Equipment Distribution Program (NDBEDP).

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Consumer and Governmental Affairs Bureau (CGB), FCC, 45 L Street NE, Washington, DC 20554.

**SYSTEM MANAGER(S):**

CGB, FCC, 45 L Street NE, Washington, DC 20554.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

47 U.S.C. 154, 201, 218, 222, 225, 226, 228, 254(k), and 620; Telecommunications Act of 1996, Public Law 014–104, 110 Stat. 56; Twenty-First Century Communications and Video Accessibility Act of 2010, as amended, Public Law 111–265, 124 Stat 2795.

**PURPOSE(S) OF THE SYSTEM:**

This system collects records submitted by the certified equipment distribution program in each state, as required by the NDBEDP, to maintain each state's certification to participate in this program. Collecting and maintaining the required types of information allows staff access to documents necessary for key activities discussed in this SORN, including maintaining information regarding certified program participants; analyzing effectiveness and efficiency of this and related FCC programs; informing future rule and policy-making activity; and improving staff efficiency. Records in this system are available for public inspection, *e.g.,* in response to requests under the Freedom of Information Act (FOIA), after redaction of information that could identify a complainant or correspondent, such as the complainant's name, address, telephone number, fax number, and/or email address.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

1. Individuals who request or receive the NDBEDP equipment;

2. Individuals who attest to the disability of the individual receiving the NDBEDP equipment and/or matters related to the eligibility requirements, qualifications, and regulations, etc., for those seeking to participate in the NDBEDP;

3. Individuals who may file complaints, and parties named in or involved with the complaint, including, but not limited to, both formal and informal complaints, and inquiries on behalf of themselves or NDBEDP participants and matters related to NDBEDP rules and regulations; and

4. Certain non-Federal personnel performing services or activities related to this system of records, including, but not limited to, representatives of equipment distribution programs.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

1. The name and contact information, including street address, email address, and phone number for the individuals requesting or receiving the NDBEDP equipment;

2. The name and contact information, including street and email addresses,

phone number(s), and fax number(s) for the individuals attesting to the disability of the individual who is deaf-blind;

3. Other miscellaneous PII related to the individuals who participate in this program, *e.g.,* response data for equipment requests, users' complaints, evaluation of the users' needs, user training data, outreach activities, equipment request denial data, and medical attestations or records regarding disability qualifications and eligibility requirements;

4. The name and contact information, including street and email addresses, phone number(s), and fax number(s) for certain non-Federal personnel performing services or activities related to this system of records, including, but not limited to, representatives of equipment distribution programs;

5. The name and contact information, including street and email addresses, phone number(s), and fax number(s) for individuals who make or have made formal and informal complaints and inquiries (including related supporting information), and parties named in or involved with the complaint or inquiry, in any format (including but not limited to paper, telephone, TTY, recording, Braille, and electronic submissions, such as email, internet, etc.) on behalf of themselves or NDBEDP participants; and

6. Commission correspondence, *e.g.,* letters and related communications regarding formal and informal complaints and inquiries (which may include PII and related information) that pertain to the NDBEDP programs, NDBEDP participants, involved parties, and the certification and participation of each entity approved by the Commission to participate in the NDBEDP.

**RECORD SOURCE CATEGORIES:**

Information in this system is provided by individuals who request or receive the NDBEDP equipment; individuals, groups, and other entities who attest to the disability of the individual requesting or receiving the equipment; and other individuals, groups, and other entities who have a connection to the NDBEDP and its participants, *e.g.,* those filing or involved with formal and informal complaints or inquiries on behalf of the participants or otherwise performing services or activities related to this system of records

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Formal or Informal Complaints—When a record in this system involves a formal or informal complaint, and/or inquiry filed against an NDBEDP certified program and related entities, the complaint or inquiry may be forwarded to the subject certified program for that state, the appropriate State and Federal medical boards, certifying associations, and related groups, and personal physicians (who may determine whether an individual meets the eligibility criteria for participation in the NDBEDP) for a response.

2. Medical Records—A medical attestation or record (including but not limited to third-party attestations, certifications, and declarations of disability) from this system may be disclosed to appropriate entities, including, but not limited to, the subject certified program for that state, the appropriate State and Federal medical boards, certifying associations, and related groups, and personal physicians for the purposes of determining whether an individual meets the eligibility criteria of being deaf-blind required to participate in the NDBEDP.

3. Income Eligibility Records—A record from this system may be disclosed to appropriate entities, including but not limited to the subject certified program for that state, as well as the appropriate State and Federal certifying boards and authorities, for the purposes of determining whether an individual meets the income eligibility criteria required to participate in the NDBEDP.

4. Law Enforcement and Investigation—To disclose pertinent information to appropriate Federal, State, Tribal, or local agencies, authorities, and officials responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or other requirement when the FCC becomes aware of an indication of a violation or potential violation of a civil or criminal statute, law, regulation, order, or other requirement.

5. Litigation—To disclose records to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the FCC collected the records.

6. Adjudication—To disclose records in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

7. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

8. Government-wide Program Management and Oversight—To DOJ to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

9. Breach Notification—To appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of PII maintained in the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information system, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

10. Assistance to Federal Agencies and Entities Related to Breaches—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. Non-Federal Personnel—To disclose information to non-Federal personnel, including contractors, other vendors (*e.g.,* identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

This electronic system of records resides on the FCC's network or on an FCC vendor's network.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records in this system of records can be retrieved by any category field, *e.g.,* the individual's contact information, including the individual's name(s), street address, email address(es), landline phone and cell phone number(s), complainant(s), and description fields.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

The information in this system is maintained and disposed of in accordance with the National Archives and Records Administration (NARA) General Records Schedule DAA–0173–2017–0002.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

The electronic records, files, and data are stored within FCC or a vendor's accreditation boundaries and maintained in a database housed in the FCC's or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), OMB, and the National Institute of Standards and Technology (NIST).

**RECORD ACCESS PROCEDURES:**

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

**CONTESTING RECORD PROCEDURES:**

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

**NOTIFICATION PROCEDURES:**

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to *privacy@fcc.gov*. Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to records as required under 47 CFR part 0, subpart E.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

77 FR 2721 (January 19, 2012).

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2023–18946 Filed 8–31–23; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FR ID: 167797]**

### Privacy Act of 1974; Matching Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a new matching program.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces a new computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the Michigan Department of Health and Human Services. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of Lifeline, and the Affordable Connectivity Program (ACP), both of which are administered by USAC under the direction of the FCC. More information about these programs is provided in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** Written comments are due on or before October 2, 2023. This computer matching program will commence on October 2, 2023, and will conclude 18 months after the effective date.

**ADDRESSES:** Send comments to Elliot S. Tarloff, FCC, 45 L Street NE, Washington, DC 20554, or to *Privacy@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Elliot S. Tarloff at 202–418–0886 or *Privacy@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs.

In the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 2129–36 (2020), Congress created the Emergency Broadband Benefit Program, and directed use of the National Verifier to determine eligibility based on various criteria, including the qualifications for Lifeline (Medicaid, SNAP, etc.). EBBP provided $3.2 billion in monthly consumer discounts for broadband service and one-time provider reimbursement for a connected device (laptop, desktop computer or tablet). In the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52), Congress modified and extended EBBP, provided an additional $14.2 billion, and renamed it the Affordable Connectivity Program (ACP). A household may qualify for the ACP benefit under various criteria, including an individual qualifying for the FCC's Lifeline program.

In a Report and Order adopted on March 31, 2016, (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for ACP. The purpose of this matching program is to verify the eligibility of Lifeline and ACP applicants and subscribers by

determining whether they receive SNAP, SSI, and Medicaid benefits administered by the Michigan Department of Health and Human Services.

**Participating Agencies**

Michigan Department of Health and Human Services; Federal Communications Commission.

**Authority for Conducting the Matching Program**

The authority for the FCC's ACP is Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52); 47 CFR part 54. The authority for the FCC's Lifeline program is 47 U.S.C. 254; 47 CFR 54.400 through 54.423; Lifeline and Link Up Reform and Modernization, *et al.,* Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (*2016 Lifeline Modernization Order*).

**Purpose(s)**

The purpose of this modified matching agreement is to verify the eligibility of applicants and subscribers to Lifeline, as well as to ACP and other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement will permit eligibility verification for the Lifeline program and ACP by checking an applicant's/subscriber's participation in SNAP, SSI, and Medicaid in Michigan. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for ACP benefits.

**Categories of Individuals**

The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for Lifeline and/or ACP benefits; are currently receiving Lifeline and/or ACP benefits; are individuals who enable another individual in their household to qualify for Lifeline and/or ACP benefits; are minors whose status qualifies a parent or guardian for Lifeline and/or ACP benefits; or are individuals who have received Lifeline and/or ACP benefits.

**Categories of Records**

The categories of records involved in the matching program include, but are not limited to, the last four digits of the applicant's Social Security Number, date of birth, and first or last name. The National Verifier will transfer these data elements to the Michigan Department of Health and Human Services, which will respond either ''yes'' or ''no'' that the individual is enrolled in a qualifying assistance program: SNAP, SSI, and Medicaid administered by the Michigan Department of Health and Human Services.

**System(s) of Records**

The records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline, which was published in the **Federal Register** at 86 FR 11526 (Feb. 25, 2021).

The records shared as part of this matching program reside in the ACP system of records, FCC/WCB–3, Affordable Connectivity Program, which was published in the **Federal Register** at 86 FR 71494 (Dec. 16, 2021).

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2023–18944 Filed 8–31–23; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FR ID: 167780]**

### Privacy Act of 1974; System of Records

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** The Federal Communications Commission (FCC, Commission, or Agency) proposes to modify an existing system of records, FCC/CGB–4, internet-based Telecommunications Relay Service-User Registration Database (ITRS–URD) Program, subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The ITRS–URD's system of records contains personally identifiable information (PII) that is collected, used, stored, and maintained to support the administration, management, operations, and functions of the ITRS programs. The ITRS–URD, which is administered by a third party under contract with the FCC, is a database registration system that provides a necessary interface for multiple ITRS services, which include, but are not limited to Video Relay Service (VRS), and internet Protocol Captioned Telephone Service (IP CTS). These services are available to individuals who are deaf, deaf-blind, hard of hearing, or have speech disabilities, who are eligible under the Americans with Disabilities Act (ADA), and who register to participate in a TRS program. This modification makes various necessary changes and updates, including clarification of the purpose of the system, formatting changes required by the Office of Management and Budget (OMB) Circular A–108 since its previous publication, the addition of new routine uses, as well as the revision of existing routine uses.

**DATES:** This modified system of records will become effective on September 1, 2023. Written comments on the routine uses are due by October 2, 2023. The routine uses in this action will become effective on October 2, 2023 unless comments are received that require a contrary determination.

**ADDRESSES:** Send comments to Katherine C. Clark, FCC, 45 L Street NE, Washington, DC 20554, or to *privacy@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Katherine C. Clark, (202) 418–1773 or *privacy@fcc.gov* (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the proposed alterations to this system of records).

**SUPPLEMENTARY INFORMATION:** As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed modification of a system of records maintained by the FCC. The FCC previously provided notice of the system of records FCC/CGB–4, internet-based Telecommunications Relay Service-User Registration Database (ITRS–URD) Program, by publication in the **Federal Register** on February 9, 2015 (80 FR 6963).

This notice serves to update and modify FCC/CGB–4 as a result of various necessary changes and updates, including approval by the National Archives and Records Administration (NARA) of a records retention and disposal schedule for the information in this system, since its previous publication. The substantive changes and modifications to the previously published version of the FCC/CGB–4 system of records include:

1. Restyling the name of the System as the ''internet-based Telecommunications Relay Service-User Registration Database (ITRS–URD)'';

2. Updating the language in the Security Classification to follow OMB guidance;

3. Modifying the language in the Categories of Individuals and Categories of Records to be consistent with the

language and phrasing now used in FCC SORNs and to reflect regulatory changes in the ITRS–URD and ITRS programs;

4. Updating and/or revising language in the following routine uses (listed by current routine use number): (4) FCC Enforcement Actions; (5) Congressional Inquiries; (6) Government-wide Program Management and Oversight; (7) Law Enforcement and Investigation; (8) Litigation; (9) Adjudication; and (10) Breach Notification, the revision of which is as required by OMB Memorandum No. M–17–12;

5. Adding two new routine uses (listed by current routine use number): (11) Assistance to Federal Agencies and Entities Related to Breaches—to assist with other Federal agencies' data breach situations, which is required by OMB Memorandum No. M–17–12; and (12) Non-Federal Personnel—to allow contractors, other vendors, grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement access to information; and

6. Deleting one routine use (listed by previous routine use number): (10) Department of Justice as duplicative of the newly revised routine use (8) Litigation.

7. Updating the existing records retention and disposal schedule with a new records schedule: ''Telecommunications Relay Service (TRS),'' Records Schedule Number DAA–0173–2015–0006.

The system of records is also revised for clarity and updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

**SYSTEM NAME AND NUMBER:**

FCC/CGB–4, internet-based Telecommunications Relay Service-User Registration Database (ITRS–URD).

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Consumer and Governmental Affairs Bureau (CGB), FCC, 45 L Street NE, Washington, DC 20554.

**SYSTEM MANAGER(S):**

CGB, FCC, 45 L Street NE, Washington, DC 20554.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

47 U.S.C. 141–154, 225, 255, 303(r), 616, and 620; 47 CFR parts 64, Subpart F.

**PURPOSE(S) OF THE SYSTEM:**

This system collects and maintains:

1. Information that is used to determine whether an individual who is applying for a TRS program is eligible to register for the program;

2. Information that the ITRS–URD administrator uses to determine whether information with respect to registered users already in the ITRS–URD is correct and complete;

3. Information that the ITRS–URD administrator uses or will use in a system for automated validation of the registration information that has been submitted and ensure that the authorized VRS and IP CTS providers are unable to register individuals who do not pass the identification verification check conducted through the ITRS–URD;

4. Information that VRS and IP CTS providers must request to validate each individual who seeks to register that he/she is an actual person living or visiting in the United States;

5. Information related to users signed up with multiple providers for VRS or IP CTS; and

6. Information that is contained in the records of the inquiries that VRS and IP CTS providers will make available to the ITRS–URD administrator and its contractors and subcontractors who manages the database (providing verification/call/service center(s) services) to verify that individuals who are deaf, deaf-blind, hard of hearing, or have speech disabilities and who are eligible under the ADA to participate in ITRS programs.

Collecting and maintaining these types of information allows staff access to documents necessary for key activities discussed in this SORN, including verifying the eligibility of individuals to participate in ITRS programs; analyzing effectiveness and efficiency of related FCC programs and informing future rule-making and policy-making activity; and improving staff efficiency. Records in this system are available for public inspection, *e.g.,* in response to requests under the Freedom of Information Act (FOIA), after redaction of identifying information such as a name, address, telephone number, fax number, and/or email address.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who are deaf, deaf-blind, hard of hearing, or have speech disabilities, and who are eligible under the ADA to register for one or more of the ITRS program's multiple services; representatives of certified ITRS Program providers; individuals who are registered and currently receiving ITRS Program services; and/or individuals who are minors whose status makes them eligible for a parent or guardian to register them for ITRS program services.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Electronic records regarding ITRS participants, subscribers, and applicants, including their full names (first, middle, and last names); the names of parents or guardians; full residential addresses; dates of birth; last four digits of social security numbers (SSNs) or Tribal identification numbers (or alternative proof of identification for those who do not have an SSN or Tribal identification number); ten digit telephone number(s) assigned in the TRS number directory and associated uniform resource identifier (URI) information; users' registered location information for emergency calling purposes; eligibility certifications (digital copy) for ITRS program's service(s) and date obtained from provider; users' VRS or IP CTS initiation dates and (when applicable) termination dates; date on which user last placed a point-to-point or relay call.

**RECORD SOURCE CATEGORIES:**

Information in this system is provided by individuals, or by parents or guardians of minor individuals, who are deaf, deaf-blind, hard of hearing or have speech disabilities to determine their eligibility for ITRS programs; and by ITRS program providers for registration of subscribers, participants, and applicants, and/or their re-certification in ITRS programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside of the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. FCC Program Management—A record from this system may be accessed and used by the ITRS–URD Administrator and to third-party contractor's employees (including employees of subcontractors) to conduct official duties associated with the administration, management, and operation of the ITRS programs, as directed by the Commission. Such duties include conducting the verification process that allows the ITRS–URD administrator to determine

the accuracy of the PII provided by or regarding participants, subscribers, and applicants to the system of records, *i.e.,* when an employee of a third-party contractor (and/or subcontractor), responsible for management registration and fraud prevention, verifies the eligibility of the participant, registrant, or subscriber. The FCC may share access to the information in the ITRS–URD for the purposes of managing and/or eliminating waste, fraud, and abuse in the ITRS programs, including as necessary for, among other things, audits, oversight, and or investigations.

2. ADA Eligibility Verification Data—A record from this system may be disclosed to the appropriate Federal, State, Tribal, or local authorities (including transfers of PII data to/from the ITRS–URD Administrator, contractors, and subcontractors, as required) for the purposes of verifying whether individuals who are deaf, deaf-blind, hard of hearing or have speech disabilities are eligible under the ADA to register to participate in/subscribe to ITRS programs;

3. State or Tribal Agencies and Authorized Entities—A record from this system may be disclosed to designated State or Tribal agencies and other authorized entities, which include, but are not limited to state public utility commissions, and their agents, as is consistent with applicable Federal and State laws, to administer TRS or ITRS (as applicable) programs in that state and to perform other management and oversight duties and responsibilities, including determining eligibility for TRS or ITRS programs.

4. FCC Enforcement Actions—When a record in this system involves an informal complaint filed with the FCC alleging a violation of FCC rules, regulations, orders, or requirements by an ITRS applicant, subscriber, participant, licensee, certified or regulated entity/provider, or an unlicensed person or entity, the complaint may be served to the alleged violator for a response through the FCC's normal course of complaint handling process. When an order or other Commission-issued document that includes consideration of an informal complaint or complaints is issued by the FCC for resolution or enforcement, the complainant's name may be made public in that order or letter document. Where a complainant in filing his or her complaint explicitly requests that confidentiality of his or her name from public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint.

5. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

6. Government-wide Program Management and Oversight—To provide information to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under FOIA; or to OMB to obtain that office's advice regarding obligations under the Privacy Act.

7. Law Enforcement and Investigation—To disclose pertinent information to appropriate Federal, State, Tribal, or local agencies, authorities, and officials responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or other requirement when the FCC becomes aware of an indication of a violation or potential violation of a civil or criminal statute, law, regulation, order, or other requirement.

8. Litigation—To disclose records to DOJ when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the DOJ is for a purpose that is compatible with the purpose for which the FCC collected the records.

9. Adjudication—To disclose records in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

10. Breach Notification—To appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

11. Assistance to Federal Agencies and Entities Related to Breaches—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

12. Non-Federal Personnel—To disclose information to non-Federal personnel, including contractors, other vendors (*e.g.,* identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

This system contains electronic records, files, and data. The ITRS–URD Program Administrator will host the electronic data, which will reside in the administrator's ITRS–URD Program's database(s) and in the databases of third-party contractors and subcontractors who conduct the subscribers/participants' verification processes.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records in this system of records can be retrieved by any category field, *e.g.,* first or last name or email address.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

The information in this system is maintained and disposed of in accordance with NARA records schedule ''Telecommunications Relay Service (TRS),'' Records Schedule Number DAA–0173–2015–0006.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

The electronic records, files, and data are stored within FCC or a vendor's accreditation boundaries and maintained in a database housed in the FCC's or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), OMB, and the National Institute of Standards and Technology (NIST).

**RECORD ACCESS PROCEDURES:**

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

**CONTESTING RECORD PROCEDURES:**

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

**NOTIFICATION PROCEDURES:**

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to *privacy@fcc.gov.* Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to records as required under 47 CFR part 0, subpart E.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

80 FR 6963 (February 9, 2015)

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2023–18945 Filed 8–31–23; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1085; FR ID 167223]**

### 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 (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. 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 31, 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 Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

**SUPPLEMENTARY INFORMATION:** The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

*OMB Control Number:* 3060–1085.

*Title:* Section 9.11, Interconnected Voice Over internet Protocol (VoIP) E911 Compliance; Section 9.12, Implementation of the NET 911 Improvement Act of 2008: Location Information From Owners and Controllers of 911 and E911 Capabilities.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or Households; Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 29 respondents; 13,783,364 responses.

*Estimated Time per Response:* 0.09 hours (five minutes).

*Frequency of Response:* One-time, on occasion, third party disclosure requirement, and recordkeeping requirement.

*Obligation to Respond:* Statutory authority for this information collection is contained in 47 U.S.C. 151, 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471.

*Total Annual Burden:* 1,262,271 hours.

*Total Annual Cost:* $202,992,000.

*Needs and Uses:* The Commission is obligated by statute to promote ''safety of life and property'' and to ''encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure'' for public safety. Congress has established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911. Efforts by Federal, State and Local Government, along with the significant efforts of wireline and wireless service providers, have resulted in the nearly ubiquitous deployment of this life-saving service.

The Order the Commission adopted on May 19, 2005, sets forth rules requiring providers of VoIP services that interconnect with the nation's existing public switched telephone network (interconnected VoIP services) to supply E911 capabilities to their customers.

To ensure E911 functionality for customers of VoIP service providers the Commission requires the following information collections:

A. *Location Registration.* Requires providers to interconnected VoIP services to obtain location information from their customers for use in the routing of 911 calls and the provision of

location information to emergency answering points.

B. *Provision of Automatic Location Information (ALI).* Interconnected VoIP service providers will place the location information for their customers into, or make that information available through, specialized databases maintained by local exchange carriers (and, in at least one case, a State Government) across the country.

C. *Customer Notification.* Requires that all providers of interconnected VoIP are aware of their interconnected VoIP service's actual E911 capabilities. That all providers of interconnected VoIP service specifically advise every subscriber, both new and existing, prominently and in plain language, the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service.

D. *Record of Customer Notification.* Requires VoIP providers to obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood this advisory.

E. *User Notification.* In addition, in order to ensure to the extent possible that the advisory is available to all potential users of an interconnected VoIP service, interconnected VoIP service providers must distribute to all subscribers, both new and existing, warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on or near the customer premises equipment used in conjunction with the interconnected VoIP service.

**Section 506 of RAY BAUM'S Act**

Section 506 of RAY BAUM'S Act, which requires the Commission to ''consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from multi-line telephone system.'' RAY BAUM'S Act also states that, ''[i]n conducting the proceeding . . . the Commission may consider information and conclusions from other Commission proceedings regarding the accuracy of the dispatchable location for a 9–1–1 call. . . .'' RAY BAUM'S Act defines a ''9–1–1 call'' as a voice call that is placed, or a message that is sent by other means of communication, to a PSAP for the purpose of requesting emergency services.

As part of implementing Section 506 of RAY BAUM'S Act, on August 1, 2019, the Commission adopted a *Report and Order* (*2019 Order*) amending, among other things, its 911 Registered Location and customer notification requirements applicable to VoIP service providers.

The Commission's *2019 Order* changed the wording of section 9.11's Registered Location requirements to facilitate the provision of automated dispatchable location in fixed and non-fixed environments. For non-fixed environments, the rule requires automated dispatchable location, if technically feasible. If not technically feasible, VoIP service providers may fall back to registered location, alternative location information for 911 calls, or a national emergency call center. Regarding customer notification requirements, the Commission afforded service providers flexibility to use any conspicuous means to notify end users of limitations in 911 service. In sum, the requirements adopted in the *2019 Order* leverage technology advancements since the 2005 *Order,* build upon the existing Registered Location requirement, expand options for collecting and supplying end-user location information with 911 calls, are flexible and technologically neutral from a compliance standpoint and serve a vital public safety interest.

**NET 911 Act**

The NET 911 Act explicitly imposes on each interconnected voice over internet Protocol (VoIP) provider the obligation to provide 911 and E911 service in accordance with the Commission's existing requirements. In addition, the NET 911 Act directs the Commission to issue regulations by no later than October 21, 2008 that ensure that interconnected VoIP providers have access to any and all capabilities they need to satisfy that requirement.

On October 21, 2008, the Commission released a *Report and Order* (*2008 Order*), FCC 08–249, WC Docket No. 08–171, that implements certain key provisions of the NET 911 Act. As relevant here under the Paperwork Reduction Act (PRA), the Commission requires an owner or controller of a capability that can be used for 911 or E911 service to make that capability available to a requesting interconnected VoIP provider under certain circumstances. In particular, an owner or controller of such capability must make it available to a requesting interconnected VoIP provider if that owner or controller either offers that capability to any commercial mobile radio service (CMRS) provider or if that capability is necessary to enable the interconnected VoIP provider to provide 911 or E911 service in compliance with the Commission's rules. The information collection requirements contained in this collection guarantee continued cooperation between interconnected VoIP service providers and Public Safety Answering Points (PSAPs) in complying with the Commission's E911 requirements.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer.*

[FR Doc. 2023–18950 Filed 8–31–23; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FR ID: 167766]**

### Privacy Act System of Records

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** The Federal Communications Commission (FCC, Commission, or Agency) proposes to modify an existing system of records, FCC/CGB–1, Informal Complaints, Inquiries, and Requests for Dispute Assistance, subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The Commission uses records in this system to handle and process informal complaints, inquiries, and requests for dispute assistance received from individuals, groups, and other entities. This modification makes various necessary changes and updates, including formatting changes required by the Office of Management and Budget (OMB) Circular A–108 since its previous publication, the addition of new routine uses, as well as the revision of existing routine uses.

**DATES:** This modified system of records will become effective on September 1, 2023. Written comments on the routine uses are due by October 2, 2023. The routine uses in this action will become effective on October 2, 2023 unless comments are received that require a contrary determination.

**ADDRESSES:** Send comments to Katherine C. Clark, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or *privacy@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Katherine C. Clark, (202) 418–1773, or *privacy@fcc.gov* (and to obtain a copy of the Narrative Statement and the

Supplementary Document, which includes details of the proposed alterations to this system of records).

**SUPPLEMENTARY INFORMATION:** As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed modification of a system of records maintained by the FCC. The FCC previously provided notice of the system of records FCC/CGB–1, Informal Complaints, Inquiries, and Requests for Dispute Assistance, by publication in the **Federal Register** on August 15, 2014 (79 FR 48154).

This notice serves to update and modify FCC/CGB–1 as a result of the various necessary changes and updates, including approval by the National Archives and Records Administration (NARA) of a records retention and disposal schedule for the information in this system since its previous publication. The substantive changes and modifications to the previously published version of the FCC/CGB–1 system of records include:

1. Updating the language in the Security Classification to follow OMB guidance;

2. Modifying the language in the Categories of Individuals and Categories of Records to be consistent with the language and phrasing now used in FCC SORNs;

3. Updating and/or revising language in the following routine uses (listed by current routine use number: (3) Public Disclosure; (4) Law Enforcement and Investigation; (5) Litigation; (6) Adjudication; (7) Congressional Inquiries; (8) Government-wide Program Management and Oversight; and (9) Breach Notification, the revision of which is as required by OMB Memorandum No. M–17–12;

4. Adding two new routine uses (listed by current routine use number): (10) Assistance to Federal Agencies and Entities Related to Breaches—to assist with other Federal agencies' data breach situations, which is required by OMB Memorandum No. M–17–12; and (11) Non-Federal Personnel—to provide contractors, other vendors, grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract, service, grant, cooperative agreement with access to information;

5. Deleting former routine use (7) Department of Justice, which is duplicative of current routine use (5) Litigation; and

6. Updating the existing records retention and disposal schedule with a new records schedule, NARA General Records Schedule 6.5, Item 020 (DAA–0173–2019–0002).

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

**SYSTEM NAME AND NUMBER:**

FCC/CGB–1, Informal Complaints, Inquiries, and Requests for Dispute Assistance.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Consumer and Governmental Affairs Bureau, Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

**SYSTEM MANAGER(S):**

Consumer and Governmental Affairs Bureau, Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sections 1, 4, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507, 710, 713, 716, 717, and 718 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507, 610, 613, 617, 618, and 619; Sections 504 and 508 of the Rehabilitation Act, 29 U.S.C. 794 and 794d; and 47 CFR 0.111, 0.141, 1.711 *et seq.,* 14.30 *et seq.,* 20.19, 64.604, 68.414 *et seq.,* and 79.1 *et seq.*

**PURPOSE(S) OF THE SYSTEM:**

This system will collect informal consumer complaints, inquiries, and requests for dispute assistance and related supporting materials received from individuals, groups, and other entities; company replies to informal consumer complaints, requests, inquiries, and Commission letters regarding such complaints, requests, and inquiries; and other submissions made by individuals, groups, or other entities. Collecting and maintaining these types of information allow staff access to documents necessary for key activities discussed in this SORN, including processing informal complaints, inquiries, and requests for dispute assistance; analyzing effectiveness and efficiency of related FCC programs and informing future rule- and policy-making activity; and improving staff efficiency. Records in this system are available for public inspection, *e.g.,* in response to requests under the Freedom of Information Act (FOIA), after redaction of information that could identify the complainant or correspondent, including the complainant's name, address, telephone number, fax number, and/or email address.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals, and individual representatives of groups or other entities who make or have made, or are responding to, informal consumer complaints, inquiries, or requests for dispute assistance, as well as Commission letters regarding such complaints, requests, and inquiries on matters arising under the Communications Act of 1934, as amended, and the Rehabilitation Act.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Computerized information contained in a database of inquiries, requests for dispute assistance, informal consumer complaints, and related supporting information, including personal contact information or other identifying information provided by individuals, groups, or other entities; company replies, including contact information, to informal consumer complaints, requests, inquiries, and Commission letters regarding such complaints, requests, and inquiries; and submissions that individuals, groups, or other entities make, including, but not limited to, submissions made by letter, fax, telephone, email, and via the FCC web portal for consumer complaints.

**RECORD SOURCE CATEGORIES:**

Information in this system is provided by individuals, groups, and other entities who make or have made, or are responding to, informal consumer complaints, inquiries, or requests for dispute assistance, as well as Commission letters regarding such complaints, requests, and inquiries on matters arising under the Communications Act of 1934, as amended, and the Rehabilitation Act.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside of the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. Informal Consumer Complaints—When a record in this system involves an informal consumer complaint filed

against a service provider (*e.g.,* broadband, telecommunications, broadcast, multi-channel video program, Voice over internet-Protocol (VoIP), etc.), the complaint may be forwarded to the subject company for a response, pursuant to Sections 4(i), 208, and 303(r) of the Communications Act of 1934, as amended.

2. Informal Complaints, Inquiries, and Requests for Dispute Assistance about Accessibility for Individuals with Disabilities—When a record in this system involves an informal complaint, inquiry, or request for dispute assistance involving or filed against a company about accessibility for individuals with disabilities, the inquiry, request, or informal complaint may be forwarded to the subject company for a response, pursuant to Section 4(i), 208, and 303(r) of the Communications Act of 1934, as amended.

3. Public Disclosure—When an order or other published Bureau- or Commission-level action (including Notices of Proposed Rulemaking, Reports and Orders, Notices of Apparent Liability, Forfeiture Orders, Consent Agreements, Notice Letters, or all other actions released by a Bureau or the Commission) includes consideration of informal complaints (including informal complaints related to accessibility for individuals with disabilities) filed against a company, the complainant's name may be made public in that order or Commission action. Where a complainant in filing his or her complaint explicitly requests confidentiality of his or her name from public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint.

4. Law Enforcement and Investigation—To disclose pertinent information to the appropriate Federal, State, local, Tribal agency, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

5. Litigation—To disclose records to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the DOJ is for a purpose that is compatible with the purpose for which the FCC collected the records.

6. Adjudication—To disclose records in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

7. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the written request of that individual.

8. Government-wide Program Management and Oversight—To provide information to the DOJ to obtain the department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

9. Breach Notification—To appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of Personally Identifiable Information (PII) maintained in the system of records; (b) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

10. Assistance to Federal Agencies and Entities Related to Breaches—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. Non-Federal Personnel—To disclose information to non-Federal personnel, including contractors, FCC program administrators (including USAC), other vendors (*e.g.,* identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records to perform their activity.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

This is a cloud-based computing system that utilizes the provider-supported application on the provider's cloud network (Software as a Service or SaaS).

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records in this system of records can be retrieved by any category field, *e.g.,* first or last name or email address.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

The information in this system is maintained and disposed of in accordance with the NARA General Records Schedule 6.5, Item 020 (DAA–0173–2019–0002).

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

The electronic records, files, and data are stored within FCC or a vendor's accreditation boundaries and maintained in a database housed in the FCC's or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), OMB, and the National Institute of Standards and Technology (NIST).

**RECORD ACCESS PROCEDURES:**

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

**CONTESTING RECORD PROCEDURES:**

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

**NOTIFICATION PROCEDURES:**

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to *privacy@fcc.gov.* Individuals requesting access or amendment of records must also comply with the FCC's Privacy Act regulations regarding verification of identity as required under 47 CFR part 0, subpart E.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

79 FR 48152 (August 15, 2014).

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2023–18948 Filed 8–31–23; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1280; FR ID 167929]**

## 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 (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. 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 31, 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 Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

**SUPPLEMENTARY INFORMATION:** The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

*OMB Control Number:* 3060–1280.

*Title:* E911 Compliance for Fixed Telephony and Multi-line Telephone Systems.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities, not-for-profit institutions and State, local, and Tribal government.

*Number of Respondents and Responses:* 1,397,677 respondents; 46,728,330 responses.

*Estimated Time per Response:* 0.016 hours (one minute).

*Frequency of Response:* One-time, on occasion, third party disclosure requirement, and recordkeeping requirement.

*Obligation to Respond:* Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471.

*Total Annual Burden:* 779,266 hours.

*Total Annual Cost:* $1,834,020.

*Needs and Uses:* The Commission is obligated by statute to promote ''safety of life and property'' and to ''encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure'' for public safety. Congress has established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911. Efforts by federal, state and local government, along with the significant efforts of wireline and wireless service providers, have resulted in the nearly ubiquitous deployment of this life-saving service.

Section 506 of RAY BAUM'S Act requires the Commission to ''consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from multi-line telephone system.'' RAY BAUM'S Act also states that, ''[i]n conducting the proceeding . . . the Commission may consider information and conclusions from other Commission proceedings regarding the accuracy of the dispatchable location for a 9–1–1 call . . . .'' RAY BAUM'S Act defines a ''9–1–1 call'' as a voice call that is placed, or a message that is sent by other means of communication, to a Public Safety Answering Point (PSAP) for the purpose of requesting emergency services.

As part of implementing section 506 of RAY BAUM'S Act, on August 1, 2019, the Commission adopted a *Report and Order* (*2019 Order*), set forth rules requiring Fixed Telephony providers and MLTS providers to ensure that dispatchable location is conveyed with 911 calls.

The Commission's *2019 Order* adopted §§ 9.8(a) and 9.16(b)(3)(i), (ii), and (iii) to facilitate the provision of automated dispatchable location. For Fixed Telephony and in fixed Multi-line Telephone Systems (MLTS) environments, respective providers must provide automated dispatchable location with 911 calls. For on-premises, non-fixed devices associated with an MLTS, the MLTS operator or manager must provide automated dispatchable location to the appropriate PSAP when technically feasible; otherwise they must provide either dispatchable location based on end-user manual update, or alternative location information. For off-premises MLTS calls to 911, the MLTS operator or manager must provide (1) dispatchable location, if technically feasible, or, otherwise, either (2) manually-updated dispatchable location, or (3) enhanced location information, which may be coordinate-based, consisting of the best available location that can be obtained from any available technology or

combination of technologies at reasonable cost. The requirements adopted in the *2019 Order* account for variance in the feasibility of providing dispatchable location for non-fixed MLTS 911 calls, and the means available to provide it. The information collection requirements associated with these rules will ensure that Fixed Telephony and MLTS providers have the means to provide 911 callers' locations to PSAPs, thus reducing response times for emergency services.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2023–18942 Filed 8–31–23; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL MARITIME COMMISSION

**[DOCKET NO. 23–09]**

### Hubbell Incorporated and HUBS, Inc., Complainants v. DSV Air & Sea, Inc. and DSV Ocean Transport A/S, Respondents; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by Hubbell Incorporated and HUBS, Inc. (the ''Complainants'') against DSV Air & Sea, Inc. and DSV Ocean Transport A/S (collectively, the ''Respondents''). Complainants state that the Commission has subject-matter jurisdiction over the complaint under the Shipping Act of 1984, as amended, 46 U.S.C. 40101 *et seq.* (the ''Shipping Act'') and personal jurisdiction over the Respondents as regulated and registered Non-Vessel-Operating Common Carriers (''NVOCC'').

Complainant Hubbell Incorporated is a Connecticut corporation with its corporate headquarters in Shelton, Connecticut.

Complainant HUBS, Inc. is a Delaware corporation with a principal place of business in Shelton, Connecticut.

Complainants identify Respondent DSV Air & Sea, Inc. as an entity organized under the laws of the state of Delaware with a principal place of business in Iselin, New Jersey. Complainants identify Respondent DSV Ocean Transport A/S as a foreign entity with an address in Denmark. Complainants state Respondents hold themselves out as part of a global transport and logistics company.

Complainants allege that Respondents violated 46 U.S.C. 41104(a)(2), 41102(c), 41102(a)(3), and 41104(d)(2)(B) and 46 CFR 531.6(c) regarding service not in accordance with the terms of an NVOCC Service Arrangement (''NSA''), unjust and unreasonable practices in handling property, and retaliation and other unfair or unjustly discriminatory methods for any other reason. Complainants allege these violations arose from a failure to comply with the termination, rate, and billing terms of negotiated NSAs; an attempt to make material changes to the NSAs; an overcharge of freight, demurrage and detention, and accessorial charges; and a complaint filed in Delaware federal court.

An answer to the complaint must be filed with the Commission within twenty-five (25) days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/23-09/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by August 28, 2024, and the final decision of the Commission shall be issued by March 12, 2025.

Served: August 28, 2023.

**Carl Savoy,**

*Federal Register Alternate Liaison Officer, Federal Maritime Commission.*

[FR Doc. 2023–18902 Filed 8–31–23; 8:45 am]

**BILLING CODE 6730–02–P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 18, 2023.

*A. Federal Reserve Bank of Dallas* (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *Briscoe Ranch, Inc., Uvalde, Texas;* to engage in extending credit and servicing loans pursuant to section 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2023–18987 Filed 8–31–23; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 18, 2023.

*A. Federal Reserve Bank of St. Louis* (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Brewer Family Trust; James F. Gramling, individually and as special trustee of the Brewer Family Trust; the William E. Brewer Irrevocable Trust; the William E. Brewer, III Irrevocable Trust; the Elizabeth Shaw Brewer Irrevocable Trust; William E. Brewer, individually and as trustee of the William E. Brewer Irrevocable Trust, the William E. Brewer, III Irrevocable Trust and the Elizabeth Shaw Brewer Irrevocable Trust; the Shawill Irrevocable Trust; William E. Brewer, III, individually and as trustee of the Shawill Irrevocable Trust; Diane Elizabeth Brewer; Meredith Brewer; Elizabeth Shaw Brewer; Neeley Camp; and Britt Camp, all of Paragould, Arkansas;* to retain the voting shares of First Paragould Bankshares, Inc., and thereby retain the voting shares of First National Bank, both of Paragould, Arkansas.

Board of Governors of the Federal Reserve System.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2023–18986 Filed 8–31–23; 8:45 am]

**BILLING CODE P**

## GENERAL SERVICES ADMINISTRATION

**[Notice–MG–2023–02; Docket No. 2023–0002; Sequence No. 29]**

### Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Notification of Upcoming Public Meeting

**AGENCY:** Office of Government-wide Policy, General Services Administration (GSA).

**ACTION:** Meeting notice.

**SUMMARY:** In accordance with the requirements of the Federal Advisory Committee Act, this notice provides the agenda for a web-based meeting of the Green Building Advisory Committee (the Committee). This meeting will be focused on gathering Committee member comments on the P100 Federal Facilities Standards (*https://www.gsa.gov/real-estate/design-and-construction/engineering/facilities-standards-for-the-public-buildings-service*) of GSA's Public Buildings Service (PBS).

The meeting is open to the public to observe; online attendees are required to register in advance to attend as instructed below.

**DATES:** The Committee's online meeting will be held Monday, September 18, 2023, from 1:30 p.m. to 3:45 p.m., Eastern Time (ET).

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Bloom, Designated Federal Officer, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, GSA, 1800 F Street NW, (Mail-code: MG), Washington, DC 20405, at *gbac@gsa.gov* or 312–805–6799. Additional information about the Committee, including meeting materials and agendas, will be made available on-line at *http://www.gsa.gov/gbac.*

**SUPPLEMENTARY INFORMATION:**

#### Procedures for Attendance and Public Comment

To register to attend this meeting as a public observer, please send the following information via email to *gbac@gsa.gov:* your first and last name, organization and email address and whether you would like to provide public comment. Requests to observe the September 18, 2023 meeting must be received by 5:00 p.m. ET, on Thursday, September 14, 2023 to receive the meeting information.

Full meeting agenda and attendance information will be provided following registration. Limited time will be provided for public comment.

GSA will be unable to provide technical assistance to any listener experiencing technical difficulties. Testing access to the Web meeting site before the calls is recommended. To request an accommodation, such as closed captioning, or to ask about accessibility, please contact Mr. Bloom at *gbac@gsa.gov* at least five business days prior to the meeting to give GSA as much time as possible to process the request.

#### Background

The Administrator of GSA established the Committee on June 20, 2011 (**Federal Register**/Vol. 76, No. 118) pursuant to section 494 of the Energy Independence and Security Act of 2007 (EISA, 42 U.S.C. 17123). Under this authority, the Committee provides independent policy advice and recommendations to GSA to advance federal building innovations in planning, design, and operations to reduce costs, enable agency missions, enhance human health and performance, and minimize environmental impacts.

#### September 18, 2023 Online Meeting Agenda

- Introductions
- About the P100
- Proposed Committee Comments to the P100 (including Committee vote if needed)
- Public Comment
- Adjourn

**Brian Gilligan,**

*Deputy Director, Office of Federal High-Performance Green Buildings, General Services Administration.*

[FR Doc. 2023–18943 Filed 8–31–23; 8:45 am]

**BILLING CODE 6820–14–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Supplemental Evidence and Data Request on Diagnosis and Treatment of Tethered Spinal Cord

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Request for supplemental evidence and data submissions.

**SUMMARY:** The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Diagnosis and Treatment of Tethered Spinal Cord,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

**DATES:** *Submission Deadline* on or before October 2, 2023.

**ADDRESSES:**

*Email submissions: epc@ahrq.hhs.gov.*

*Print submissions:*

*Mailing Address:* Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

*Shipping Address (FedEx, UPS, etc.):* Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Kelly Carper, Telephone: 301–427–1656 or Email: *epc@ahrq.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Diagnosis and Treatment of Tethered Spinal Cord.* AHRQ is conducting this review pursuant to section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Diagnosis and Treatment of Tethered Spinal Cord.* The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/tethered-spinal-cord/protocol.*

This is to notify the public that the EPC Program would find the following information on *Diagnosis and Treatment of Tethered Spinal Cord* helpful:

- A list of completed studies that your organization has sponsored for this topic. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements, if relevant: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this topic.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including, if relevant, a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this topic and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on topics not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

*The review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.*

**Key Questions (KQ)**

*KQ 1:* What is the accuracy of radiographic and other diagnostic criteria in diagnosing tethered spinal cord?

*KQ 2:* What are the benefits and harms of prophylactic surgery for asymptomatic tethered spinal cord patients?

*KQ 3:* What are the effectiveness, comparative effectiveness and harms of surgical and non-surgical treatments for symptomatic tethered spinal cord?

a. Stratified by symptom type, intensity, and patient age?

b. Are effects modified by use of special surgical equipment or techniques?

*KQ 4*: Among individuals who experience retethering after spinal detethering surgery, what are the benefits, harms and long-term outcomes of another surgery compared with no treatment?

a. Are individual factors with which a patient presents (such as primary symptoms, symptom intensity, age, etc.) associated with better or worse outcomes after repeat surgery?

**PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, and Setting)**

TABLE 1—ELIGIBILITY CRITERIA

| Element | Inclusion criteria | Exclusion criteria |
|---|---|---|
| Population ..... | *KQ1:* Pediatric or adult patients assessed for tethered spinal cord.<br>*KQ2:* Pediatric or adult patients with tethered spinal cord and no symptoms or marginally symptomatic without functional deficits.<br>*KQ3:* Pediatric or adult patients with symptomatic tethered spinal cord.<br>*KQ4:* Pediatric or adult patients who experience retethering after spinal detethering surgery. | Tethering of the spine as an adverse event associated with an intervention (not patients being treated for tethered spinal cord). |
| Interventions ..... | *KQ1:* Screening and diagnostic approaches, tools, and criteria such as physical examination, urodynamic studies, (MRI), myelogram, computed tomography (CT) scan, computed axial tomography (CAT) scan, or ultrasound.<br>*KQ2:* Prophylactic or early surgery.<br>*KQ3:* Surgical or non-surgical treatment or management interventions such as surgical detethering, or other surgery (*e.g.,* spine-shortening vertebral osteotomy, spinal cord transection), physical therapy, bladder therapy for bladder function, or bracing.<br>*KQ4:* Surgical interventions such as repeat detethering, revision detethering, spine-shortening vertebral osteotomy, vertebral column shortening, spinal cord transection, or other surgery. | Interventions and approaches not addressing tethered spinal cord. |

TABLE 1—ELIGIBILITY CRITERIA—Continued

| Element | Inclusion criteria | Exclusion criteria |
|---|---|---|
| Comparators | *KQ1:* Confirmation of diagnosis by a neurosurgeon or neurologist.<br>*KQ2–4:* No surgery, sham surgery, no treatment, or alternative treatments for effectiveness outcomes; no comparator is required for studies reporting adverse events of interest (eligible adverse events will be determined with the help of the TEP). | *KQ 1:* no comparator.<br>For KQ 2–4, Studies without comparator except for studies for an adverse event of interest. |
| Outcomes | *KQ1:* Diagnostic performance (*e.g.,* diagnostic accuracy measured as concordance with neurosurgeon or neurologist diagnosis); adverse events of the diagnostic procedure; and clinical impact of a correct or incorrect diagnosis such as (*e.g.,* overtreatment due to misdiagnosis, delayed treatment, or undertreatment due to missed diagnosis).<br>*KQ2–4:* Patient health and other patient effects such as leg weakness, leg numbness, leg pain, other pain, gait, walking difficulty, bowel incontinence, bladder incontinence, scoliosis, disability, adverse events, postoperative complications, infection, 30-day complication rate, morbidity, quality of life, or general health status, as well as process measures such as repeat surgery. | Provider satisfaction and frequency of procedures. |
| Timing | No restrictions regarding the timing or duration of the intervention or the follow up. | N/A. |
| Setting | Settings compatible with US healthcare settings, no restrictions regarding the clinical setting. | Very low resource countries or conflict zones. |
| Study Design | *KQ1:* Diagnostic accuracy and diagnostic impact analyses<br>*KQ2–4:* Randomized controlled trials (RCTs), clinical trials without randomization, cohort studies comparing two cohorts, controlled post-only studies, and case-control studies. Experimental single arm trials and observational case series, with or without structured pre- and post-intervention data, need to report on neurological status or bladder or bowel function to be eligible. | Secondary data, but systematic reviews will be retained for reference-mining. |
| Other limiters | Data published in journal manuscript and trial records | Data reported in abbreviated format (*e.g.,* conference abstracts). |

**Note:** KQ key question, TEP technical expert panel.

Dated: August 29, 2023.

**Marquita Cullom,**

*Associate Director.*

[FR Doc. 2023–18984 Filed 8–31–23; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Research Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Findings of research misconduct have been made against Surangi (Suranji) Jayawardena, Ph.D. (Respondent), who was an Assistant Professor of Chemistry, University of Alabama in Huntsville (UAH). Respondent engaged in research misconduct in grant applications submitted for U.S. Public Health Service (PHS) funds, specifically R21 AI154256, R21 AI152064, R21 AI149142, and R15 AI146978 submitted to the National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH). The administrative actions, including supervision for a period of four (4) years, were implemented beginning on August 18, 2023, and are detailed below.

**FOR FURTHER INFORMATION CONTACT:** Sheila Garrity, JD, MPH, MBA, Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

*Surangi (Suranji) Jayawardena, Ph.D., University of Alabama in Huntsville:* Based on the report of an investigation conducted by UAH, an admission by Respondent, and additional analysis conducted by ORI in its oversight review, ORI found that Surangi (Suranji) Jayawardena, Ph.D., who was an Assistant Professor of Chemistry, UAH, engaged in research misconduct in grant applications submitted for PHS funds, specifically R21 AI154256, R21 AI152064, R21 AI149142, and R15 AI146978 submitted to NIAID, NIH.

ORI found that Respondent engaged in research misconduct by intentionally, knowingly, or recklessly falsifying and/or fabricating data in twelve (12) figure panels in the following four (4) NIH grant applications:

- R21 AI154256, ''Designing artificial glycoforms to inhibit binding of *Clostridioides difficile* flagellin to TLR5,'' submitted to NIAID, NIH, on October 16, 2019, withdrawn on November 5, 2019
- R21 AI152064, ''Multivalent glycoconjugates to inhibit binding of *Clostridioides difficile* flagella to TLR5,'' submitted to NIAID, NIH, on June 14, 2019, administratively withdrawn on November 1, 2021
- R21 AI149142, ''Rapid Low-cost Diagnostics Assay for Mycobacteria through Magnetic Concentration,'' submitted to NIAID, NIH, on February 15, 2019, administratively withdrawn on July 1, 2021
- R15 AI146978, ''BACTERIA HOMING–IN GLYCAN SENSING,'' submitted to NIAID, NIH, on October 25, 2018, administratively withdrawn on March 1, 2021

Specifically, ORI found that Respondent intentionally, knowingly, or recklessly falsified and/or fabricated the following image data by reusing data from the same source and falsely relabeling the data as representing different experimental conditions with antibiotic particles or bacteria:

• Transmission electron microscopy (TEM) images of:

—(left) NeuNAc-AuNPs and (middle) enlarged image showing binding of NeuNAc-AuNP binding to flagella and (right) Man-AuNPs in Figure 1b of R21 AI152064

—(left) NeuNAc-[60]fullerene and (middle) enlarged image showing binding of NeuNAc-[60]fullerene binding to flagella and (right) Man-[60]fullerene in Figure 1e of R21 AI154256

• photos of the formation of magnetic precipitate in a microcentrifuge tube representing:

—CSL3-magSNPs binding *Pseudomonas aeruginosa* in Figure 3a of R15 AI146978

—ConA-mag beads binding *Mycobacterium bovis* in Figure 2A of R21 AI149142

• photos of the lack of magnetic precipitate in a microcentrifuge tube representing CSL3 magSNPs remaining in solution in the presence of:

—*Staphylococcus aureus* in Figure 3b of R15 AI146978

—*Mycobacteria smegmatis* in Figure 3d of R15 AI146978

Additionally, Respondent reported the following images that were falsely relabeled to represent different bacterial experimental conditions:

• photos of the formation of magnetic precipitate in a microcentrifuge tube representing:

—lectin or antibody treated magnetic beads binding *Mycobacterium bovis* in Figures 2A, 2B, and 2C of R21 AI149142

Respondent entered into a Voluntary Settlement Agreement (Agreement) and voluntarily agreed to the following:

(1) Respondent will have her research supervised for a period of four (4) years beginning on August 18, 2023 (the ''Supervision Period''). Prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity in PHS-supported research, Respondent will submit a plan for supervision of Respondent's duties to ORI for approval. The supervision plan must be designed to ensure the integrity of Respondent's research. Respondent will not participate in any PHS-supported research until such a supervision plan is approved by ORI. Respondent will comply with the agreed-upon supervision plan.

(2) The requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance for a period of four (4) years from the effective date of the Agreement. The committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

ii. The committee will conduct an advance review of each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application, report, manuscript, or abstract are supported by the research record.

(3) During the Supervision Period, Respondent will ensure that any institution employing her submits, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported and not plagiarized in the application, report, manuscript, or abstract.

(4) If no supervision plan is provided to ORI, Respondent will provide certification to ORI at the conclusion of the Supervision Period that her participation was not proposed on a research project for which an application for PHS support was submitted and that she has not participated in any capacity in PHS-supported research.

(5) During the Supervision Period, Respondent will exclude herself voluntarily from serving in any advisory or consultant capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee.

Dated: August 29, 2023.

**Sheila Garrity,**

*Director, Office of Research Integrity, Office of the Assistant Secretary for Health.*

[FR Doc. 2023–18954 Filed 8–31–23; 8:45 am]

**BILLING CODE 4150–31–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; 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:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel NIDCD Institutional Training Grant Review Meeting.

*Date:* September 27, 2023.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, 301–402–3587, *rayk@nidcd.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 28, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–18932 Filed 8–31–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; 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:* National Eye Institute Special Emphasis Panel; Institutional Training Grants.

*Date:* September 25, 2023.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Jeanette M. Hosseini, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, 6700 B Rockledge Drive, Bethesda, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 28, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–18941 Filed 8–31–23; 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 Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Healthcare Delivery and Methodologies Integrated Review Group Clinical Informatics and Digital Health Study Section.

*Date:* September 28–29, 2023.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

*Contact Person:* Paul Hewett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room Bethesda, MD 20892, (240) 672–8946, *hewettmarxpn@csr.nih.gov.*

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group Cellular, Molecular and Integrative Reproduction Study Section

*Date:* September 28–29, 2023.

*Time:* 10:00 a.m. to 8:00 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:* Anthony Wing Sang Chan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 809K, Bethesda, MD 20892, (301) 496–9392, *chana2@csr.nih.gov.*

*Name of Committee:* Cell Biology Integrated Review Group Cellular Signaling and Regulatory Systems Study Section.

*Date:* September 28–29, 2023.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel RFA–OD–23–004: Advancing Gender Inclusive Excellence (AGIE)–Coordinating Center (U24).

*Date:* September 28, 2023.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Shivani Sharma, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 240 507 7661, *shivani.sharma@nih.gov.*

*Name of Committee:* Oncology 1-Basic Translational Integrated Review Group Cancer Cell Biology Study Section.

*Date:* October 5–6, 2023.

*Time:* 8:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

*Contact Person:* Charles Morrow, MD, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–408–9850, *morrowcs@csr.nih.gov.*

*Name of Committee:* Interdisciplinary Molecular Sciences and Training Integrated Review Group Enabling Bioanalytical and Imaging Technologies Study Section.

*Date:* October 5–6, 2023.

*Time:* 8:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Monaco, 700 F Street NW, Washington, DC 20001.

*Contact Person:* Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov.*

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group Skeletal Biology Structure and Regeneration Study Section.

*Date:* October 5–6, 2023.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Tysons Corner Marriott, 8028 Leesburg Pike, Vienna, VA 22182.

*Contact Person:* Yanming Bi, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 451–0996, *ybi@csr.nih.gov.*

*Name of Committee:* Infectious Diseases and Immunology A Integrated Review Group Viral Pathogenesis and Immunity Study Section.

*Date:* October 5–6, 2023.

*Time:* 9:00 a.m. to 8:00 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:* Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1742, *kaushikbasun@csr.nih.gov.*

*Name of Committee:* Bioengineering Sciences & Technologies Integrated Review Group Instrumentation and Systems Development Study Section.

*Date:* October 5–6, 2023.

*Time:* 9:30 a.m. to 7:30 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:* Kee Forbes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, 301–272–4865, *pyonkh2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 28, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–18933 Filed 8–31–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 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:* Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel Member Conflict: Development Biology Study Section.

*Date:* October 18, 2023.

*Time:* 10:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2137B, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Vera A. Cherkasova, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137B, Bethesda, MD 20892, (240) 731–6040, *vera.cherkasova@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: August 28, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–18931 Filed 8–31–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary & Integrative Health; 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:* National Center for Complementary and Integrative Health Special Emphasis Panel NCCIH Training and Education Review Panel (CT).

*Date:* November 7–8, 2023.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Center for Complementary and Integrative Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Michael Eric Authement, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, 6707 Democracy Boulevard, Bethesda, MD 20817, *michael.authement@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: August 28, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–18934 Filed 8–31–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Research and Development of Vaccines and Monoclonal Antibodies for Pandemic Preparedness (ReVAMPP) Network—Coordination and Data Sharing Center (CDSC) (UG3/UH3 Clinical Trial Not Allowed).

*Date:* September 25, 2023.

*Time:* 10:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F36, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Noto K. Dutta, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F36, Rockville, MD 20852, 240–669–2857, *noton.dutta@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 28, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–18940 Filed 8–31–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Study Section.

*Date:* October 3, 2023.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2125D, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Moushumi Paul, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2125D, Bethesda, MD 20892, (301) 496–3596, *moushumi.paul@nih.gov.*

*Name of Committee:* Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group; Reproduction, Andrology, and Gynecology Study Section.

*Date:* October 26, 2023.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

*Contact Person:* Jagpreet Singh Nanda, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2121C, Bethesda, MD 20892, (301) 451–4454, *jagpreet.nanda@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: August 28, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–18939 Filed 8–31–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Request for Information (RFI): Inviting Comments and Suggestions on Updating the NIH Mission Statement

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Request for information.

**SUMMARY:** This Notice is a Request for Information (RFI) inviting feedback on a proposed update to the National Institutes of Health (NIH) mission statement. As the largest public funder of biomedical and behavioral research in the world, NIH works to turn scientific discoveries into better health for all. This RFI will inform NIH's efforts to update its mission statement to ensure that it reflects the NIH mission as accurately as possible. Review of this entire RFI notice is encouraged to ensure your response is comprehensive and to have a full understanding of how it will be used.

**DATES:** Comments must be received by 11:59:59 p.m. (ET) on November 24, 2023 to ensure consideration. After the public comment period has closed, the comments received will be considered in a timely manner by NIH.

**ADDRESSES:** All comments must be submitted electronically on the submission website at *https://rfi.grants.nih.gov/?s=64caaa8bb1112e46ad0a1d52*. Responses to this RFI are voluntary and may be submitted anonymously. Please do not include any personally identifiable information or any information that you do not wish to make public. Proprietary, classified, confidential, or sensitive information should not be included in your response. The Government will use the information submitted in response to this RFI at its discretion. The Government reserves the right to use any submitted information on public websites, in reports, in summaries of the state of the science, in any possible resultant solicitation(s), grant(s), or cooperative agreement(s), or in the development of future funding opportunity announcements. This RFI is for informational and planning purposes only and is not a solicitation for applications or an obligation on the part of the Government to provide support for any ideas identified in response to it. Please note that the Government will not pay for the preparation of any information submitted or for use of that information.

We look forward to your input and hope that you will share this RFI opportunity with your colleagues.

**FOR FURTHER INFORMATION CONTACT:** Questions about this RFI should be directed to Lauren Brodd, Ph.D., Office of the Director, National Institutes of Health, *RFIMissionStatement@nih.gov,* 301–827–5152.

**SUPPLEMENTARY INFORMATION:** NIH is the nation's medical research agency — making important discoveries that improve health and save lives. NIH's current mission statement at *https://www.nih.gov/about-nih/what-we-do/mission-goals* is ''to seek fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to enhance health, lengthen life, and reduce illness and disability.''

In 2021, NIH established the Advisory Committee to the Director (ACD) Working Group on Diversity, Subgroup on Individuals with Disabilities (*https://www.acd.od.nih.gov/working-groups/disabilitiessubgroup.html*) to dedicate time and resources to identify strategies to support individuals with disabilities. The Subgroup issued a report (*https://acd.od.nih.gov/documents/presentations/12092022_WGD_Disabilities_Subgroup_Report.pdf*) in December 2022 that contains several recommendations, including updating the NIH mission statement. The ACD adopted the Working Group's recommendations and provided them to the NIH Director. The report stated: ''*One immediate action for the NIH to support disability inclusion is to remove the language of 'reducing disability' from the NIH mission statement. The current mission statement could be interpreted as perpetuating ableist beliefs that disabled people are flawed and need to be 'fixed'.*''

To address this suggestion, NIH Leadership committed to evaluate the mission statement, particularly reviewing the inclusion of the phrase ''reduce [. . .] disability'', and to update it to better reflect the current and future vision for the agency. Following discussions among NIH Leadership and with NIH subject matter experts, a proposed revised mission statement was developed.

#### Information Requested

This RFI invites input from interest groups throughout the scientific

research, advocacy, and clinical practice communities, those employed by NIH or at institutions receiving NIH support, and the public, on a proposed revised mission statement. The bolded language reflects differences between the current and proposed mission statements.

- *Current mission statement:* ''To seek fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to enhance health, lengthen life, and reduce illness and disability.''
- *Proposed revised mission statement:* ''To seek fundamental knowledge about the nature and behavior of living systems and *to apply* that knowledge *to optimize health and prevent or reduce illness for all people.*''

Input sought about the proposed revised mission statement includes, but is not limited to, the following:

- Feedback on whether the proposed new mission statement reflects the goals and objectives as outlined in the NIH-Wide Strategic Plan for Fiscal Years 2021–2025 *(https://www.nih.gov/sites/default/files/about-nih/strategic-plan-fy2021-2025-508.pdf).*
- Suggestions for specific language that could be added to the proposed mission statement and why.
- Feedback on any specific language that could be removed from the proposed mission statement and why.

NIH encourages organizations (*e.g.,* patient advocacy groups, professional societies) to submit a single response reflective of the views of the organization or its membership.

Dated: August 29, 2023.

**Tara A. Schwetz,**

*Acting Principal Deputy Director, National Institutes of Health.*

[FR Doc. 2023–18989 Filed 8–31–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Fiscal Year (FY) 2023 Notice of Supplemental Funding Opportunity

**AGENCY:** Substance Abuse and Mental Health Services Administration, Department of Health and Human Services (HHS).

**ACTION:** Notice of intent to award supplemental funding.

**SUMMARY:** This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting supplemental funding in the scope of the parent award to the 36 Rural Emergency Medical Services Training Grant (REMS) recipients funded under Notice of Funding Opportunity (NOFO) TI–23–011. These recipients have a project end date of September 29, 2024. The supplemental funding is to provide the opioid antagonist medication, naloxone, that can be used to treat respiratory depression in suspected opioid overdose patients, and for the procurement of emergency equipment used to rapidly reverse the effects of opioid overdoses. Recipients may receive up to $49,000 for the purchase of naloxone and up to $49,000 for purchasing equipment, for a total of $98,000 per recipient.

**FOR FURTHER INFORMATION CONTACT:** Humberto Carvalho, Email: *Humberto.Carvalho@samhsa.hhs.gov,* Phone: (240) 276–2974.

**SUPPLEMENTARY INFORMATION:**

*Funding Opportunity Title:* Rural Emergency Medical Services Training TI–23–011.

*Assistance Listing Number:* 93.243.

*Authority:* The REMS Training grants are authorized under Section 330J of the Public Health Service Act, as amended (42 U.S.C. 254c15).

*Justification:* This is not a formal request for application. Assistance will only be provided to the 36 REMS recipients funded in FY 2023 funded under Rural Emergency Medical Services Training Grant Funding Opportunity TI–23–011, based on the receipt of a satisfactory application and associated budget. The purpose of the supplement is to further expand and enhance REMS grant activities; therefore, only current recipients are eligible.

Dated: August 28, 2023.

**Ann Ferrero,**

*Public Health Analyst.*

[FR Doc. 2023–18911 Filed 8–31–23; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

**FOR FURTHER INFORMATION CONTACT:** Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

**SUPPLEMENTARY INFORMATION:** In accordance with section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503

of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

**HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing**

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

**HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing**

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

**HHS-Certified Laboratories Approved To Conduct Urine Drug Testing**

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

**Anastasia Marie Donovan,**

*Public Health Advisor, Division of Workplace Programs.*

[FR Doc. 2023–18964 Filed 8–31–23; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2022–0033; OMB No. 1660–NW160]**

### Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Floodplain Administrator (FPA) National Training Assessment

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30-Day notice of new collection and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the training needs of National Flood Insurance Program (NFIP) Floodplain Administrators (FPAs) throughout the United States.

**DATES:** Comments must be submitted on or before October 2, 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.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C St. SW, Washington, DC 20472, email address: *FEMA-Information-Collections-Management@fema.dhs.gov* or Michael Gumpert, National Floodplain Management Training Coordinator, FIMA, Floodplain Management Division, *Michael.Gumpert@fema.dhs.gov,* 702–415–6499.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP) is authorized by the National Flood Insurance Act of 1968 (title XIII of Pub. L. 90–448, as amended, 42 U.S.C. 4001, *et seq.*). The general purpose of the NFIP is both to offer primary flood insurance to properties with significant flood risk, and to reduce flood risk through the adoption of floodplain management standards. Communities volunteer to participate in the NFIP to have access to federal flood insurance, and in return are required to adopt minimum standards. Nationally, as of December 2021, over 22,000 communities in 56 states and jurisdictions participate in the NFIP. Each ''Participating Community'' (FEMA's term for participating units of local government) is obligated to appoint a Floodplain Administrator who is directly responsible for managing the NFIP in their community. It is common for Participating Communities to assign the FPA role to employees who are also simultaneously responsible for other roles such as Police Chief, Town Clerk, Grants Manager, Finance Manager. FPAs are a diverse group with varied abilities, schedules, learning styles, geographies, and resources. A Training Strategy is needed to direct FEMA's limited FPA Training budget into training solutions that address the unique needs of FPA's as well as their varied abilities, schedules, learning styles, geographies, and resources. To be effective, the aforementioned FPA Training Strategy must be grounded in an accurate understanding FPAs' varied needs, abilities, schedules, learning styles, geographies, and resources. To achieve this understanding, a Training Assessment must be performed.

FEMA is requesting a three-year clearance to collect information from Floodplain Administrators (FPA) regarding their training needs, floodplain management experiences, and demographics to produce improved outcomes for the National Flood Insurance Program (NFIP). The data will be used to help FEMA, State, Tribal, and Territorial NFIP Offices, and Floodplain Associations to develop training strategies and solutions that effectively and efficiently address the diverse abilities, schedules, learning styles, geographies and resources of Floodplain Administrators who implement this Federal Government program on behalf of their local communities. The information collection, to be administered by an independent, third-party research organization, will allow for a data-informed approach to understanding the needs and expectations of an important and specific group of FEMA partners and customers for their development and program administration. By using this approach, FEMA will be able to gain important insights about Floodplain Administrators and how to improve its offerings and support as well as to allocate resources more effectively. The ultimate objective is to reduce the socio-economic impact of floods through better preparation of Floodplain Administrators to assist communities adopt and enforce floodplain management regulations that help mitigate flooding effects and thus support property owners, renters, and businesses to recover faster after a flooding event.

The primary law that supports the information collection efforts is the Government Performance and Results Act of 1993, 31 U.S.C. 1116, which has as one of its purposes ''improve Federal programs effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction.''

This proposed information collection previously published in the **Federal Register** on January 3, 2023, at 88 FR 86 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance. Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Collection of Information**

*Title:* Floodplain Administrator (FPA) National Training Needs Assessment.

*Type of Information Collection:* New information collection.

*OMB Number:* 1660–NW160.

*FEMA Forms:* FEMA Form FF–206–FY–22–159, Floodplain Administrator Training Needs Assessment.

*Abstract:* The online survey will collect information from Floodplain Administrators regarding their training needs, floodplain management experiences, and demographics. The data will be used to help FEMA, State, Tribal, and Territorial NFIP Offices, and Floodplain Associations to develop training strategies and solutions that effectively and efficiently address those needs to produce improved outcomes for the National Flood Insurance Program.

*Affected Public:* State, Local, or Tribal Government.

*Estimated Number of Respondents:* 6,323.

*Estimated Number of Responses:* 6,323.

*Estimated Total Annual Burden Hours:* 3,162.

*Estimated Total Annual Respondent Cost:* $137,895.

*Estimated Respondents' Operation and Maintenance Costs:* $0.

*Estimated Respondents' Capital and Start-Up Costs:* $0.

*Estimated Total Annual Cost to the Federal Government:* $421,298.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (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.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023–18889 Filed 8–31–23; 8:45 am]

**BILLING CODE 9111–47–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2368]**

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Nicholas A. Shufro,**

*Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.*

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| California: San Luis Obispo. | City of Arroyo Grande (22–09–1729P). | Whitney McDonald, City of Arroyo Grande Manager, 300 East Branch Street, Arroyo Grande, CA 93420. | Public Works Department, 300 East Branch Street, Arroyo Grande, CA 93420. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 2, 2023 ..... | 060305 |
| Colorado: | | | | | | |
| Chaffee ..... | City of Salida (23–08–0089P). | The Honorable Dan Shore, Mayor, City of Salida, 448 East 1st Street, Suite 112, Salida, CO 81201. | Community Development Department, 448 East 1st Street, Suite 112, Salida, CO 81201. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 13, 2023 .... | 080031 |
| Chaffee ..... | Unincorporated areas of Chaffee County (23–08–0089P). | Keith Baker, Chair, Chaffee County Board of Commissioners, P.O. Box 699, Salida, CO 81201. | Chaffee County Development Services Department, 104 Crestone Avenue, Salida, CO 81201. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 13, 2023 .... | 080269 |
| El Paso ..... | City of Colorado Springs (22–08–0842P). | The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Suite 601, Colorado Springs, CO 80903. | Pikes Peak Regional Building Department, Floodplain Management Office, 2880 International Circle, Colorado Springs, CO 80910. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 12, 2023 ..... | 080060 |
| El Paso ..... | City of Manitou Springs (22–08–0492P). | The Honorable John Graham, Mayor, City of Manitou Springs, 606 Manitou Avenue, Manitou Springs, CO 80829. | Pikes Peak Regional Building Department, Floodplain Management Office, 2880 International Circle, Colorado Springs, CO 80910. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 29, 2023 .... | 080063 |
| Jefferson ..... | City of Lakewood (23–08–0091P). | The Honorable Adam Paul, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, CO 80226. | Public Works Department, 470 South Allison Parkway, Lakewood, CO 80226. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 6, 2023 ..... | 085075 |
| Weld ..... | City of Greeley (22–08–0472P). | The Honorable John Gates, Mayor, City of Greeley, 1000 10th Street, Greeley, CO 80631. | City Hall, 1000 10th Street, Greeley, CO 80631. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 2, 2023 ..... | 080184 |
| Weld ..... | Town of Kersey (22–08–0472P). | The Honorable Gary Lagrimanta, Mayor, Town of Kersey, P.O. Box 657, Kersey, CO 80644. | Town Hall, 446 1st Street, Kersey, CO 80644. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 2, 2023 ..... | 080185 |
| Weld ..... | Unincorporated areas of Weld County (22–08–0472P). | Mike Freeman, Chair, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80632. | Weld County Administrative Building, 1150 O Street, Greeley, CO 80631. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 2, 2023 ..... | 080266 |
| Florida: | | | | | | |
| Brevard ..... | Town of Grant-Valkaria (23–04–1676P). | Honorable Del Yonts, Mayor, Town of Grant-Valkaria, 1449 Valkaria Road, Grant-Valkaria, FL 32950. | Town Hall, 1449 Valkaria Road, Grant-Valkaria, FL 32950. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 15, 2023 .... | 120224 |
| Marion ..... | Unincorporated areas of Marion County (22–04–5182P). | Craig Curry, Chair, Marion County Board of Commissioners, 601 Southeast 25th Avenue, Ocala, FL 34471. | Marion County Administration, 601 Southeast 25th Avenue, Ocala, FL 34471. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 17, 2023 .... | 120160 |
| Monroe ..... | Village of Islamorada (23–04–2764P). | The Honorable Joseph Buddy Pinder III, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036. | Building Department, 86800 Overseas Highway, Islamorada, FL 33036. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 10, 2023 ..... | 120424 |
| Pasco ..... | Unincorporated areas of Pasco County (23–04–1144P). | Mike Carballa, Pasco County Administrator, 8731 Citizens Drive, New Port Richey, FL 34654. | Pasco County Administration Building, 8731 Citizens Drive, New Port Richey, FL 34654. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 13, 2023 .... | 120230 |
| Pasco ..... | Unincorporated areas of Pasco County (23–04–1704P). | Mike Carballa, Pasco County Administrator, 8731 Citizens Drive, New Port Richey, FL 34654. | Pasco County Administration Building, 8731 Citizens Drive, New Port Richey, FL 34654. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 13, 2023 .... | 120230 |
| Georgia: Bulloch ... | City of Statesboro (23–04–2242P). | The Honorable Jonathan M. McCollar, Mayor, City of Statesboro, 50 East Main Street, Statesboro, GA 30458. | City Hall, 50 East Main Street, Statesboro, GA 30458. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 17, 2023 .... | 130021 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Kentucky: Jefferson | Metropolitan Government of, Louisville and Jefferson County (23–04–3227P). | The Honorable Craig Greenberg, Mayor, Metropolitan Government of, Louisville and Jefferson County, 527 West Jefferson Street, Louisville, KY 40202. | Louisville/Jefferson County Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY 40203. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 3, 2023 ..... | 210120 |
| Maryland: Baltimore. | Unincorporated areas of Baltimore County (23–03–0139P). | John A. Olszewski, Jr., Baltimore County Executive, 400 Washington Avenue, Towson, MD 21204. | Baltimore County Department of Public Works and Transportation, 111 West Chesapeake Avenue, Room 205, Towson, MD 21204. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 16, 2023 .... | 240010 |
| North Carolina: Cabarrus. | Town of Harrisburg (23–04–1302P). | The Honorable Jennifer Teague, Mayor, Town of Harrisburg, P.O. Box 100, Harrisburg, NC 28075. | Planning and Economic Development Department, 4100 Main Street, Suite 102, Harrisburg, NC 28075. | *https://msc.fema.gov/portal/advanceSearch.* | Dec. 11, 2023 .... | 370038 |
| Pennsylvania: | | | | | | |
| Montgomery ... | Borough of Collegeville (23–03–0045P). | Catherine Kernen, President, Borough of Collegeville Council, 491 East Main Street, Collegeville, PA 19426. | Borough Hall, 491 East Main Street, Collegeville, PA 19426. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 16, 2023 ..... | 421900 |
| Montgomery ... | Township of Lower Providence (23–03–0045P). | E. J. Mentry, Manager, Township of Lower Providence, 100 Parklane Drive, Eagleville, PA 19403. | Community Development Department, 100 Parklane Drive, Eagleville, PA 19403. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 16, 2023 ..... | 420703 |
| South Carolina: Orangeburg. | Unincorporated areas of Orangeburg County (22–04–0400P). | Harold Young, Orangeburg County Administrator, 1437 Amelia Street, Orangeburg, SC 29115. | Orangeburg County Floodplain Development Department, 1437 Amelia Street, Orangeburg, SC 29115. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 2, 2023 ..... | 450160 |
| Texas: | | | | | | |
| Bowie ..... | City of Texarkana (22–06–2469P). | The Honorable Bob Bruggeman, Mayor, City of Texarkana, 220 Texas Boulevard, Texarkana, TX 75501. | Public Works Department, 220 Texas Boulevard, Texarkana, TX 75501. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 2, 2023 ..... | 480060 |
| Collin ..... | City of McKinney (22–06–2372P). | The Honorable George Fuller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070. | Engineering Department, 221 North Tennessee Street, McKinney, TX 75069. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 13, 2023 .... | 480135 |
| Collin ..... | City of Melissa (22–06–2372P). | The Honorable Jay Northcut, Mayor, City of Melissa, 3411 Barker Avenue, Melissa, TX 75454. | City Hall, 3411 Barker Avenue, Melissa, TX 75454. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 13, 2023 .... | 481626 |
| Collin ..... | Unincorporated areas of Collin County (22–06–2372P). | The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071. | Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 13, 2023 .... | 480130 |
| Denton ..... | City of Denton (23–06–0154P). | Sara Hensley, City of Denton Manager, 215 East McKinney Street, Denton, TX 76201. | Development Services Department, 401 North Elm Street, Denton, TX 76201. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 10, 2023 ..... | 480194 |
| Denton ..... | Unincorporated areas of Denton County (23–06–0154P). | The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208. | Denton County Hall, 1 Courthouse Drive, Denton, TX 76208. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 10, 2023 ..... | 480774 |
| Grayson ..... | City of Denison (22–06–2995P). | The Honorable Janet Gott, Mayor, City of Denison, 300 West Main Street, Denison, TX 75020. | City Hall, 300 West Main Street, Denison, TX 75020. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 2, 2023 ..... | 480259 |
| Grayson ..... | City of Sherman (22–06–2995P). | The Honorable David Plyler, Mayor, City of Sherman, 220 West Mulberry Street, Sherman, TX 75090. | City Hall, 220 West Mulberry Street, Sherman, TX 75090. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 2, 2023 ..... | 485509 |
| Guadalupe ..... | City of Cibolo (23–06–0055P). | The Honorable Mark Allen, Mayor, City of Cibolo, 200 South Main Street, Cibolo, TX 78108. | Public Works Department, 108 Cibolo Drive, Cibolo, TX 78108. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 2, 2023 ..... | 480267 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Guadalupe ..... | City of Schertz (23–06–0055P). | The Honorable Ralph Gutierrez, Mayor, City of Schertz, 1400 Schertz Parkway, Schertz, TX 78154. | Engineering Department, 1400 Schertz Parkway, Schertz, TX 78154. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 2, 2023 ..... | 480269 |
| Guadalupe ..... | Unincorporated areas of Guadalupe County (23–06–0348P). | The Honorable Kyle Kutscher, Guadalupe County Judge, 101 East Court Street, Seguin, TX 78155. | Guadalupe County Main Office, 211 West Court Street, Seguin, TX 78155. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 24, 2023 .... | 480266 |
| Hunt ..... | City of Josephine (23–06–0202P). | The Honorable Jason Turney, Mayor, City of Josephine, P.O. Box 99, Josephine, TX 75164. | City Hall, 201 South Main Street, Josephine, TX 75173. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 29, 2023 .... | 480756 |
| Hunt ..... | City of Royse City (22–06–2909P). | The Honorable Clay Ellis, Mayor, City of Royse City, P.O. Box 638, Royse City, TX 75189. | City Hall, 305 North Arch Street, Royse City, TX 75189. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 13, 2023 .... | 480548 |
| Hunt ..... | Unincorporated areas of Hunt County (23–06–0202P). | The Honorable Bobby W. Stovall, Hunt County Judge, 2507 Lee Street, 2nd Floor, Greenville, TX 75401. | Hunt County Courthouse, 2507 Lee Street, 2nd Floor, Greenville, TX 75401. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 29, 2023 .... | 480363 |
| Hunt ..... | Unincorporated areas of Hunt County (22–06–2909P). | The Honorable Bobby W. Stovall, Hunt County Judge, 2507 Lee Street, 2nd Floor, Greenville, TX 75401. | Hunt County Courthouse, 2507 Lee Street, 2nd Floor, Greenville, TX 75401. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 13, 2023 .... | 480363 |
| Medina ..... | Unincorporated areas of Medina County (23–06–0288P). | The Honorable Keith Lutz, Medina County Judge, 1300 Avenue M, Room 250, Hondo, TX 78861. | Medina County Environmental Health Department, 1502 Avenue K, Hondo, TX 78861. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 3, 2023 ..... | 480472 |
| Tarrant ..... | City of Everman (22–06–2189P). | The Honorable Ray Richardson, Mayor, City of Everman, 212 North Race Street, Everman, TX 76140. | City Hall, 212 North Race Street, Everman, TX 76140. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 2, 2023 ..... | 480594 |
| Tarrant ..... | City of Fort Worth (22–06–2189P). | The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 2, 2023 ..... | 480596 |
| Tarrant ..... | City of Fort Worth (22–06–2655P). | The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 30, 2023 ..... | 480596 |
| Tarrant ..... | City of Fort Worth (23–06–0163P). | The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 10, 2023 ..... | 480596 |
| Wise ..... | City of New Fairview (23–06–0394P). | The Honorable John R. Taylor, Mayor, City of New Fairview, 999 Illinois Lane, New Fairview, TX 76078. | Public Works Department, 999 Illinois Lane, New Fairview, TX 76078. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 24, 2023 .... | 481629 |
| Wise ..... | Unincorporated areas of Wise County (23–06–0394P). | The Honorable J.D. Clark, Wise County Judge, 101 North Trinity Street, Decatur, TX 76234. | Wise County Public Works Department, 2901 South F.M. 51, Building 100, Decatur, TX 76234. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 24, 2023 .... | 481051 |
| Virginia: Independent City. | City of Newport News (22–03–1173P). | Cynthia D. Rohlf, Manager, City of Newport News, 2400 Washington Avenue, Newport News, VA 23607. | Department of Information Technology, 2400 Washington Avenue, Newport News, VA 23607. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 14, 2023 .... | 510103 |
| West Virginia: Hardy. | Unincorporated areas of Hardy County (23–03–0533P). | David J. Workman, President, Hardy County Commission, 204 Washington Street, Room 111, Moorefield, WV 26836. | Hardy County Courthouse, 204 Washington Street, Moorefield, WV 26836. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 16, 2023 .... | 540051 |

[FR Doc. 2023–18972 Filed 8–31–23; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2023–0002]**

### Final Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

**DATES:** The date of January 11, 2024, has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Nicholas A. Shufro,**

*Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.*

| Community | Community map repository address |
|---|---|
| **Ouray County, Colorado and Incorporated Areas<br>Docket No.: FEMA–B–2281** | |
| City of Ouray | City Hall, 320 6th Avenue, Ouray, CO 81427. |
| Town of Ridgway | Town Hall, 201 North Railroad Street, Ridgway, CO 81432. |
| Unincorporated Areas of Ouray County | Ouray County Courthouse, 541 4th Street, Ouray, CO 81427. |
| **Allen County, Indiana and Incorporated Areas<br>Docket No.: FEMA–B–2257** | |
| City of Woodburn | Allen County Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802. |
| Town of Monroeville | Town Hall, 104 Allen Street, Monroeville, IN 46773. |
| Unincorporated Areas of Allen County | Allen County Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802. |
| **Morrow County, Ohio and Incorporated Areas<br>Docket No.: FEMA–B–2277** | |
| Unincorporated Areas of Morrow County | Morrow County Planning and Zoning Office, 80 North Walnut Street, Suite C, Mt. Gilead, OH 43338. |
| **Johnston County, Oklahoma and Incorporated Areas<br>Docket No.: FEMA–B–2217** | |
| City of Tishomingo | City Hall, 1130 East Main Street, Tishomingo, OK 73460. |
| Town of Mannsville | Town Hall, 103 South 18th Street, Mannsville, OK 73447. |
| Town of Milburn | City Hall, 101 Main Street, Milburn, OK 73450. |
| Town of Mill Creek | Town Hall, 105 East Main Street, Mill Creek, OK 74856. |
| Town of Ravia | Town Hall Complex, 109 East Grand Avenue, Ravia, OK 73455. |
| Town of Wapanucka | City Hall, 211 South Choctaw Avenue, Wapanucka, OK 73461. |
| Unincorporated Areas of Johnston County | Johnston County Commissioner's Office, 705 West Main Street, Tishomingo, OK 73460. |

| Community | Community map repository address |
|---|---|
| **Murray County, Oklahoma and Incorporated Areas<br>Docket No.: FEMA–B–2217** | |
| City of Davis | City Hall, 227 East Main Street, Davis, OK 73030. |
| City of Sulphur | City Hall, 600 West Broadway Avenue, Sulphur, OK 73086. |
| Town of Dougherty | Murray County Courthouse, 1001 West Wyandotte Avenue, Sulphur, OK 73086. |
| Unincorporated Areas of Murray County | Murray County Courthouse, 1001 West Wyandotte Avenue, Sulphur, OK 73086. |
| **Clark County, South Dakota and Incorporated Areas<br>Docket No.: FEMA–B–2273** | |
| City of Clark | City Hall, 120 North Commercial Street, Clark, SD 57225. |
| Town of Raymond | Fire Department, 201 Flower Street, Raymond, SD 57258. |
| Town of Willow Lake | Fire Hall, 211 Garfield Avenue, Willow Lake, SD 57278. |
| Unincorporated Areas of Clark County | Clark County Registrar's Office, 200 North Commercial Street, Clark, SD 57225. |
| **City of Alexandria, Virginia (Independent City)<br>Docket No.: FEMA–B–2134 and B–2271** | |
| City of Alexandria | City Hall, 301 King Street, Alexandria, VA 22314. |
| **City of Colonial Heights, Virginia (Independent City)<br>Docket No.: FEMA–B–2160 and B–2271** | |
| City of Colonial Heights | Department of Planning and Community Development, 201 James Avenue, Colonial Heights, VA 23834. |
| **Pulaski County, Virginia and Incorporated Areas<br>Docket No.: FEMA–B–2032 and B–2271** | |
| Town of Pulaski | Municipal Building, 42 1st Street Northwest, Pulaski, VA 24301. |
| Unincorporated Areas of Pulaski County | Pulaski County Administration Building, 143 3rd Street Northwest, Suite 1, Pulaski, VA 24301. |
| **Racine County, Wisconsin and Incorporated Areas<br>Docket No.: FEMA–B–2267** | |
| City of Burlington | City Hall, 300 North Pine Street, Burlington, WI 53105. |
| City of Racine | City Hall, 730 Washington Avenue, Racine, WI 53403. |
| Unincorporated Areas of Racine County | Ives Grove Office Complex, 14200 Washington Avenue, Sturtevant, WI 53177. |
| Village of Caledonia | Caledonia Village Hall, 5043 Chester Lane, Racine, WI 53402. |
| Village of Mount Pleasant | Village Hall, 8811 Campus Drive, Mount Pleasant, WI 53406. |
| Village of North Bay | North Bay Village Hall, 3615 Hennepin Place, Racine, WI 53402. |
| Village of Rochester | Village Hall, 300 West Spring Street, Rochester, WI 53167. |
| Village of Waterford | Village Hall, 123 North River Street, Waterford, WI 53185. |
| Village of Wind Point | Wind Point Village Office, 215 East Four Mile Road, Racine, WI 53402. |

[FR Doc. 2023–18971 Filed 8–31–23; 8:45 am]
BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2023–0022; OMB No. 1660–0149]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Requests for Special Priorities Assistance

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 60-Day notice of renewal and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning FEMA's Requests for Special Priorities Assistance, FEMA Form FF–112–FY–23–100 (009–0–142).

**DATES:** Comments must be submitted on or before October 31, 2023.

**ADDRESSES:** To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2023–0022. Follow the instructions for submitting comments.

All submissions received must include the Agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is

available via a link on the homepage of *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Marc Geier, FEMA's Office of Policy and Program Analysis, 500 C Street SW, Washington, DC 20472, at (202) 924–0196, or *FEMA-DPA@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** This information is necessary to support the President's priorities and allocations authority under Title I of the Defense Production Act of 1950 (DPA), 50 U.S.C. 4501, *et seq.,* (as amended) as implemented by the Emergency Management Priorities and Allocations System (EMPAS) regulation (44 CFR part 333) which was added by FEMA's *Emergency Management Priorities and Allocations System Interim Final Rule* (RIN 1660–AB04) dated May 13, 2020. The purpose of this authority is to ensure the timely delivery of products, materials, and services to meet current national defense requirements. The definition of ''national defense'' in section 702(14) of the DPA provides that this term includes ''homeland security,'' ''emergency preparedness activities'' conducted pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5195 *et seq.*), and ''critical infrastructure protection and restoration.''

**Collection of Information**

*Title:* Requests for Special Priorities Assistance.

*Type of Information Collection:* Extension, without change, of a currently approved information collection.

*OMB Number:* 1660–0149.

*FEMA Forms:* FEMA Form FF–112–FY–23–100 (009–0–142), Requests for Special Priorities Assistance.

*Abstract:* Contractors may request Special Priorities Assistance (SPA) when placing rated orders with suppliers, to obtain timely delivery of products, materials or services from suppliers, or for any other reason under the EMPAS, in support of approved national programs. Additionally, when responding to an emergency event like COVID–19, State and local governments, owners, operators, and the private sector may request SPA. These contractors use FEMA Form FF–112–FY–23–100 (formerly 009–0–142) to apply for such assistance.

*Affected Public:* Private Sector, For-Profit.

*Estimated Number of Respondents:* 20.

*Estimated Number of Responses:* 20.

*Estimated Total Annual Burden Hours:* 5.

*Estimated Total Annual Respondent Cost:* $293.

*Estimated Respondents' Operation and Maintenance Costs:* $0.

*Estimated Respondents' Capital and Start-Up Costs:* $0.

*Estimated Total Annual Cost to the Federal Government:* $56,440.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (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.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023–18887 Filed 8–31–23; 8:45 am]

**BILLING CODE 9111–19–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2364]**

### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** Comments are to be submitted on or before November 30, 2023.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2364, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances

that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Nicholas A. Shufro,**

*Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.*

| Community | Community map repository address |
|---|---|
| **Effingham County, Illinois and Incorporated Areas<br>Project: 16–05–2969S Preliminary Date: July 21, 2022** | |
| City of Altamont | City Hall, 202 North 2nd Street, Altamont, IL 62411. |
| City of Effingham | City Hall, 201 East Jefferson Avenue, Effingham, IL 62401. |
| Unincorporated Areas of Effingham County | Effingham County Courthouse, 101 North 4th Street, Suite 304, Effingham, IL 62401. |
| Village of Dieterich | Village Hall, 103 West Section Street, Dieterich, IL 62424. |
| Village of Teutopolis | Village Hall, 106 West Main Street, Teutopolis, IL 62467. |
| Village of Watson | Village Hall, 104 North Monroe Street, Watson, IL 62473. |
| **Itasca County, Minnesota and Incorporated Areas<br>Project: 17–05–1527S Preliminary Date: November 20, 2020 and July 30, 2021** | |
| City of Bigfork | City Hall, 200 Main Avenue, Bigfork, MN 56628. |
| City of Bovey | City Hall, 402 2nd Street, Bovey, MN 55709. |
| City of Cohasset | City Hall, 305 Northwest First Avenue, Cohasset, MN 55721. |
| City of Coleraine | City Hall, 302 Roosevelt Avenue, Coleraine, MN 55722. |
| City of Deer River | City Hall, 60 2nd Street SE, Deer River, MN 56636. |
| City of Grand Rapids | City Hall, 420 North Pokegama Avenue, Grand Rapids, MN 55744. |
| City of Keewatin | City Hall, 127 West Third Avenue, Keewatin, MN 55753. |
| City of LaPrairie | LaPrairie City Hall, 15 Park Drive, Grand Rapids, MN 55744. |
| City of Taconite | Community Building, 26 Haynes Street, Taconite, MN 55786. |
| City of Warba | City Hall, 130 South 2nd Avenue, Warba, MN 55793. |
| City of Zemple | Zemple City Hall, 606 County Road 139, Deer River, MN 56636. |
| Unincorporated Areas of Itasca County | Itasca County Courthouse, Department of Environmental Services, 123 Northeast 4th Street, Grand Rapids, MN 55744. |
| Leech Lake Band of Ojibwe | Leech Lake Band of Ojibwe Tribal Office, 190 Sailstar Drive NW, Cass Lake, MN 56633. |
| **Hamilton County, Ohio and Incorporated Areas<br>Project: 14–05–4456S Preliminary Date: February 03, 2023** | |
| City of Forest Park | City Hall, 1201 West Kemper Road, Forest Park, OH 45240. |
| Unincorporated Areas of Hamilton County | Hamilton County Department of Planning and Development, 138 East Court Street, Room 603, Cincinnati, OH 45202. |
| Village of Cleves | Administration Offices, 92 Cleves Avenue, Cleves, OH 45002. |

[FR Doc. 2023–18973 Filed 8–31–23; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7077–N–15A]**

### Privacy Act of 1974; System of Records; Correction

**AGENCY:** Office of Multifamily Housing, HUD.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of the Housing and Urban Development (HUD) published a document in the **Federal Register** of August 28, 2023, a rescindment of a systems of records notice concerning the Integrated Real Estate Management System (iREMS). The document did not contain a comment closing date. This notice establishes a due date of September 27, 2023.

**FOR FURTHER INFORMATION CONTACT:** LaDonne White; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001; telephone number 202–708–3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the **Federal Register** of August 28, 2023, in FR Doc 2023–18446, on page 58593, in the third column, add at the end of the Dates caption the following:

*Comments Due Date:* September 27, 2023.

**Aaron Santa Anna,**

*Associate General Counsel, Office of Legislation and Regulations.*

[FR Doc. 2023–18992 Filed 8–31–23; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

**[GX23LC00TZ901: OMB Control Number 1028–0082]**

### Agency Information Collection Activities; U.S. Geological Survey Bird Banding Permit Applications and Band Recovery Reports

**AGENCY:** U.S. Geological Survey, Department of the Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before October 31, 2023.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0082, U.S. Geological Survey Bird Banding Permit Applications and Band Recovery Reports in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Antonio Celis-Murillo here by email at *acelis-murillo@usgs.gov,* or by telephone at 301–497–5808. 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:** In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this 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) How the agency might 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The Bird Banding Program is the responsibility of the USGS Bird Banding Laboratory (BBL). The BBL plays a critical role in permitting the banding and marking of wild birds and is responsible for storing and maintaining data on banded and marked birds. This effort requires coordination between banders and people who later encounter the marked birds to ensure the data are available for later analyses.

To achieve these goals, the BBL collects information using three forms: (1) The Application for Federal Bird Banding or Marking Permit, (2) The Federal Bird Banding or Marking Permit Renewal Form, and (3) The Bird Banding Recovery Report.

*Title of Collection:* Bird Banding Permit Applications and Band Recovery Reports.

*OMB Control Number:* 1028–0082.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* General Public.

*Total Estimated Number of Annual Respondents:* 92,000.

—*Bird Banding Permit Application:* 80 respondents

—*Bird Banding Permit Renewal:* 400 respondents

—*Band Recovery Form:* 91,520 respondents

*Total Estimated Number of Annual Responses:* 93,150.

—*Bird Banding Permit Application:* 80 responses

—*Bird Banding Permit Renewal:* 400 responses

—*Band Recovery Form:* 92,670: responses

*Estimated Completion Time per Response:* 3 to 30 minutes, depending on form used.

—*Bird Banding Permit Application:* 30 minutes

—*Bird Banding Permit Renewal:* 30 minutes

—*Band Recovery Form:* 3 minutes

*Burden Hours*

—*Bird Banding Permit Application:* 80 responses/40 hours.

—*Bird Banding Permit Renewal:* 400 responses/200 hours.

—*Band Recovery Report Form:* 92,670 responses/4,634 hours.

*Total Estimated Number of Annual Burden Hours:* 4,874 hours.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* We have not identified any ''non-hour cost'' burdens associated with this collection of information.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

**Antonio Celis-Murillo,**

*Chief, USGS Bird Banding Laboratory.*

[FR Doc. 2023–18991 Filed 8–31–23; 8:45 am]

**BILLING CODE 4388–11–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[234A2100DD/AAKC001030/A0A501010.999900]**

### Advisory Board of Exceptional Children

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children will hold a two-day meeting, in-person and online. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 (IDEA) for Indian children with disabilities.

**DATES:** The BIE Advisory Board meeting will be held Thursday, September 21, 2023, from 8:00 a.m. to 4:30 p.m., Eastern Daylight Time (EDT); and continue on Friday, September 22, 2023, from 8:00 a.m. to 4:30 p.m., Eastern Daylight Time (EDT).

**ADDRESSES:**

• *Meeting:* All Advisory Board activities will be conducted in-person and online. The onsite meeting location will be at the Crystal City Marriott, 1999 Richmond Highway, Arlington, Virginia. See the **SUPPLEMENTARY INFORMATION** section of this notice for information on how to join the meeting.

• *Comments:* Public comments can be emailed to the DFO at *Jennifer.davis@bie.edu*; or faxed to (602) 265–0293 Attention: Jennifer Davis, DFO; or mailed or hand delivered to the Bureau of Indian Education, Attention: Jennifer Davis, DFO, 2600 N Central Ave., 12th Floor, Suite 250, Phoenix, AZ 85004.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Davis, Designated Federal Officer, Bureau of Indian Education, 2600 N Central Ave., 8th Floor, Suite 250, Phoenix, AZ 85004, *Jennifer.Davis@bie.edu,* or mobile phone (202) 860–7845. 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.

**SUPPLEMENTARY INFORMATION:** The Advisory Board was established under the Individuals with Disabilities Act of 2004 (20 U.S.C. 1400 *et seq.*) to advise the Secretary of the Interior, through the Assistant Secretary-Indian Affairs, on the needs of Indian children with disabilities. The meeting is open to the public in their entirety.

#### Meeting Agenda Items

The following agenda items will be for the meeting on September 21, 2023, and September 22, 2023. The reports are regarding special education topics.

• *Office of Special Education Programs (OSEP).* How can OSEP more directly support the BIE's work in providing special education services that result in positive outcomes for children with disabilities across the BIE school system.

• *Office of the Secretary of the Interior.* As the Secretary of the Interior, how do you ensure that all American Indian and Alaska Native children receive an equitable education?

• *BIE-Office of the Director.* Provide updates on rural school internet access and include any challenges and potential resolves to the issues from BIE.

• *BIE Human Resources Office.* During board meetings we consistently hear from Bureau Operated School (BOS) administrators that delays in the hiring process cost schools qualified hires. Can greater responsibility be provided to local school hiring authorities?

• *BIE Division of Performance and Accountability, (DPA)/BIE Special Education Program.* Provide an update on IDEA, ESSA, and the Government Accountability Office (GAO) recommendations report.

• *Associate Deputy Director (ADD), Regions for Bureau Operated Schools (BOS), Navajo Schools (BOS & TCS) and Tribally Controlled Schools (TCS)/ Special Education Programs:* What services do you provide for BIE funded schools? Provide an update on the 2022–2023 school year. Discuss the successes, challenges, ongoing goals, and other items that would be pertinent to the Advisory Board.

• Advisory Board members will work on finalizing the 2023 Annual Report.

• Advisory Board members will develop the agenda for the next board meeting scheduled for January 18–19, 2024.

• Four Public Commenting Sessions will be provided during both meeting days.

○ On Thursday, September 21, 2023, two sessions (15 minutes each) will be provided, 11:00 a.m. to 11:15 a.m. EDT and 2:00 p.m. to 2:15 p.m. EDT. Public comments can be provided via webinar or telephone conference call. Please use the online access codes as listed below.

○ On Friday, September 22, 2023, two sessions (15 minutes each) will be provided, 9:30 a.m. to 9:45 a.m. EDT and 12:15 a.m. to 12:30 a.m. EDT. Public comments can be provided during the meeting or telephone conference call. Please register for each meeting day to obtain the online meeting access codes as listed below.

○ Public comments can also be emailed to the DFO at *Jennifer.Davis@bie.edu*; or faxed to (602) 265–0293 Attention: Jennifer Davis, DFO; or mailed or hand delivered to the Bureau of Indian Education, Attention: Jennifer Davis, DFO, 2600 N Central Ave., 12th Floor, Suite 250, Phoenix, Arizona 85004.

#### Online Meeting Access

To attend the Advisory Board meeting on September 21–22, 2023, please register using this link: *https://www.zoomgov.com/meeting/register/vJItf-2prTkjHQm8iBckGVMexfylXaLrHlo* and register. Attendees register once and can attend one or both meeting events. After registering, you will receive a confirmation email containing information about joining the meeting.

#### Accessibility Request

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. Please

contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT** at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

*Authority:* 5 U.S.C. ch. 10.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2023–18913 Filed 8–31–23; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

### Notice of Approved Class III Tribal Gaming Ordinance

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public of the approval of the Confederated Tribes of Siletz Indians of Oregon Class III gaming ordinance by the Chairman of the National Indian Gaming Commission.

**DATES:** This notice is applicable September 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Dena Wynn, Office of General Counsel at the National Indian Gaming Commission, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.,* established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710(d)(2)(B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chairman to publish, in the **Federal Register**, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register**, is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Every ordinance and approval thereof is posted on the Commission's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances within five (5) business days of approval.

On July 10, 2023, the Chairman of the National Indian Gaming Commission approved the Confederated Tribes of Siletz Indians of Oregon Class III Gaming Ordinance. A copy of the approval letter is posted with this notice and can be found with the approved ordinance on the NIGC's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances. A copy of the approved Class III ordinance will also be made available upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Dena Wynn, 1849 C Street NW, MS #1621, Washington, DC 20240 or at *info@nigc.gov.*

National Indian Gaming Commission.

Dated: July 13, 2023.

**Rea Cisneros,**

*General Counsel (Acting).*

July 10, 2023
VIA E–MAIL
Chairman Delores Pigsley
Siletz Tribal Council
Confederated Tribes of Siletz Indians of Oregon
201 SE Swan Ave.
P.O. Box 549
Siletz, OR 97380
Re: Amended Gaming Ordinance

Dear Chairman Pigsley:

This letter responds to your request for the National Indian Gaming Commission (''NIGC'') Chairman to review and approve the Confederated Tribes of Siletz Indians of Oregon's amended Gaming Ordinance (''Ordinance''). The Siletz Tribal Council adopted an amended Ordinance by Resolution 2023–179 on May 19, 2023.

Thank you for bringing the Ordinance to our attention and for providing us with a copy. The Ordinance is approved as it is consistent with the Indian Gaming Regulatory Act and NIGC regulations.

If you have any questions or require anything further, please contact Staff Attorney Adam L. Candler at 202–580–5718 or by email at *adam.candler@nigc.gov.*

Sincerely,

E. Sequoyah Simermeyer NIGC Chairman
cc: Katie Gargan, Siletz Tribal Attorney

[FR Doc. 2023–18982 Filed 8–31–23; 8:45 am]

**BILLING CODE 7565–01–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–685 and 731–TA–1599–1606 (Final)]**

### Tin Mill Products From Canada, China, Germany, the Netherlands, South Korea, Taiwan, Turkey, and the United Kingdom; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of countervailing and antidumping duty investigation Nos. 701–TA–685 and 731–TA–1599–1606 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of tin mill products from Canada, China, Germany, the Netherlands, South Korea, Taiwan, Turkey, and the United Kingdom, provided for in subheadings 7210.11.00, 7210.12.00, 7210.50.00, 7212.10.00, 7212.50.00, 7225.99.00, and 7226.99.01 of the Harmonized Tariff Schedule of the United States. The Department of Commerce (''Commerce'') has preliminary determined imports of tin mill products from China to be subsidized and imports of tin mill products from Canada, China, and Germany to be sold at less-than-fair value. In addition, Commerce has made negative preliminary determinations of sales at less-than-fair value in the antidumping duty investigations on tin mill products from the Netherlands, South Korea, Taiwan, Turkey, and the United Kingdom.

**DATES:** August 22, 2023.

**FOR FURTHER INFORMATION CONTACT:** Caitlyn Hendricks (202–205–2058), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for

these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

**SUPPLEMENTARY INFORMATION:**

*Scope.*—For purposes of these investigations, Commerce has defined the subject merchandise as ''tin mill flat-rolled products that are coated or plated with tin, chromium, or chromium oxides. Flat-rolled steel products coated with tin are known as tinplate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such as scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material.'' [1]

*Background.*—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Act (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of tin mill products, and that such products from Canada, China, and Germany are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b).[2] The investigations were requested in petitions filed on January 18, 2023, by Cleveland-Cliffs Inc., Cleveland, Ohio and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Pittsburgh, Pennsylvania.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

*Participation in the investigations and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 18, 2023, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on November 1, 2023. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 26, 2023. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigation, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html*.

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on October 30, 2023. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on October 31, 2023. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is October 25, 2023. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 8, 2023. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petitions, on or before November 8, 2023. On November 22, 2023, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this

[1] A full description of the subject merchandise covered in the scope of these investigations is contained in the **Federal Register** notices of Commerce's preliminary countervailing and antidumping duty determinations on tin mill products. 88 FR 41373, June 26, 2023; 88 FR 57078, 88 FR 57081, 88 FR 57084, 88 FR 57087, 88 FR 57090, 88 FR 57093, 88 FR 57096, 88 FR 57099, August 22, 2023.

[2] While Commerce has preliminarily determined that imports of tin mill products from the Netherlands, South Korea, Taiwan, Turkey, and the United Kingdom are not being and are not likely to be sold in the United States at less-than-fair value, the Commission is continuing its investigative activities pursuant to § 207.21 of the Commission's Rules of Practice and Procedure (19 CFR 207.21(c)).

information on or before November 27, 2023, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Authority:* These investigations are being conducted under authority of title VII of the Act; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 28, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–18914 Filed 8–31–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–679 (Fifth Review)]**

## Stainless Steel Bar From India; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on stainless steel bar from India would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted September 1, 2023. To be assured of consideration, the deadline for responses is October 2, 2023. Comments on the adequacy of responses may be filed with the Commission by November 9, 2023.

**FOR FURTHER INFORMATION CONTACT:** Alexis Yim (202–708–1446), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On February 21, 1995, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of stainless steel bar from India (60 FR 9661). Commerce issued a continuation of the antidumping duty order on imports of stainless steel bar from India following Commerce's and the Commission's first five-year reviews, effective April 18, 2001 (66 FR 19919), second five-year reviews, effective January 23, 2007 (72 FR 2858), third five-year reviews, effective August 9, 2012 (77 FR 47595), and fourth five-year reviews, effective October 3, 2018 (83 FR 49910). The Commission is now conducting a fifth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is India.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its full first and second five-year review determinations, its expedited third five-year review determination, and its full fourth five-year review determination, the Commission defined the *Domestic Like Product* as all stainless steel bar coextensive with Commerce's scope. One Commissioner defined the *Domestic Like Product* differently in the original determination.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, its full first and second five-year review determination, its expedited third five-year review determination, and its full fourth five-year review determination, the Commission defined the *Domestic Industry* as domestic producers of stainless steel bar. One Commissioner defined the *Domestic Industry* differently in the original determination.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on October 2, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is 5:15 p.m. on November 9, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–578, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information to be Provided In Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in

general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2017.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2017, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

*Authority:* This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 25, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–18736 Filed 8–31–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–344 (Fifth Review)]**

## Tapered Roller Bearings From China; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on tapered roller bearings from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted September 1, 2023. To be assured of consideration, the deadline for responses is October 2, 2023. Comments on the adequacy of responses may be filed with the Commission by November 9, 2023.

**FOR FURTHER INFORMATION CONTACT:** Stamen Borisson (202–205–3125), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On June 15, 1987, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of tapered roller bearings from China (52 FR 22667). Commerce issued a continuation of the antidumping duty order on imports of tapered roller bearings from China following Commerce's and the Commission's first five-year reviews, effective July 11, 2000 (65 FR 42665), second five-year reviews, effective September 15, 2006 (71 FR 54469), third five-year reviews, effective August 30, 2012 (77 FR 52682), and fourth five-year reviews, effective October 17, 2018 (83 FR 52384). The Commission is now conducting a fifth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination concerning tapered roller bearings from China, the Commission found one *Domestic Like Product:* tapered roller bearings and parts thereof-finished or unfinished; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, and whether or not for automotive use. In its full first, second, third, and fourth five-year review determinations, the Commission defined the *Domestic Like Product* as tapered roller bearings coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination concerning tapered roller bearings from China, the Commission found one *Domestic Industry* devoted to the production of the *Domestic Like Product,* as defined above. In its full first, second, and third five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of tapered roller bearings. In its full fourth five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of tapered roller bearings, except for certain producers that were excluded from the domestic industry as related parties.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in

this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on October 2, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is 5:15 p.m. on November 9, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–579, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2017.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the

following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in number of bearings or bearing equivalents and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in number of bearings or bearing equivalents and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in number of bearings or bearing equivalents and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2017, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

*Authority:* This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 25, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–18765 Filed 8–31–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1328]**

### Certain Pillows and Seat Cushions, Components Thereof, and Packaging Thereof

### Notice of a Commission Determination To Review in Part an Initial Determination Granting Complainant's Motion for Summary Determination of Violation of Section 337 and on Review, To Vacate Part of the Initial Determination; Request for Written Submissions on Remedy, the Public Interest, and Bonding

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review in part an Initial Determination (''ID'') (Order No. 31) of the presiding administrative law judge (''ALJ''), granting a motion for summary determination of violation of section 337 and on review, to vacate part of the ID and to take no position on certain findings in the ID. The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the

issues of remedy, the public interest, and bonding, under the schedule set forth below.

**FOR FURTHER INFORMATION CONTACT:** Edward S. Jou, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3316. 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 on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on September 13, 2022, based on a complaint (the ''Complaint'') filed by Purple Innovation, LLC of Lehi, Utah (the ''Complainant''). 87 FR 56086–88 (Sept. 13, 2022). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation, the sale for importation, or sale within the United States after importation of certain pillows and seat cushions, components thereof, and packaging thereof by reason of infringement of the sole claim of U.S. Design Patent No. D909,092 (''the D'092 patent''); claims 1–16, 18, 19, 21–33, and 35 of U.S. Patent No. 10,772,445 (''the '445 patent''); claims 1–4, 6, 10–12, 19, and 20 of U.S. Patent No. 10,863,837 (''the '837 patent''); U.S. Trademark Registration No. 5,661,556 (''the '556 mark''); and U.S. Trademark Registration No. 6,551,053 (''the '053 mark''). *Id.* at 56086–87. The Complaint further alleges the existence of a domestic industry. *Id.* The Complaint also alleges violations of section 337 in the importation into the United States, or sale of certain products identified above by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.*

The Commission's notice of investigation names 41 respondents: Bedmate-U Co., Ltd. (''Bedmate-U'') of Gyeonggi-do, Korea; Chuang Fan Handicraft Co., Ltd. of Zhejiang, China; Dongguan Bounce Technology Co., Ltd. of Guangdong, China; Dongguan Jingrui Silicone Technology Co., Ltd. (''Dongguan Jingrui'') of Guangdong, China; Foshan Dirani Design Furniture Co., Ltd. (''Dirani Design'') of Guangdong, China; Global Ocean Trading Co., Ltd. of Guangdong, China; Guang An Shi Lin Chen Zai Sheng Wuzi Co., Ltd. of Zhejiang, China; Guang Zhou Wen Jie Shang Mao Youxian Gongsi Co., Ltd. of Shanghai, China; Guangzhou Epsilon Import and Export Co., Ltd. of Guangdong, China; Guangzhoushi Baixiangguo Keji Youxian Gongsi Co., Ltd. of Guangdong, China; Haircrafters LLC of Chattanooga, TN; Hangzhou Lishang Import & Export Co., Ltd. of Zhejiang, China; Hangzhou Lydia Sports Goods Co., Ltd. (''Hangzhou Lydia'') of Zhejiang, China; Hebei Zeyong Technology Co., Ltd. of Hebei, China; Henson Holdings, LLC (''Henson Holdings'') of Lafayette, Louisiana; Hetaibao of Anhui, China; Hubei Sheng Bingyi Dianzi Keji Youxian Gongsi Co., Ltd. of Hubei, China; Kaifeng Shi Long Ting Qu Chen Yi of Henan, China; Lankao Junchang Electronic Commerce Co., Ltd. of Henan, China; Lei Lei Wang of Anhui, China; Liu Lin Xian Xu Bin Dian Zi Chan Pin Dian of Shanxi, China; Nanchang Shirong Bao Er Guanggao Youxian Gongsi Co., Ltd. of Jiangxi, China; Ningbo Bolian Import & Export Co., Ltd. (''Ningbo Bolian'') of Beijing China; Ningbo Minzhou Import & Export Co., Ltd. (''Ningbo Minzhou'') of Beijing, China; Ruian Xiu Yuan Guoji MaoYi Youxian Gongso Co., Ltd. of Zhejiang, China; Shandong Jiu Hui Xinxi Keji Youxian Gongsi Co., Ltd. (''Shangdong Jiu Hui'') of Shandong, China; Shanxi Chao Ma Xun Keji Youxian Gongsi Co., Ltd. of Shanxi, China; Shenzhen Baibaikang Technology Co., Ltd. of Guangdong, China; Shenzhen Leadfar Industry Co., Ltd. (''Shenzhen Leadfar'') of Guangdong, China; Shenzhen Shi Mai Rui Ke Dianzi Shangwu Co., Ltd. of Guangdong, China; Shenzhen Shi Xin Shangpin Dianzi Shangwu Youxian Gongsi Co., Ltd. (''Shenzhen Shi Xin'') of Guangdong, China; Shenzhen Shi Yan Huang Chu Hai Keji Youxian Gongsi Co., Ltd. of Guangdong, China; Shenzhen Shi Yuxiang Meirong Yongju of Guangdong, China; Shenzhen Tianrun Material Co., Ltd. of Guangdong, China; Wuhan Chenkuxuan Technology Co., Ltd. of Hubei, China; Xiao Dawei of Fujian, China; Xiao Xiao Pi Fa Shang Mao You Xian Ze Ren Gongsi Co. of Shanxi, China; YaRu Wang of Shanxi, China; Yiwu Youru E-commerce Co., Ltd. of Zhejiang, China; Zhejiang Xinhui Import & Export Co., Ltd. of Zhejiang, China; and Zhou Meng Bo of Guangdong, China. *Id.* at 56087–88. The Office of Unfair Import Investigations (''OUII'') is also a party to this investigation. *Id.* at 56088.

Five respondents were terminated by withdrawal of allegations in the Complaint pursuant to Order No. 15 (Jan. 10, 2023), *unreviewed by* Comm'n Notice (Feb. 8, 2023). Twenty-five additional respondents were terminated by withdrawal of allegations in the Complaint pursuant to Order No. 19 (Feb. 16, 2023), *unreviewed by* Comm'n Notice (Mar. 20, 2023), *reconsidered in part by* Comm'n Notice (May 19, 2023). Complainant also withdrew its allegations with respect to trade dress, the '556 mark, and the D'092 patent pursuant to Order No. 19. *Id.* Seven additional respondents were terminated by consent order pursuant to Order No. 23 (Mar. 30, 2023) (Shenzhen Shi Xin), Order No. 24 (Apr. 3, 2023) (Bedmate-U), Order No. 25 (Apr. 7, 2023) (Henson Holdings), Order No. 26 (Apr. 10, 2023) (Ningbo Minzhou), Order No. 27 (Apr. 12, 2023) (Lei Lei Wang), Order No. 28 (Apr. 13, 2023) (Hetaibao), and Order No. 29 (May 10, 2023) (Ningbo Bolian), *unreviewed by* Comm'n Notice (May 19, 2023).

Dirani Design, Dongguan Jingrui, Hangzhou Lydia, and Shenzhen Leadfar (collectively, the ''Defaulting Respondents'') were found in default pursuant to Order No. 16 (Jan. 11, 2023), *unreviewed by* Comm'n Notice (Feb. 8, 2023), and Order No. 21 (Mar. 8, 2023), *unreviewed* by Comm'n Notice (Mar. 30, 2023).

On March 15, 2023, Complainant filed a motion for summary determination of violation with respect to infringement of certain claims of the '837 patent and the '445 patent by the Defaulting Respondents. On March 29, 2023, OUII filed a response in support of the motion.

On July 13, 2023, the ALJ granted Complainant's motion in an Initial Determination and issued a Recommended Determination on Remedy and Bond (Order No. 31, the ''ID'' and ''RD''). The ID finds a violation of section 337 by reason of infringement of certain claims of the '445 patent by Dongguan Jingrui, Hangzhou Lydia, and Shenzhen Leadfar. The ALJ notes that ''a finding of violation as to Dirani Design is unnecessary because Purple seeks only a limited exclusion order.'' RD at 50. The RD recommends that a limited exclusion order issue with respect to the products of Dirani Design accused of infringing certain claims of the '837 patent and that a general exclusion order issue with respect to articles that infringe certain claims of the '445 patent. The RD further recommends that cease and desist orders issue with

respect to each of the Defaulting Respondents and that a 100% bond be set during Presidential review.

No petitions for review of the ID were filed.

The Commission has determined to review the ID in part to address (i) the ID's consideration of the alleged indefiniteness of the term ''threshold pressure level'' and (ii) the ID's findings with respect to the significance of domestic industry investments.

On review, the Commission has determined to vacate the ID's consideration of the alleged indefiniteness of the term ''threshold pressure level.'' ID at 28–33. Consistent with *Lannom Mfg. Co.* v. *U.S. Int'l Trade Comm'n,* 799 F.2d 1579 (Fed. Cir. 1986), the Commission declines to address invalidity arguments raised solely by a party that has been terminated from the investigation before invalidity is decided. *See id.* at 1579–80 (''Congress did not authorize the Commission to redetermine patent validity when no defense of invalidity has been raised.''); *see also Certain Toner Cartridges and Components Thereof,* Inv. No. 337–TA–918, Initial Determination at 68–69 (May 12, 2015) (declining to address indefiniteness arguments raised by terminated respondents), *unreviewed in relevant part by* Comm'n Notice (Jun. 24, 2015). The Commission affirms the ID's finding that no construction of the term ''threshold pressure level'' is necessary as the surrounding claim language already defines the term as the pressure at which the claimed ''deformable wall members'' are ''configured to buckle.'' ID at 33–34.

With respect to the economic prong of the domestic industry requirement, the Commission takes no position with respect to the ID's finding that the investments are ''quantitatively significant in absolute terms.'' ID at 45.[1] [2] The Commission affirms the ID's finding that Complainant's domestic investments in plant and equipment and employment of labor and capital are significant. *Id.* at 45–47.

The Commission has determined not to review the remainder of the ID, including the determination that there is a violation of section 337 by reason of infringement of certain claims of the '445 patent by Dongguan Jingrui, Hangzhou Lydia, and Shenzhen Leadfar.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on September 11, 2023. Reply submissions must be filed no later than the close of business on September 18, 2023. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1328'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party

[1] Commissioner Kearns and Commissioner Stayin also take no position on the ID's comparisons of Complainant's allocated domestic expenditures on manufacturing and R&D relating to the domestic industry product to department-wide expenditures related to the domestic industry products. *See* ID at 46.

[2] Commissioner Karpel would adopt the ID's analysis of the economic prong of the domestic industry requirement. ID at 38–47. The ID identifies in numerical terms the particular investments that are claimed by Purple with respect to the articles protected by the '445 patent and notes that Purple's investments within these statutory categories ''are quantitatively significant in absolute terms.'' ID at 45–46. The ID then reviews the significance of these investments in context, comparing them to total manufacturing and R&D expenditures for the DI product, Purple's overall U.S. expenditures on its DI products, and its revenues from sales of these products and finds these indicia show the investments to be quantitatively significant. *Id.* at 46–47. The ID's approach is consistent with the Commission's practice to review the asserted investments in numerical terms and then review those investments in the context of the company's operations, the marketplace, or the industry in question. Therefore, Commissioner Karpel would affirm the ID's domestic industry economic prong analysis in its entirety.

wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on August 28, 2023.

This action is taken under the authority of 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 28, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–18893 Filed 8–31–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1288]**

## In the Matter of Certain Playards and Strollers; Notice of a Final Determination Finding No Violation of Section 337; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to affirm in part, modify in part, reverse in part, and take no position on certain portions of the Administrative Law Judge's (''ALJ'') final initial determination (''ID''), issued on March 31, 2023, finding a violation of section 337 in the above-referenced investigation as to two of the three asserted patents. The Commission has determined that no violation of section 337 has occurred as to any of the asserted patents based on the importation of certain playards and strollers. This investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. 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 on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation by publication in the **Federal Register** on December 27, 2021. 86 FR 73318 (Dec. 27, 2021). The complainants are Graco Children's Products Inc., of Atlanta, GA (''Graco'') and Wonderland Nurserygoods Co., Ltd. of Taipei, Taiwan (''Wonderland''). Graco and Wonderland's complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain playards and strollers by reason of infringement of certain claims of U.S. Patent Nos. 9,706,855 (''the '855 patent''); 9,414,694 (''the '694 patent''); RE43,919 (''the '919 patent''); and 6,979,017 (''the '017 patent''). *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission's notice of investigation named as respondents Baby Trend, Inc. of Fontana, CA (''Baby Trend''); Dongguan Golden Prosper Baby Products Co., Ltd., of Guangdong, China (''Golden Prosper''); Sichuan Hobbies Baby Products Co., Ltd., of Sichuan, China (''Sichuan Hobbies''); and Anhui Chile Baby Products Co., Ltd. of Anhui Province, China (''Anhui Chile''). *Id.* The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

On April 1, 2022, the Commission determined not to review an ID terminating the investigation as to the '017 patent. Order No. 7 (Mar. 7, 2022), *unreviewed by* Comm'n Notice (Apr. 1, 2022). On April 12, 2022, the Commission determined not to review an ID terminating the investigation as to respondent Golden Prosper based on withdrawal of the complaint. Order No. 8 (Mar. 23, 2022), *unreviewed by* Comm'n Notice (Apr. 12, 2022). And, on December 14, 2022, the Commission determined not to review an ID terminating the investigation as to claims 3–9, 11–12, 14, and 16–20 of the '855 patent, claims 2, 4–9, 11–17, and 19–20 of the '694 patent, and claims 8, 10–12, 14–19, and 27–28 of the '919 patent as to all respondents, and terminating the investigation as to claim 20 of the '919 patent as to respondents Sichuan Hobbies and Anhui Chile (but not Baby Trend). Order No. 21 (Nov. 15, 2022), *unreviewed by* Comm'n Notice (Dec. 14, 2022).

The ALJ held an evidentiary hearing from December 12–15, 2022, at which point, only claims 1, 2, 10, 13, and 15 of the '855 patent and claims 1, 10, and 18 of the '694 patent remained as to all respondents and claim 20 of the '919 patent remained as to respondent Baby Trend. At the time of the evidentiary hearing, there were three remaining respondents in this investigation: Baby Trend, Sichuan Hobbies, and Anhui Chile (''Respondents'').

On March 31, 2023, the ALJ issued the final ID in this investigation. The ID found that a violation of section 337 had occurred based on the respondents' importation and sale of products that infringe certain claims of the '855 patent and the '694 patent. By contrast, the ID found that no violation had occurred in connection with the '919 patent. The ALJ issued his recommended determination (''RD'') on remedy and bond concurrently with the ID. The RD recommended issuance of a limited exclusion order directed to accused products that infringe the '855 or '694 patents. In addition, the RD recommended the issuance of a cease and desist order. As to bond, the RD recommended a bond rate of 4% for the product accused of infringing only the '919 patent and a bond rate of 59% for the remaining accused products.

The parties filed petitions for review of the ID on April 14, 2023, and responses thereto on April 24, 2023.

On July 6, 2023, the Commission determined to review the ID in part. Specifically, the Commission determined to review: (1) for the '855

patent, whether claim 15 is anticipated by Gabriella, and whether claims 1, 2, 10, and 13 are obvious based on Troutman and Song or Hsia and Song; (2) for the '694 patent, whether claim 18 is anticipated by Hsia and whether claims 1 and 10 are obvious based on Troutman and Tharalson; (3) the '919 patent in its entirety; and (4) whether the technical and economic prongs of the domestic industry requirement are met for all three patents. In connection with its review of the ID, the Commission sought briefing from the parties on several questions germane to the issues on review. The Commission also requested briefing from the parties, interested government agencies, and other interested persons on remedy, bonding, and the public interest.

On July 20, 2023, the parties submitted briefs responding to the questions posed in the Commission's Notice of Review and on remedy, the public interest, and bond. Thereafter, on July 27, 2023, each submitted a reply to the other's brief on review. No additional submissions were received.

Having considered the parties' submissions, the ID, and the record in this investigation, the Commission has determined that no violation of section 337 has occurred based on Respondents' importation into the United States, sale for importation, or sale within the United States after importation of certain playards and strollers. The Commission has further determined to affirm in part, modify in part, reverse in part, and take no position on certain portions of the ID, as explained in the Commission's opinion issued concurrently herewith. This investigation is terminated.

The Commission vote for this determination took place on August 28, 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 28, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–18953 Filed 8–31–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–23–042]**

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** September 8, 2023 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. *Agendas for future meetings:* none.

2. Minutes.

3. Ratification List.

4. Commission vote on Inv. Nos. 701–TA–570 and 731–TA–1346 (Review) (Aluminum Foil from China). The Commission currently is scheduled to complete and file its determinations and views of the Commission on September 19, 2023.

5. Commission vote on Inv. Nos. 701–TA–693 and 731–TA–1629–1640 (Preliminary) (Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan). The Commission currently is scheduled to complete and file its determinations on September 11, 2023; views of the Commission currently are scheduled to be completed and filed on September 18, 2023.

6. *Outstanding action jackets:* none.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Bellamy, Acting Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 30, 2023.

**Sharon Bellamy,**

*Acting Supervisory Hearings and Information Officer.*

[FR Doc. 2023–19106 Filed 8–30–23; 4:15 pm]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–692 and 731–TA–1628 (Preliminary)]**

### Certain Pea Protein From China

#### Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain pea protein from China, provided for in subheadings 3504.00.10, 3504.00.50, and 2106.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of China.[2]

#### Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

#### Background

On July 12, 2023, PURIS Proteins LLC, Minneapolis, Minnesota filed

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 88 FR 52116 and 88 FR 52124 (August 7, 2023).

petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of certain pea protein from China and LTFV imports of certain pea protein from China. Accordingly, effective July 12, 2023, the Commission instituted countervailing duty investigation No. 701–TA–692 and antidumping duty investigation No. 731–TA–1628 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 18, 2023 (88 FR 45924). The Commission conducted its conference on August 2, 2023. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on August 28, 2023. The views of the Commission are contained in USITC Publication 5457 (September 2023), entitled *Certain Pea Protein from China: Investigation Nos. 701–TA–692 and 731–TA–1628* (*Preliminary*).

By order of the Commission.

Issued: August 28, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–18907 Filed 8–31–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1189 (Second Review)]**

## Large Power Transformers From South Korea; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on large power transformers from South Korea would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted September 1, 2023. To be assured of consideration, the deadline for responses is October 2, 2023. Comments on the adequacy of responses may be filed with the Commission by November 9, 2023.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Gatten (202–708–1447), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

**SUPPLEMENTARY INFORMATION:**

*Background.*—On August 31, 2012, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of large power transformers from South Korea (77 FR 53177). Following the first five-year reviews by Commerce and the Commission, effective October 16, 2018, Commerce issued a continuation of the antidumping duty order on imports of large power transformers from South Korea (83 FR 52206). The Commission is now conducting a second review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is South Korea.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its full first five-year review determination, the Commission found a single *Domestic Like Product* consisting of large power transformers coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its full first five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of large power transformers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment

statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on October 2, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is 5:15 p.m. on November 9, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–577, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2017.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in megavolt-amperes (''MVA''), and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in MVA and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in MVA and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2017, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

*Authority:* This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 25, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–18731 Filed 8–31–23; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–1254]**

### Importer of Controlled Substances Application: Catalent CTS, LLC

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Catalent CTS, LLC. has applied to be registered as an importer of basic class(es) of controlled

substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 2, 2023. Such persons may also file a written request for a hearing on the application on or before October 2, 2023.

**ADDRESSES:** The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on July 13, 2023, Catalent CTS, LLC, 10245 Hickman Mills Drive, Kansas City, Missouri 64137–1418, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Gamma Hydroxybutyric Acid. | 2010 | I |
| Marihuana Extract | 7350 | I |
| Marihuana Extract | 7360 | I |
| Tetrahydrocannabinols | 7370 | I |

The company plans to import the listed controlled substances as dosage unit products for clinical trial studies. In reference to drug codes 7370 (Tetrahydrocannabinols), the company plans to import a synthetic tetrahydrocannabinol. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

**Claude Redd,**

*Acting Deputy Assistant Administrator.*

[FR Doc. 2023–18919 Filed 8–31–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–1253]**

### Importer of Controlled Substances Application: Fisher Clinical Services, Inc.

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Fisher Clinical Services, Inc., has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 2, 2023. Such persons may also file a written request for a hearing on the application on or before October 2, 2023.

**ADDRESSES:** The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on August 15, 2023, Fisher Clinical Services, Inc., 7554 Schantz Road, Allentown, Pennsylvania 18106–9032, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Psilocybin | 7437 | I |
| Marihuana Extract | 7350 | I |
| Methylphenidate | 1724 | II |
| Levorphanol | 9220 | II |
| Noroxymorphone | 9668 | II |
| Tapentadol | 9780 | II |

The company plans to import the listed controlled substances for clinical trials only. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

**Claude Redd,**

*Acting Deputy Assistant Administrator.*

[FR Doc. 2023–18922 Filed 8–31–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–1251]**

### Bulk Manufacturer of Controlled Substances Application: Curia Wisconsin, Inc.

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Curia Wisconsin, Inc has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 31, 2023. Such persons may also file a written request for a hearing on the application on or before October 31, 2023.

**ADDRESSES:** The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on August 3, 2023, Curia Wisconsin, Inc., 870 Badger Circle, Grafton, Wisconsin 53024–0000, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Lysergic acid diethylamide | 7315 | I |
| Tetrahydrocannabinols | 7370 | I |
| 4-Bromo-2,5-dimethoxyphenethylamine | 7392 | I |
| 3,4-Methylenedioxyamphetamine | 7400 | I |
| 3,4-Methylenedioxymethamphetamine | 7405 | I |
| 5-Methoxy-N-N-dimethyltryptamine | 7431 | I |
| Dimethyltryptamine | 7435 | I |
| Psilocybin | 7437 | I |
| Psilocyn | 7438 | I |
| Methylphenidate | 1724 | II |
| Nabilone | 7379 | II |
| ANPP (4-Anilino-N-phenethyl-4-piperidine) | 8333 | II |
| Noroxymorphone | 9668 | II |
| Fentanyl | 9801 | II |

The company plans to bulk manufacture the listed controlled substances for the purpose of analytical reference standards or for sale to its customers. In reference to the drug code 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture as synthetic. No other activities for these drug codes are authorized for this registration.

**Claude Redd,**

*Acting Deputy Assistant Administrator.*

[FR Doc. 2023–18923 Filed 8–31–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Radiation Sampling and Exposure Records

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-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 October 2, 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:** Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** MSHA is required to-issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this Act. Airborne radon and radon daughters exist in every uranium mine and in several other underground mining commodities. Radon is radioactive gas. It diffuses into the underground mine atmosphere through the rock and the ground water. Radon decays in a series of steps into other radioactive elements, which are solids, called radon daughters. Radon and radon daughters are invisible and odorless. Decay of radon and its daughters results in emissions of alpha energy. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 21, 2023 (88 FRN 17020).

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.

*Agency:* DOL–MSHA.

*Title of Collection:* Consumer Price Index Commodities and Services Survey.

*OMB Control Number:* 1219–0003.

*Affected Public:* Businesses or other for-profits; Not-for-profit institutions; State, Local and Tribal Governments.

*Number of Respondents:* 4.

*Frequency:* On occasion.

*Number of Responses:* 404.

*Annual Burden Hours:* 402 hours.

*Total Estimated Annual Other Costs Burden:* $20.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

**Michael Howell,**

*Senior Paperwork Reduction Act Analyst.*

[FR Doc. 2023–18925 Filed 8–31–23; 8:45 am]

**BILLING CODE 4510–43–P**

## MILLENNIUM CHALLENGE CORPORATION

**[MCC FR 23–04]**

## Millennium Challenge Corporation Candidate Country Report for Fiscal Year 2024

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice.

**SUMMARY:** The Millennium Challenge Act of 2003, as amended, requires the Millennium Challenge Corporation to publish a report that identifies countries that are ''candidate countries'' for Millennium Challenge Account assistance during Fiscal Year 2024. The report is set forth in full below.

(Authority: 22 U.S.C. 7707(a))

Dated: August 28, 2023.

**Gina Porto Spiro,**

*Acting Vice President, General Counsel, and Corporate Secretary.*

### Millennium Challenge Corporation Candidate Country Report for Fiscal Year 2024

*Summary*

This report to Congress is provided in accordance with section 608(a) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7701, 7707(a) (the Act).

The Act authorizes the provision of assistance for global development through the Millennium Challenge Corporation (MCC) for countries that enter into a Millennium Challenge Compact with the United States to support policies and programs that advance the progress of such countries to achieve lasting economic growth and poverty reduction. The Act requires MCC to take a number of steps in selecting countries with which MCC will seek to enter into a compact, including determining the countries that will be eligible countries for fiscal year (FY) 2024 based on (a) a country's demonstrated commitment to (i) just and democratic governance, (ii) economic freedom, and (iii) investments in its people; (b) the opportunity to reduce poverty and generate economic growth in the country; and (c) the availability of funds to MCC. These steps include the submission to the congressional committees specified in the Act and publication in the **Federal Register** of reports on the following:

- The countries that are ''candidate countries'' for FY 2024 based on their per capita income levels and their eligibility to receive assistance under U.S. law and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act);
- The criteria and methodology that the MCC Board of Directors (the Board) will use to measure and evaluate the relative policy performance of the ''candidate countries'' consistent with the requirements of subsections (a) and (b) of section 607 of the Act in order to determine ''eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act); and
- The list of countries determined by the Board to be ''eligible countries'' for FY 2024, identification of such countries with which the Board will seek to enter into compacts, and a justification for such eligibility determination and selection for compact negotiation (section 608(d) of the Act).

This report is the first of three required reports listed above.

*Candidate Countries for FY 2024*

The Act requires the identification of all countries that are candidate countries for purposes of eligibility for MCC compact assistance for FY 2024 and the identification of all countries that would be candidate countries for purposes of eligibility for MCC compact assistance but for specified legal prohibitions on assistance. Under sections 606(a) and (b) of the Act, candidate countries must qualify as low income or lower middle income countries as defined in the Act.

Specifically, a country will be a candidate country in the low income category for FY 2024 if it

- has a per capita income that is not greater than the World Bank's lower middle income country threshold for such fiscal year ($4,465 gross national income per capita for FY 2023);
- is among the 75 countries identified by the World Bank as having the lowest per capita income; and
- is not ineligible to receive United States economic assistance under part I of the Foreign Assistance Act of 1961, as amended (the Foreign Assistance Act), by reason of the application of the Foreign Assistance Act or any other provision of law.

A country will be a candidate country in the lower middle income category for FY 2024 if it

- has a per capita income that is not greater than the World Bank's lower middle income country threshold for such fiscal year ($4,465 gross national income per capita for FY 2024);
- is not among the 75 countries identified by the World Bank as having the lowest per capita income; and
- is not ineligible to receive United States economic assistance under part I of the Foreign Assistance Act by reason of the application of the Foreign Assistance Act or any other provision of law.

Under section 606(c) of the Act as applied for FY 2024, a country with per capita income changes from FY 2023 to FY 2024 such that the country would be reclassified from the low income category to the lower middle income category or vice versa will retain its income status in its former category for FY 2024 and two subsequent fiscal years (FY 2025 and FY 2026). A country that has transitioned to the upper middle income category does not qualify as a candidate country.

Pursuant to section 606(d) of the Act, the Board identified the following countries as candidate countries under the Act for FY 2024. In so doing, the Board referred to the prohibitions on assistance to countries for FY 2023 under the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2023 (FY 2023 SFOAA) contained in Division K of the Consolidated Appropriations Act, 2023 (Pub. L. 117–103).

Candidate Countries: Low Income Category

1. Afghanistan
2. Angola
3. Bangladesh
4. Benin
5. Bhutan
6. Bolivia
7. Burundi
8. Cabo Verde
9. Cameroon
10. Central African Republic
11. Chad
12. Comoros
13. Congo, Democratic Republic of the
14. Congo, Republic of the

15. Côte d'Ivoire
16. Djibouti
17. Egypt
18. Eswatini
19. Ethiopia
20. Gambia, The
21. Ghana
22. Guinea-Bissau
23. Honduras
24. India
25. Kenya
26. Kiribati
27. Kyrgyzstan
28. Laos
29. Lebanon
30. Lesotho
31. Liberia
32. Madagascar
33. Malawi
34. Mauritania
35. Micronesia, Federated States of
36. Mongolia
37. Morocco
38. Mozambique
39. Nepal
40. Niger *
41. Nigeria
42. Pakistan
43. Papua New Guinea
44. Philippines
45. Rwanda
46. Sao Tome and Principe
47. Senegal
48. Sierra Leone
49. Solomon Islands
50. Somalia
51. Tajikistan
52. Tanzania
53. Timor-Leste
54. Togo
55. Tunisia
56. Uganda
57. Ukraine
58. Uzbekistan
59. Vanuatu
60. Vietnam
61. Yemen
62. Zambia

Candidate Countries: Lower Middle Income Category

1. Algeria
2. Jordan
3. Samoa

*Countries That Would Be Candidate Countries but for Legal Provisions That Prohibit Assistance*

Countries that would be considered candidate countries for purposes of eligibility for MCC compact assistance for FY 2024 but are ineligible to receive United States economic assistance under part I of the Foreign Assistance Act by reason of the application of any provision of the Foreign Assistance Act or any other provision of law are listed below. This list is based on legal prohibitions against economic assistance that apply as of July 25, 2023.

Prohibited Countries: Low Income Category

- *Burkina Faso* is ineligible to receive foreign assistance pursuant to the military coup restriction in section 7008 of the FY 2023 SFOAA.
- *Burma* is ineligible to receive foreign assistance as it is subject to numerous restrictions including concerns relative to its record on human rights and pursuant to the military coup restriction in section 7008 of the FY 2023 SFOAA.
- *Cambodia* is ineligible to receive foreign assistance pursuant to section 7043(b)(2) of the FY 2023 SFOAA, which restricts (with limited exceptions) assistance to the Government of Cambodia unless the Secretary of State certifies that the Government of Cambodia is taking effective steps to strengthen regional security and stability and respect the rights and responsibilities enshrined in the Constitution of the Kingdom of Cambodia.
- *Eritrea* is ineligible to receive foreign assistance as it is subject to numerous restrictions including concerns relative to its record on human rights and its status as a Tier 3 country under the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 *et seq.*).
- *Guinea* is ineligible to receive foreign assistance pursuant to the military coup restriction in section 7008 of the FY 2023 SFOAA.
- *Haiti* is ineligible to receive foreign assistance unless the Secretary of State provides a certification pursuant to section 7045(c)(2) of the FY 2023 SFOAA.
- *Iran* is ineligible to receive foreign assistance as it is subject to numerous restrictions including as a state sponsor of terrorism under Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) and its status as a Tier 3 country under the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 *et seq.*).
- *Korea North* ,is ineligible to receive foreign assistance as it is subject to numerous restrictions including section 7007 of the FY 2023 SFOAA and its status as a Tier 3 country under the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 *et seq.*).
- *Mali* is ineligible to receive foreign assistance pursuant to the military coup restriction in section 7008 of the FY 2023 SFOAA.
- *Nicaragua* is ineligible to receive foreign assistance as it is subject to numerous restrictions including its status as a Tier 3 country under the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 *et seq.*) and under section 7047(c) of the FY 2023 SFOAA related to its recognition posture with respect to the Russian Federation occupied Georgian territories of Abkhazia and Tskhinvali Region/South Ossetia.
- *South Sudan* is ineligible to receive foreign assistance as it is subject to numerous restrictions including under section 7042(g) of the FY 2023 SFOAA, for concerns relative to its record on human rights, and its status as a Tier 3 country under the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 *et seq.*).
- *Sudan* is ineligible to receive foreign assistance as it is subject to numerous restrictions including the military coup restriction in section 7008 of the FY 2023 SFOAA.
- *Syria* is ineligible to receive foreign assistance as it is subject to numerous restrictions including as a state sponsor of terrorism under Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) and its status as a Tier 3 country under the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 *et seq.*).
- *Zimbabwe* is ineligible to receive foreign assistance, including pursuant to section 7042(j)(2) of the FY 2023 SFOAA, which prohibits (with limited exceptions) assistance for the central government of Zimbabwe unless the Secretary of State certifies and reports to Congress that the rule of law has been restored, including respect for ownership and title to property, and freedoms of expression, association, and assembly.

Prohibited Countries: Lower Middle Income Category

- *Sri Lanka* is ineligible to receive foreign assistance pursuant to section 7044(e)(2) of the FY 2023 SFOAA, which restricts (with limited exceptions) assistance for the central government unless the Secretary makes certain certifications regarding actions taken by the Government of Sri Lanka and reports to the Committees on Appropriations.

Countries identified above as candidate countries, as well as countries that would be considered candidate countries but for the applicability of legal provisions that prohibit U.S. economic assistance, may be the subject of future statutory restrictions or determinations, or changed country circumstances, that affect their legal

* Note that, should events that began in July 2023 in Niger be assessed to trigger restrictions on foreign assistance pursuant to the military coup restriction in section 7008 of the FY 2023 SFOAA, Niger will not be a candidate country.

eligibility for assistance under part I of the Foreign Assistance Act by reason of application of the Foreign Assistance Act or any other provision of law for FY 2024.

[FR Doc. 2023–18891 Filed 8–31–23; 8:45 am]

BILLING CODE 9211–03–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 23–093]**

## Name of Information Collection: Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) as part of its continuing effort to reduce paperwork and respondent burden, is announcing an opportunity for public comment on a new proposed collection of 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, and to allow 30 days for public comment in response to the notice. This notice solicits comments on new collection proposed by the Agency.

**DATES:** Comments are due by October 2, 2023.

**ADDRESSES:** Submit comments identified by Information Collection 2700–0181, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), by any of the following methods:

- *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.
- *By mail:* Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–7998, or *b.edwards-bodmer@nasa.gov.*

*Instructions:* Please submit comments only and cite Information Collection 2700–0181, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov*, approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–7998, or *b.edwards-bodmer@nasa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

Under the PRA, (44 U.S.C. 3501–3520) Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, NASA is publishing notice of the proposed collection of information set forth in this document.

Whether seeking a loan, Social Security benefits, veterans benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. NASA will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on performance.gov to help build transparency and accountability of Federal programs to the customers they serve.

### II. Methods of Collection

NASA will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews.

### III. Data

*Title:* Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

*OMB Number:* 2700–0181.

*Type of Review:* Extension.

*Affected Public:* Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or Tribal governments; Federal Government; and Universities.

*Estimated Number of Respondents:* 2,001,550.

*Estimated Time per Response:* Varied, dependent upon the data collection

method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview.

*Estimated Total Annual Burden Hours:* 101,125.

*Estimated Total Annual Cost to Public:* $0.

**IV. Request for Comments**

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**William Edwards-Bodmer,**

*NASA PRA Clearance Officer.*

[FR Doc. 2023–18956 Filed 8–31–23; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 23–092]**

### Name of Information Collection: NASA Complaint of Discrimination Form 1355

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, 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 proposed and/or continuing information collections.

**DATES:** Comments are due by October 31, 2023.

**ADDRESSES:** Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–7998, or *b.edwards-bodmer@nasa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Federal agencies are required by statute not to engage in discrimination on the bases of race, color, religion, sex, national origin, age, disability, genetic information, or retaliation. A Federal employee, former employee, or job applicant who believes s/he was discriminated against has a right to file a complaint with the agency's office responsible for its Equal Employment Opportunity (EEO) programs. Federal agencies must offer pre-complaint counseling or EEO alternative dispute resolution (EEO ADR) to individuals who allege that they were discriminated against by the agency. If pre-complaint counseling or EEO ADR does not resolve the dispute(s), the individual can file a formal discrimination complaint with the agency's EEO office.

**II. Methods of Collection**

Title 29 of the Code of Federal Regulations (CFR) part 1614 section 104 requires agencies to establish procedures for processing individual and class complaints of discrimination that include the provisions contained in 29 CFR 1614.105 through 1614.110 and in § 1614.204, which are consistent with all other applicable Federal EEO regulations and complaint processing requirements contained in the Equal Employment Opportunity Commission (EEOC) Management Directives (MD).

When an individual decides to pursue the formal discrimination complaint process, EEOC MD 110 requires that the formal complaint must be:

- In writing;
- Specific with regard to the claim(s) that the individual raised in pre-complaint counseling and that the person wishes to pursue;
- Must be signed by the individual and/or his or her representative; and
- Must be filed within fifteen (15) calendar days from the date s/he receives the Notice of Right to File a Discrimination Complaint.

Consequently, NASA established NF–1355P form to ensure the individual who wishes to utilize the EEO process complies with the requirements listed above.

**III. Data**

*Title:* Formal Discrimination Complaint Form.

*OMB Number:* 2700–0163.

*Type of Review:* Reinstatement of existing information collection.

*Affected Public:* Individuals who wish to file a formal discrimination complaint against NASA.

*Estimated Annual Number of Activities:* 60.

*Estimated Number of Respondents per Activity:* 1.

*Annual Responses:* 60.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 30 hours.

**IV. Request for Comments**

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**William Edwards-Bodmer,**

*NASA PRA Clearance Officer.*

[FR Doc. 2023–18960 Filed 8–31–23; 8:45 am]

**BILLING CODE 7510–13–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–341; NRC–2023–0146]**

### DTE Electric Company; Fermi, Unit 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Renewed Facility Operating License No. NPF–43, issued to DTE Electric Company, for operation of Fermi, Unit

2 (Fermi 2). The proposed amendment requests an amendment to the Fermi 2 Technical Specifications (TS) 3.7.2, to allow for a one-time extension of the Condition A Completion Time to allow repair of Division 1 Mechanical Draft Cooling Tower A and C fan pedestals while online. The proposed amendment is being requested due to an exigent circumstance pursuant to NRC regulations.

**DATES:** Submit comments by September 15, 2023. Request for a hearing or petitions for leave to intervene must be filed by October 31, 2023.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website.

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0146. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail Comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Surinder S. Arora, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1421, email: *Surinder.Arora@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2023–0146 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0146.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

### *B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0146 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. NPF–43, issued to DTE Electric Company, for operation of Fermi, Unit 2, located in Monroe County, Michigan.

The proposed amendment requests an amendment to the Fermi, Unit 2, Technical Specifications (TS) 3.7.2, to allow for a one-time extension of the Condition A Completion Time to allow repair of Division 1 Mechanical Draft Cooling Tower A and C fan pedestals while online. The proposed amendment is being requested due to an exigent circumstance pursuant to paragraph 50.91(a)(6) of title 10 of the *Code of Federal Regulations* (10 CFR).

On July 18, 2023, the Division II Residual Heat Removal Service Water Mechanical Draft Cooling Tower (MDCT) fan D tripped due to high vibrations caused by a degraded, non-conforming gearbox pedestal. Corrective actions were required to correct the conditions and restore the equipment to an operable status, using extra time allowed by the Notice of Enforcement Discretion approved by the NRC on July 20, 2023. During that time the ultimate heat sink was declared inoperable. During the 'extent of condition' review by DTE, it was discovered that the MDCT A and C fan pedestals were also degraded and non-conforming but remained operable and also in need of similar repair. DTE submitted this amendment to repair the Division I MDCT A and C fan pedestals. Additionally, the request provides justification that obtaining an extension of the Completion Time to repair the Division | MDCT fan pedestals online instead of waiting until the next refueling outage.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

DTE will use the compensatory measures and Fermi 2 Configuration Risk Management program requirements outlined [in] Section 3.2 and in enclosure 4 [of ML23222A037] during the duration of the proposed extension

of the Completion Time for the MDCT fan pedestal repair. The risk impact of the proposed Completion Time is deemed acceptable and meets the requirements of RG 1.177 [Risk Evaluation is in Enclosure 4 of ML23222A037].

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes do not involve a change in design, configuration, or method of operation of the plant. The proposed changes will not alter the manner in which equipment is initiated, nor will the functional demands on credited equipment be changed. The proposed changes do not impact the interaction of any systems whose failure or malfunction can initiate an accident. There are no identified redundant components affected by these changes and, thus, there are no new common cause failures or any existing common cause failures that are affected by extending the Completion Time. The proposed changes do not create any new failure modes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes do not alter the plant design, nor do they affect the assumptions contained in the safety analyses. Specifically, there are no changes being made to the MDCT fan design. The proposed changes have been evaluated and margins of safety ascribed to Emergency Equipment Cooling Water (EECW) [Correction by the Licensee in ML23237B402] availability and to plant risk have been determined to be not significantly reduced. The risk impact of the proposed changes is acceptable to the compensatory measures and other requirements, as outlined in Section 3.2 and in Enclosure 4 [of ML23222A037]. As analyzed in the UFSAR, the loss of the Division | MDCT fans would not cause a significant reduction in safety because the MDCT system is redundant and can perform its function with one division unavailable.

The evaluation provided above shows that the proposed changes will not significantly increase the probability or the consequences of any accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, if circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. If the Commission takes this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

## III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate*.

## IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056)

and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b) through (d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated August 10, 2023 (ADAMS Accession No. ML23222A037).

*Attorney for licensee:* Jon P. Christinidis, DTE Electric Company, Expert Attorney—Regulatory, 1635 WCB, One Energy Plaza, Detroit, MI 48226.

*NRC Branch Chief:* Jeff Whited.

Dated: August 29, 2023.

For the Nuclear Regulatory Commission.

**Surinder S. Arora,**

*Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2023–18920 Filed 8–31–23; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2023–0113]**

## Draft NUREG: Environmental Evaluation of Accident Tolerant Fuels With Increased Enrichment and Higher Burnup Levels

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft report; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft NUREG–2266, ''Environmental Evaluation of Accident Tolerant Fuels with Increased Enrichment and Higher Burnup Levels.'' This study evaluates the reasonably foreseeable impacts of near-term accident tolerant fuel (ATF) technologies with increased enrichment and higher burnup levels to 8 wt% uranium-235 (U–235) and up to 80 GWd/MTU, respectively, on the uranium fuel cycle, transportation of fuel and waste, and decommissioning for light-water reactors (LWRs) (*i.e.,* a bounding analysis).

**DATES:** Submit comments by October 31, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0113. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail Comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments,

see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Donald Palmrose, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3803, email: *Donald.Palmrose@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2023–0113 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0113.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The draft NUREG, ''Environmental Evaluation of Accident Tolerant Fuels with Increased Enrichment and Higher Burnup,'' is available in ADAMS under Accession No. ML23240A756.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

### *B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0113 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Discussion

To support efficient and effective licensing reviews of new accident tolerant fuels (ATFs) and to reduce the need for a complex site-specific environmental review for each ATF license amendment request, this study evaluated the likely impacts of near-term ATF technologies with increased enrichment and higher burnup levels on the uranium fuel cycle, transportation of fuel and waste, and decommissioning for light-water reactors (LWRs) (*i.e.,* a bounding analysis). Near-term ATF technologies are coated cladding, doped pellets, and (iron-chrome-aluminum) FeCrAl cladding. Other long-term ATF technologies are not a part of this study. The NRC staff evaluated the impact of increased enrichment and higher burnup levels by assessing and applying NRC-sponsored ATF technology reports, prior environmental reviews, transportation studies, and new or updated data sources to determine the bounding (generic) environmental impacts of deploying ATF technologies with increased enrichment and higher burnup levels in LWRs.

The NRC initially considered the environmental impacts of the uranium fuel cycle in WASH–1248 (ADAMS Accession No. ML14092A628). There have been significant changes to the front-end processes and NRC-licensed facilities since the publication of WASH–1248. The most notable examples of these changes are extracting uranium from the ground using in situ recovery instead of traditional mining, performing all enrichment with gaseous centrifuges instead of gaseous diffusion, and electricity generation moving significantly away from the use of coal. The result of these various changes is to significantly reduce the environmental effects from the front-end of the uranium fuel cycle. Thus, the environmental effects of the front-end of the uranium fuel cycle from the deployment and use of ATF with increased enrichment is bounded by the environmental effects provided in Table S–3 under title 10 of the *Code of Federal Regulations* (10 CFR) section 51.51.

Regarding the back-end of the uranium fuel cycle, the current practice of long-term storage and management of spent nuclear fuel (SNF) would still apply to the deployment and use of ATF with increased enrichment and higher burnup levels. Consistent with NRC regulations and thermal loading requirements for licensed spent fuel storage cask systems, specific cooling times in a spent fuel pool would be necessary prior to transferring the spent fuel to an Independent Spent Fuel Storage Installation (ISFSI).

A benefit from deployment and use of ATF with increased enrichment and higher burnup levels would be the longer times between refueling operations, which would lessen the average annual rate at which licensees place spent ATF assemblies into the spent fuel pools and ultimately transfer spent ATF assemblies to an ISFSI relative to the rate for traditional spent fuel. This could, in turn, lessen the overall amount of SNF stored at a site and lengthen the time before licensees need to expand an ISFSI relative to facilities using fuel with lower enrichments and lower burnup levels. This lessens the environmental impacts compared to what would occur with current fuel, which would be consistent with prior NRC environmental evaluations. Spent ATF storage would be consistent with earlier published analyses, would not require any significant departure from certified spent fuel shipping and storage containers, and would continue under an approved aging management program.

In conducting the generic analysis in the Continued Storage Generic Environment Impact Statement (GEIS) of NUREG–2157, Volume 1 (ADAMS Accession No. ML14196A105) and NUREG–2157, Volume 2 (ADAMS Accession No. ML14196A107), the NRC staff applied conditions and parameters that are sufficiently conservative to bound the impacts such that any variances that may occur from site to site are unlikely to result in environmental impact determinations that are greater than those presented in the Continued Storage GEIS. Therefore, with respect to ATF storage, including spent ATF with increased enrichment and higher burnup levels, the storage period beyond the licensed life for operation of a reactor for spent ATF would conform with the analysis of the Continued Storage GEIS, and accordingly, the Continued Storage

GEIS would bound the impacts from deployment and use of ATF.

The analysis of the transportation of ATF and ATF waste with increased enrichment and higher burnup levels is based on shipment of low-level radioactive waste, unirradiated, and spent ATF, including with increased enrichments and higher burnup levels, by legal weight trucks in certified transport packages. The transportation impacts are divided into two parts. The first part considers normal conditions, or incident-free, transportation, and the second part considers transportation accidents.

Shipments that take place without the occurrence of accidents are routine, incident-free shipments and the radiation doses to various receptors (exposed persons) are called incident-free doses. The vast majority of radioactive shipments are expected to reach their destination without experiencing a transportation accident or incident or releasing any cargo (to date, there have been no shipments of spent fuel resulting in a release of radioactive material to the environment). As previously noted, deployment and use of ATF with increased enrichment and higher burnup levels could result in lengthening of the time between refueling operations, leading to an overall reduction of the number of spent fuel assemblies needing to be shipped offsite on an annual basis. Such reduction would have the effect to lessen the environmental impacts compared to what would occur with current fuel and refueling operations due to transportation of spent fuel. The incident-free impacts from these normal, routine shipments arise from the low levels of radiation that are emitted externally from the shipping container.

Incident-free legal weight truck transportation of spent ATF, including spent ATF with increased enrichment and higher burnup levels, has been evaluated by considering shipments from six representative LWR sites to a postulated permanent geological repository for SNF in the western United States. As a surrogate for such a postulated permanent geologic repository, the NRC has used the proposed Yucca Mountain, Nevada site for the transportation analysis. The six LWR sites from which the shipments originate include:

- Brunswick Steam Electric Plant;
- Columbia Generating Station;
- Dresden Nuclear Power Station;
- Enrico Fermi Nuclear Generating Station Unit 2;
- Millstone Power Station; and
- Turkey Point Nuclear Plant.

For each LWR site, the NRC staff considered and evaluated both boiling water reactor (BWR) and pressurized water reactor (PWR) spent ATF shipments, including with increased enrichment and higher burnup levels, for the purpose of impact comparison owing to the different release fractions for BWR and PWR fuel designs.

Environmental impacts from these shipments would occur to persons residing along the transportation corridors between the reactor sites and the repository, to persons in vehicles passing the spent fuel shipments in the same and opposite directions, to persons at vehicle stops (such as rest areas, refueling stations, inspection stations, etc.), and to transportation crew members. For the purposes of this analysis, the transportation crew for truck spent fuel shipments consisted of two drivers. The regulatory maximum crew dose rate of 2 millirem(s) per hour (mrem/hr), and regulatory maximum transport package surface dose rate of 10 mrem/hr at 2 meters is conservatively used in the analysis. The characteristics of specific shipping routes (*e.g.,* population densities, shipping distances) influence the normal radiological exposures.

The accident risks are the product of the likelihood of an accident involving a spent fuel shipment and the consequences of a release of radioactive material resulting from the accident. The likelihood of an accident is directly proportional to the number of fuel shipments. Accident risks also include a consequence term. Consequences are represented by the population dose from a release of radioactive material given that an accident occurs that leads to a breach in the shipping cask's containment systems. Consequences are a function of the total amount of radioactive material in the shipment, the fraction that escapes from the shipping cask, the fraction of the release from the shipping cask that is aerosolized, the fraction of the release that is respirable, the dispersal of radioactive material to humans, and the characteristics of the exposed population. The NRC staff used the shipping distances and population distribution information for the regions pertaining to the sites used for the evaluation of the impacts of incident-free transportation for accident impact evaluations. The NRC staff used the most recent available data on accident rates, release fractions, aerosolized fractions, and respirable fractions in this evaluation.

The transportation impact evaluation includes the use of the NRC maintained NRC-Radioactive Material Transport (NRC–RADTRAN) transportation risk code package, pertinent fuel radionuclide inventory (source term) data, and external and accidental release characteristics, routing distance information, and population density by State along the route. The staff obtained routing information by running the Web-Based Transportation Routing Analysis Geographic Information System (WebTRAGIS) code. While the population density considered in WebTRAGIS is for the year 2012, based in part on the 2010 U.S. Census data, the staff extrapolated the population density to 2022 based on each State's growth rate using 2010 and 2020 U.S. Census data. The staff compiled information with respect to vehicle daily traffic count, vehicle speed, vehicle accident, fatality, and injury rates from U.S. Department of Transportation data base and used that information in the NRC–RADTRAN analysis to determine single shipment impacts. To determine annual transportation impacts, the staff applied the normalized (annual) truck shipments of 52 shipments and 30 shipments estimated spent ATF from a BWR and PWR, respectively.

The NRC staff found the maximum normal conditions (*i.e.,* incident-free) cumulative worker dose per year was bounded by the 4 person-rem value of Table S–4. This worker dose would be managed with multiple drivers available as the transportation crew so that the individual worker dose would be below the U.S. Department of Energy administrative limit of 2 rem per year and the NRC's occupational exposure annual limit of 5 rem per year. PWR shipment cumulative public doses were at or slightly higher than the 3 person-rem per year specified in the Table S–4. The NRC staff found the cumulative population dose per year for the BWR shipments to be higher than 3 person-rem per year. However, both the BWR and PWR results are not significant when the related average individual dose is considered. Namely, the average individual doses along all routes and fuel types are well below 1 mrem per year, a small fraction of the average annual natural background radiation exposure of approximately 310 mrem, and within the Table S–4 range of doses to exposed individuals. These results are conservative because they are based on the transport package with the least capacity. Applying a transport package with a greater capacity would reduce the number of shipments resulting in a lower cumulative dose that would be less than the 3 person-rem of Table S–

4 as shown by the rail sensitivity case in this study (*e.g.,* the GA–4 truck spent fuel transport can hold four PWR fuel assemblies, which would reduce the PWR cumulative doses by a factor of 4).

The NRC staff found total accidental population risk per year due to transport of spent ATF, including spent ATF with increased enrichment and higher burnup levels, continued to demonstrate the low risks from both radiological and nonradiological accidents and is consistent with past transportation studies. The greater risk to a member of the public would be physical harm from an actual vehicle collision involving a spent ATF shipment, if such an event ever happens. While the nonradiological risk is the greater risk, the results of this study demonstrate that those risks would still not be significant and are less than the common (nonradiological) cause environmental risks of Table S–4. The results for spent ATF with increased enrichment and higher burnup are consistent with the environmental impacts associated with the transportation of fuel and radioactive wastes to and from current-generation reactors presented in Table S–4 of 10 CFR 51.52.

Based on the results of the impact analysis, shipment of near-term ATF technologies with enrichments of up to 8 (wt%) uranium-235 (U–235) and higher burnup levels of up to 80 gigawatt days per metric ton of uranium (GWd/MTU) would not significantly change the potential impacts of either incident-free or accident transportation risk. Hence, the transportation impacts of spent ATF are bounded by Table S–4. Therefore, the results of this analysis could serve as a reference in helping to address the environmental impacts of ATF licensing without a detailed site-specific transportation analysis, as long as the ATF is within the enrichment and burnup levels with the associated fuel assembly radionuclide inventory and parameters applied in the analyses of this proposed NUREG.

In the case of decommissioning, the expected impacts from deployment and use of ATF with increased enrichment and higher burnup levels would be the same as or slightly less than those from decommissioning nuclear power plants operating with the existing fuel. Additionally, the expected Decommissioning GEIS and guidance updates could build upon the analysis from this study to specifically address the decommissioning of a LWR deploying and using ATF.

Therefore, based on findings in this study, the NRC staff concludes that the reevaluated findings addressing near-term ATF technologies (*i.e.,* coated cladding, doping, and FeCrAl cladding) indicate the environmental effects associated with deploying and using ATF would be bounded by the NRC staff's prior analysis with enrichments up to 8 wt% U–235 and extending peak-rod burnup to 80 GWd/MTU for the uranium fuel cycle, transportation of fuel and waste, and decommissioning. Additionally, if in a future licensing action, the enrichment and burnup levels are greater than 8 wt% U–235 and 80 GWd/MTU, respectively, and for the deployment and use of long-term ATF technologies, the study could provide guidance for completing the needed revised analysis.

As the NRC staff continues to prepare to review license applications related to ATF technologies and fuel with increased enrichment and higher burnup levels, the NRC staff will evaluate new industry developments and other activities before publishing the final NUREG to consider further refinements of the ATF environmental evaluation. For example, such new information could include results from ongoing licensing actions regarding the use of higher enrichment levels in fuel fabrication (ADAMS Accession No. ML22175A070).

### III. Specific Requests for Comments

The NRC is seeking advice and recommendations from the public on the draft NUREG. We are particularly interested in comments and supporting rationale from the public on the following:

Transportation Accident Release Fractions

1. Previous transportation accident analyses have relied upon the use of release fractions in Table 7.31 from NUREG/CR–6672, ''Reexamination of Spent Fuel Shipment Risk Estimates,'' (ADAMS Accession No. ML003698324) for burnup levels up to 60 GWd/MTU. By subjecting LWR nuclear fuel to higher burnup levels, the radionuclide inventory available to be released is greater and material issues such as cladding embrittlement, fuel fragmentation, and additional diffusional release of fission products are expected to result in greater release fractions than assessed in NUREG/CR–6672. Therefore, Appendix B of the draft NUREG assessed the potential effects due to higher radiological material release fractions from the physical effects of higher burnup levels on the fuel pin cladding and the uranium fuel pellets.

The NRC is seeking comment on the use of release fractions developed in Appendix B of the draft NUREG for higher burnup levels than previously considered under transportation accident conditions.

Dated: August 29, 2023.

For the Nuclear Regulatory Commission.

**John M. Moses,**

*Deputy Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Materials Safety, and Safeguards.*

[FR Doc. 2023–18966 Filed 8–31–23; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. CP2022–75; CP2022–91]**

## New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* September 6, 2023.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Docketed Proceeding(s)

### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each

request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

**II. Docketed Proceeding(s)**

1. *Docket No(s).:* CP2022–75; *Filing Title:* USPS Notice of Amendment to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 12, Filed Under Seal; *Filing Acceptance Date:* August 28, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 6, 2023.

2. *Docket No(s).:* CP2022–91; *Filing Title:* USPS Notice of Amendment to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 17, Filed Under Seal; *Filing Acceptance Date:* August 28, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 6, 2023.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2023–18969 Filed 8–31–23; 8:45 am]

**BILLING CODE 7710–FW–P**

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review, Request for Comments

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) is forwarding 4 Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

*1. Title and Purpose of information collection:* Certification Regarding Rights to Unemployment Benefits; OMB 3220–0079.

Under section 4 of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 354), an employee who leaves work voluntarily is disqualified for unemployment benefits unless the employee left work for good cause and is not qualified for unemployment benefits under any other law. RRB Form UI–45, Claimant's Statement—Voluntary Leaving of Work, is used by the RRB to obtain the claimant's statement when the claimant, the claimant's employer, or another source indicates that the claimant has voluntarily left work.

Completion of Form UI–45 is required to obtain or retain benefits. One response is received from each respondent.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (88 FR 41993 on June 28, 2023) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

**Information Collection Request (ICR)**

*Title:* Certification Regarding Rights to Unemployment Benefits.

*OMB Control Number:* 3220–0079.

*Form(s) submitted:* UI–45.

*Type of request:* Extension without change of a currently approved collection.

*Affected public:* Individuals or households.

*Abstract:* In administering the disqualification for the voluntary leaving of work provision of Section 4 of the Railroad Unemployment Insurance Act, the Railroad Retirement Board investigates an unemployment claim that indicates the claimant left voluntarily. The certification obtains information needed to determine if the leaving was for good cause.

*Changes proposed:* The RRB proposes no changes to Form UI–45.

*The burden estimate for the ICR is as follows:*

| Form No. | Annual responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| UI–45 | 200 | 15 | 50 |

*2. Title and Purpose of information collection:* Self-Employment and Substantial Service Questionnaire; OMB 3220–0138.

Section 2 of the Railroad Retirement Act (RRA) (45 U.S.C. 231a) provides for payment of annuities to qualified employees and their spouses. In order to receive an age and service annuity, section 2(e)(3) states that an applicant must stop all railroad work and give up any rights to return to such work. However, applicants are not required to stop nonrailroad work or self-employment.

The RRB considers some work claimed as ''self-employment'' to actually be employment for an employer. Whether the RRB classifies a particular activity as self-employment or as work for an employer depends upon the circumstances of each case. These

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

circumstances are prescribed in 20 CFR 216.

Under the 1988 amendments to the RRA, an applicant is no longer required to stop work for a ''Last Pre-Retirement Nonrailroad Employer'' (LPE). However, section 2(f)(6) of the RRA requires that a portion of the employee's Tier II benefit and supplemental annuity be deducted for earnings from the ''LPE.''

The ''LPE'' is defined as the last person, company, or institution with whom the employee or spouse applicant was employed concurrently with, or after, the applicant's last railroad employment and before their annuity beginning date. If a spouse never worked for a railroad, the LPE is the last person for whom he or she worked.

The RRB utilizes Form AA–4, *Self-Employment and Substantial Service Questionnaire,* to obtain information needed to determine if the work the applicant claims is self-employment is really self-employment or work for an LPE or railroad service. If the work is self-employment, the questionnaire identifies any month in which the applicant did not perform substantial service.

Completion is voluntary. However, failure to complete the form could result in the nonpayment of benefits. One response is requested of each respondent.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (88 FR 41993 on June 28, 2023) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

**Information Collection Request (ICR)**

*Title:* Self-Employment and Substantial Service Questionnaire.

*OMB Control Number:* 3220–0138.

*Form(s) submitted:* AA–4.

*Type of request:* Extension without change of a currently approved collection.

*Affected public:* Individuals or households.

*Abstract:* Section 2 of the Railroad Retirement Act (RRA) provides for payment of annuities to qualified employees and their spouses. Work for a Last Pre-Retirement Nonrailroad Employer (LPE), and work in self-employment affect payment in different ways. This collection obtains information to determine whether claimed self-employment is really self-employment, and not work for a railroad or LPE.

*Changes proposed:* The RRB proposes no changes to the form AA–4.

*The burden estimate for the ICR is as follows:*

| Form No. | Annual responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| AA–4 (With assistance) | 1,109 | 40 | 739 |
| AA–4 (Without assistance) | 58 | 70 | 68 |
| Total | 1,167 | | 807 |

3. *Title and purpose of information collection:* Vocational Report; OMB 3220–0141.

Section 2 of the Railroad Retirement Act (RRA) (45 U.S.C. 231a) provides for payment of disability annuities to qualified employees and widow(ers). The establishment of permanent disability for work in the applicant's ''regular occupation'' or for work in any regular employment is prescribed in 20 CFR 220.12 and 220.13 respectively.

The RRB utilizes Form G–251, *Vocational Report,* to obtain an applicant's work history. This information is used by the RRB to determine the effect of a disability on an applicant's ability to work. Form G–251 is designed for use with the RRB's disability benefit application forms and is provided to all applicants for employee disability annuities and to those applicants for a widow(er)'s disability annuity who indicate that they have been employed at some time.

Completion is required to obtain or retain a benefit. One response is requested of each respondent.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (88 FR 41994 on June 28, 2023) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

**Information Collection Request (ICR)**

*Title:* Vocational Report.

*OMB Control Number:* 3220–0141.

*Form(s) submitted:* G–251.

*Type of request:* Extension without change of a currently approved collection.

*Affected public:* Individuals or households.

*Abstract:* Section 2 of the Railroad Retirement Act provides for the payment of disability annuities to qualified employees and widow(er)s. In order to determine the effect of a disability on an annuitant's ability to work, the RRB needs the applicant's work history. The collection obtains the information needed to determine their ability to work.

*Changes proposed:* The RRB proposes no changes to Form G–251.

*The burden estimate for the ICR is as follows:*

| Form No. | Annual responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| G–251 (with assistance) | 2,866 | 40 | 1,911 |
| G–251 (without assistance) | 136 | 50 | 113 |
| Total | 3,002 | | 2,024 |

*4. Title and Purpose of information collection:* Designation of Contact Officials; 3220–0200.

Coordination between railroad employers and the RRB is essential to properly administer the payment of benefits under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA). In order to enhance timely coordination activity, the RRB utilizes Form G–117A, Designation of Contact Officials. Form G–117A is used by railroad employers to designate employees who are to act as point of contact with the RRB on a variety of RRA and RUIA-related matters.

Form G–117a (internet), Designation of Contact Officials, is available to employers who request access to the form through the RRB's Employer Reporting System (ERS). The G–117a (internet) consists of a series of screens

that allows users to view the Contact Officials currently on file for the employer. Users will be able to edit and delete existing Contact Officials, as well as add new Contact Officials. The screen to edit and add Contact Officials collects essentially the same information as the approved paper Form G–117a. The internet version provides for the required notices and certifications, contains help messages to ensure users provide valid contact information, and prevents users from deleting Contact Officials without first providing a replacement.

Completion is voluntary. One response is requested from each respondent.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (88 FR 41994 on June 28, 2023) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

**Information Collection Request (ICR)**

*Title:* Designation of Contact Officials.

*OMB Control Number:* 3220–0200.

*Form(s) submitted:* G–117A & G–117A (internet).

*Type of request:* Revision of a currently approved collection.

*Affected public:* Private sector; businesses or other for profits.

*Abstract:* The Railroad Retirement Board (RRB) requests that railroad employers designate employees to act as liaison with the RRB on a variety of Railroad Retirement Act and Railroad Unemployment Insurance Act matters.

*Changes proposed:* The RRB proposes to change the Form G–117a (Paper) by adding updated language in section 12, Signature line. The language proposed is, ''The above officials of this employer are authorized to serve in the capacities indicated and to act as trusted referees for the RRB in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800–63A guidelines for online reporting access.'' The RRB proposes no changes to Form G–117a (internet).

*The burden estimate for the ICR is as follows:*

| Form No. | Annual responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| G–117A | 25 | 15 | 6 |
| G–117a (Internet) | 200 | 5 | 17 |
| Total | 225 | | 23 |

*Additional Information or Comments:* Copies of the forms and supporting documents can be obtained from Kennisha Money at (312) 469–2591 or *Kennisha.Money@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or *Brian.Foster@rrb.gov.*

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.

**Brian Foster,**

*Clearance Officer.*

[FR Doc. 2023–18980 Filed 8–31–23; 8:45 am]

**BILLING CODE 7905–01–P**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Request for Information; Potential Changes to the Policies for Oversight of Dual Use Research of Concern (DURC) and the Potential Pandemic Pathogen Care and Oversight (P3CO) Policy Framework

**AGENCY:** Office of Science and Technology Policy (OSTP).

**ACTION:** Notice of request for information.

**SUMMARY:** Life sciences research is vital for improving health outcomes and protecting the Nation from infectious disease threats, but a small subset of this research could potentially pose risk of accidents or misuse that could harm human health. It is important to regularly evaluate and update biosafety and biosecurity oversight policies to keep pace with new technological developments and the evolving risk landscape. The Office of Science and Technology Policy (OSTP) invites comments on potential changes to the Policies for Federal and Institutional Oversight of Life Sciences Dual Use Research of Concern (DURC) and Recommended Policy Guidance for Departmental Development of Review Mechanisms for Potential Pandemic Pathogen Care and Oversight (P3CO). These policies establish frameworks for review and oversight requirements for certain categories of life sciences research, namely research with certain pathogens and toxins, including at institutions that accept Federal funding for such research. These requirements are intended to complement activities under existing Federal regulations or guidelines such as the Federal Select Agent Program. OSTP requests comments on how potential changes to these research oversight policies could mitigate risks associated with DURC and research with enhanced potential pandemic pathogens (ePPP) while minimizing undue burden on institutions. The public input provided through this Request for Information (RFI) will inform policy evaluations and issuance of a revised policy (Revised Policy).

**DATES:** Responses are due by 11:59 p.m. Eastern Time on October 16, 2023. Submissions received after the deadline may not be taken into consideration.

**ADDRESSES:** Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov,* please use the email or phone number listed under **FOR FURTHER INFORMATION CONTACT**. OSTP will not accept comments by fax or by email. To ensure that OSTP does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID (EOP–2023–0001) at the top of your comments.

*Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on how to use *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ'' (*https://www.regulations.gov/faq*).

*Privacy Note:* OSTP's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. OSTP requests that

no proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI.

*Instructions:* Response to this RFI is voluntary. Each individual or organization is requested to submit only one response. Commenters can respond to one or multiple questions. Submissions are suggested to not exceed the equivalent of ten (10) pages in 12 point or larger font. Submissions should clearly indicate which questions are being addressed. Responses should include the name(s) of the person(s) or organization(s) filing the response. Responses containing references, studies, research, and other empirical data that are not widely published should include copies of or electronic links to the referenced materials. Responses containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

**FOR FURTHER INFORMATION CONTACT:** Direct questions to Asad Ramzanali, *research-oversight-policy@ostp.eop.gov*, or 202–456–4444.

**SUPPLEMENTARY INFORMATION:** Life sciences research is essential to the scientific advances that underpin improvements in the health and safety of the public, agricultural crops, and other plants, animals, and the environment. While life sciences research provides enormous benefits to society, there can be risks associated with certain subsets of work, typically related to biosafety and biosecurity, that can and should be mitigated. The United States has existing, complementary statutes, regulations, policies, and guidelines that address these potential biosafety and biosecurity risks, particularly those associated with research oversight and management.[1] Together these existing regulatory authorities and guidelines provide a foundation to ensure that scientific research and innovation is safe and secure.

Scientists, institutions, and the USG have gained valuable insight over the past decade from implementing research oversight policies such as the policies for oversight of DURC[2] and the P3CO Policy Framework.[3] During this time, advances in science and technology have occurred that present realized and potential future benefits. However, these advances also present potential risks of misuse. The National Science Advisory Board for Biosecurity (NSABB), a Federal advisory committee that addresses issues related to biosecurity and dual use research, provided recommendations in a March 2023 report[4] to inform United States Government (USG) policy evaluations and the development of a more comprehensive and integrated framework for the oversight of research with pathogens and toxins that may pose significant biosafety or biosecurity risks. Since the release of this report, OSTP has been working with Federal departments and agencies to review, harmonize, and revise these policies in accordance with USG goals of promoting safe and secure biological practices and strengthening responsible conduct for biological research as outlined in the 2022 National Biodefense Strategy and Implementation Plan.[5]

The policy review and revision process has three broad goals:

1. Assess whether and how to merge the existing Federal DURC, Institutional DURC, and P3CO policies into a harmonized policy that addresses oversight for research with pathogens and toxins.

2. Consider revising the scope of the Federal DURC, Institutional DURC, and P3CO policies to include a broader set of pathogens and toxins, including—but not limited to—biological select agents and toxins (BSAT) that impact humans or have the potential to impact humans.

3. Examine ways to strengthen effective implementation of oversight for life sciences research on pathogens and toxins throughout the research lifecycle.

The USG acknowledges that effective oversight helps maintain public trust in the life sciences research enterprise by demonstrating that the scientific community recognizes the implications of research conducted and is acting responsibly to protect public welfare and preserve national security.

*Scope:* OSTP invites comment from any interested stakeholders. In particular, OSTP is interested in input from research institutions, including both domestic and international entities, currently subject to the PC3O Policy or the DURC policies or that may be subject to the revised scope of a potential policy update, researchers within those institutions, scientific and professional organizations, and organizations representing diverse interests across the U.S. research ecosystem.

*Information Requested:* Respondents may provide information for one or more of the topics included below. Respondents are asked to note the corresponding number/s to which responses pertain.

1. The NSABB recommended that USG develop an integrated approach to oversight of research that raises significant biosafety and biosecurity concerns, including ePPP research and DURC (Recommendation 1). By merging the existing Federal DURC, Institutional DURC, and P3CO policies into a harmonized policy, a merged policy could potentially adopt the institutional applicability outlined in the Institutional DURC policy framework, making the following entities subject to a Revised Policy:

- U.S. Government departments and agencies that fund, sponsor, or conduct life sciences research.
- Institutions within the United States or its territories that both:
  - Receive U.S. Government funds to conduct or sponsor life sciences research; and,
  - Conduct or sponsor research that is within the revised scope, regardless of the source of the funding for the specific project.
- Institutions outside of the United States that receive U.S. Government funds to conduct or sponsor research that falls under the scope.

(a) What are the anticipated benefits and challenges of applying a Revised Policy, inclusive of both DURC and

[1] Examples include: Select Agents and Toxins Regulations (42 CFR part 73, 9 CFR part 121, and 7 CFR part 331); National Institutes of Health Guidelines on Research Involving Recombinant and Synthetic Nucleic Acids; (*https://osp.od.nih.gov/wp-content/uploads/NIH_Guidelines.pdf*); Biosafety in Microbiological & Biomedical Laboratories (BMBL) 6th Edition (*https://www.cdc.gov/labs/BMBL.html*); Additional U.S. Laws, Regulations and Guidelines (*https://www.phe.gov/s3/law/Pages/default.aspx*).

[2] United States Government Policy for Oversight of Life Sciences Dual Use Research of Concern (*https://www.phe.gov/s3/dualuse/Documents/us-policy-durc-032812.pdf*); United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (*https://www.phe.gov/s3/dualuse/Documents/durc-policy.pdf*).

[3] Recommended Policy Guidance for Departmental Development of Review Mechanisms for Potential Pandemic Pathogen Care and Oversight (P3CO) (*https://www.phe.gov/s3/dualuse/Documents/P3CO-FinalGuidanceStatement.pdf*).

[4] Proposed Biosecurity Oversight Framework for the Future of Science (*nih.gov*); *https://osp.od.nih.gov/wp-content/uploads/2023/03/NSABB-Final-Report-Proposed-Biosecurity-Oversight-Framework-for-the-Future-of-Science.pdf.*

[5] National Biodefense Strategy and Implementation Plan: *https://www.whitehouse.gov/wp-content/uploads/2022/10/National-Biodefense-Strategy-and-Implementation-Plan-Final.pdf.*

ePPP research, to the scope of entities outlined above?

(b) What are the anticipated benefits and challenges of investigators and institutions having primary responsibility for identification of both DURC and ePPP research?

(c) What types of resources or tools would be useful for researchers and institutions to determine if their research falls into a revised policy scope that is risk-based rather than list-based, and adequately conduct risk assessments to identify DURC and ePPP research?

2. Currently, the scope of the DURC policies is research that uses one or more of 15 listed agents or toxins and that produces, or is anticipated to produce, any of seven listed experimental effects. The NSABB recommended that the scope of research requiring review for potential DURC should include research that directly involves *any* human, animal, or plant pathogen, toxin, or agent that is reasonably anticipated to result in one or more of the seven experimental effects outlined in the DURC policy [6] (Recommendation 10.1).

a. Considering the diversity of federally-funded research settings and portfolios, how would adoption of NSABB's Recommendation 10.1 affect policy implementation and research programs at the institutional level?

b. Rather than including *any* pathogen within the scope of DURC review, one possible modification of Recommendation 10.1 would be to include DURC experiments that utilize:

i. HHS and Overlap Biological Select Agent and Toxins (BSAT) List [7] and/or

ii. Pathogen risk group (RG) classification of 3 or 4 [8] and/or

iii. Any pathogen where the conduct of work (*e.g.,* one of the DURC experimental categories) would require biosafety level 3 or 4 containment.

Would a modification of Recommendation 10.1, in line with the outlined scope of pathogens above, be useful for policy implementation? What specific benefits, challenges, and/or gaps are anticipated by this revised scope?

c. Are there other risk-based approaches that would expand the scope beyond the current list of 15 agents and toxins provided in the DURC policy that would facilitate the identification of research that poses significant risks by investigators and institutions while not resulting in undue burdens?

d. Given the possible revised scope of research requiring review for potential DURC, what modifications, if any, to the current DURC policy list of 7 experimental effects should be considered for a Revised Policy that captures appropriate research without hampering research progress?

e. What resources or tools would be valuable to assist with implementation of a DURC policy with a scope that is revised to include more than the current list of 15 agents and toxins?

3. A PPP is currently defined in the P3CO policy framework [9] as: ''a pathogen that satisfies both of the following: 1. It is likely highly transmissible and likely capable of wide and uncontrollable spread in human populations; and 2. It is likely highly virulent and likely to cause significant morbidity and/or mortality in humans.''

The NSABB recommended that the definition of PPP be modified to: (1) Likely moderately or highly transmissible and likely capable of wide and uncontrollable spread in human populations; and/or (2) Likely moderately or highly virulent and likely to cause significant morbidity and/or mortality in humans; and, in addition (3) Likely to pose a severe threat to public health, the capacity of public health systems to function, or national security'' (Recommendation 2).

(a) How would the change in the definition of PPP affect the overall scope of a Revised Policy and its subsequent implementation?

(b) One possible modification to the NSABB PPP definition is to specify a respiratory route of transmission within clause (1). Would that definition of PPP be an appropriate scope to mitigate risks and enhance effective implementation?

(c) Do you have additional suggestions to modify the PPP definition to mitigate the most significant risks not currently addressed and enhance effective implementation, while limiting negative or unintended consequences and burden on researchers, institutions, and the Federal government?

(d) Are there characteristics related to human pathology, pathogen characteristics, or other features that would be helpful to clarify the intent of ''moderately virulent''? Are there characteristics related to human pathology that would be helpful to clarify the intent of ''moderately transmissible''?

4. A Government Accountability Office (GAO) report from January 2023 [10] recommended that the Department of Health and Human Services funding agencies should develop and document a standard to define ''reasonably anticipated'' to ensure consistency in identifying research that falls within scope of a Revised Policy. One possible definition of ''reasonably anticipated'' is:

'' 'Reasonably anticipated' describes an assessment of an outcome that an individual with scientific expertise relevant to the research in question would expect this outcome to occur with a non-trivial likelihood. It does not require high confidence that the outcome will definitely occur and excludes experiments in which an expert would anticipate the outcome to be technically possible, but highly unlikely.''

(a) Does this definition of ''reasonably anticipated'' provide additional clarity to ensure greater consistency in identifying research that falls within scope of the Revised Policy? What modifications to this definition (if any) would be most helpful?

5. NSABB recommends the removal of blanket exclusions for research activities associated with surveillance and vaccine development or production for research with ePPPs (Recommendation 3).

(a) Should exemptions for certain activities be included in a Revised Policy?

(b) What are the benefits and drawbacks of including exemptions for domestic and international pandemic preparedness, biosafety, biosecurity, and global health security?

(c) If exemptions are included, how could they be bounded to maximize safety and security and minimize negative impact on domestic and global public health including outbreak and pandemic preparedness and response? For example, would vaccine research and development activities be unjustifiably impeded if the current P3CO policy framework exemption for ''Activities associated with developing and producing vaccines, such as generation of high growth strains'' was either removed completely or modified

[6] United States Government Policy for Oversight of Life Sciences Dual Use Research of Concern (*https://www.phe.gov/s3/dualuse/Documents/us-policy-durc-032812.pdf*); United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (*https://www.phe.gov/s3/dualuse/Documents/durc-policy.pdf*).

[7] Select Agents and Toxins Regulations (42 CFR part 73, 9 CFR part 121, and 7 CFR part 331).

[8] Risk groups as defined in ''NIH Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules'' (*https://osp.od.nih.gov/wp-content/uploads/2019_NIH_Guidelines.htm*).

[9] Recommended Policy Guidance for Departmental Development of Review Mechanisms for Potential Pandemic Pathogen Care and Oversight (P3CO) (*https://www.phe.gov/s3/dualuse/Documents/P3CO-FinalGuidanceStatement.pdf*).

[10] Public Health Preparedness: HHS Could Improve Oversight of Research Involving Enhanced Potential Pandemic Pathogens. (GAO–23–105455).

to ''Research on PPPs directly associated with testing and/or producing vaccines, such as generation of high growth strains''?

6. NSABB recommends that continued assessment of the risks and benefits associated with advances and applications of bioinformatics, modeling, and other *in silico* experimental approaches and research involving genes from or encoding pathogens, toxins, or other agents must inform future evaluations of the scope of research oversight policies to help ensure that associated risks are appropriately identified and managed. (Recommendation 10.2). This type of research is not currently included in the DURC and ePPP oversight policies.

(a) Is there a subset of such *in silico* research that should require risk assessment and review in a Revised Policy, and if so, how should this research be defined so that the Policy captures the appropriate research without hampering activities with limited biosecurity risks?

(b) One possible way to define this category of *in silico* research within a Revised Policy would be to include experiments that are reasonably anticipated to:

''(i) Develop *in silico* models that directly enable the predictive design of an enhanced potential pandemic pathogen or novel pathogen or toxin covered under a Revised Policy that could be constructed via genomic editing or *de novo* synthesis; and/or

(ii) Develop a dataset(s) connecting nucleic acid or amino acid sequences with experimentally-determined pathogenic functions in a manner sufficient to enable the development of *in silico* models described in (i).''

If a new category of research, similar to the examples provided above, were to require risk assessment and review in a Revised Policy, what would be the benefits and challenges with implementation?

Dated: August 28, 2023.

**Stacy Murphy,**

*Deputy Chief Operations Officer/Security Officer.*

[FR Doc. 2023–18906 Filed 8–31–23; 8:45 am]

**BILLING CODE 3270–F1–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98233; File No. SR–ISE–2023–08]**

## Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent Certain P.M.-Settled Pilots

August 28, 2023.

On February 23, 2023, Nasdaq ISE LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the pilot program to permit the listing and trading of options based on 1/5 the value of the Nasdaq-100 Index and the Exchange's nonstandard expirations pilot program. The proposed rule change was published for comment in the **Federal Register** on March 2, 2023.[3]

On April 7, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On May 11, 2023, the Exchange filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[6] On May 31, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change and published Amendment No. 1 for notice and comment.[7]

Section 19(b)(2) of the Exchange Act [8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on March 2, 2023.[9] The 180th day after publication of the proposed rule change is August 29, 2023. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to section 19(b)(2) of the Exchange Act,[10] designates October 28, 2023, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–ISE–2023–08).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–18898 Filed 8–31–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98231; File No. SR–CboeBZX–2023–062]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Initial Period After Commencement of Trading of a Series of ETF Shares on the Exchange as It Relates to the Holders of Record and/or Beneficial Holders, as Provided in Exchange Rule 14.11(l)

August 28, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 14, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96979 (February 24, 2023), 88 FR 13182.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 97261, 88 FR 22509 (April 13, 2023).

[6] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-ise-2023-08/srise202308.htm.*

[7] *See* Securities Exchange Act Release No. 97626, 88 FR 37110 (June 6, 2023).

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3 and accompanying text.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''Cboe'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to Exchange Rule 14.11(l), Exchange-Traded Fund Shares (''ETF Shares''), to amend the initial period after commencement of trading of a series of ETF Shares on the Exchange as it specifically relates to holders of record and/or beneficial holders. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, 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 change to Rule 14.11(l)(4)(B)(i)(c) (the ''Beneficial Holders Rule'') in order to amend the continued listing standard applicable to ETF Shares [3] listed on the Exchange. Specifically, the Exchange is proposing to amend the Beneficial Holders Rule such that it would provide additional time for a series of ETF Shares to meet the Beneficial Holders [4] standards.[5] [6]

Currently, the Exchange's continued listing standard for ETF Shares under the Beneficial Holders Rule requires that, following the initial 12-month period after commencement of trading on the Exchange, the Exchange shall consider the suspension of trading in and will commence delisting proceedings under Rule 14.12 for a series of ETF Shares for which there are fewer than 50 Beneficial Holders for 30 or more consecutive trading days. The Exchange is proposing to change the date at which a series of ETF Shares would need to have at least 50 Beneficial Holders or be subject to delisting proceedings under Rule 14.12 from 12 months after commencement of trading on the Exchange to 36 months after commencement of trading on the Exchange.

As further described below, the Exchange believes it is appropriate to increase the period of time for a series of ETF Shares to comply with the Beneficial Holders Rule from 12 months to 36 months because: (i) it would bring the rule more in line with the life cycle of an ETP; (ii) the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to de-list products rather than continuing to list products that do not garner investor interest; and (iii) extending the period from 12 to 36 months will not meaningfully impact the manipulation concerns that the Beneficial Holders Rule is intended to address.

First, the Exchange-Traded Product (''ETP'') [7] space generally is more competitive than it has ever been—with more than 2,000 ETPs listed on U.S. national securities exchanges competing for investor assets, the natural cycle for an average ETP to gain traction in the market is growing longer and longer. As more and more ETPs have come to market, many distribution platforms have become more restrictive about the ETPs that they allow on their systems, often requiring a minimum existing track record (*e.g.,* at least 12 months) and meeting certain thresholds for assets under management (*e.g.,* at least $100 million) for an ETP to be added. Similarly, many larger entities are unwilling to invest in ETPs that do not have at least one calendar year track record. All of these factors have contributed to the natural slowing of the average ETP's growth cycle and, unsurprisingly, the Exchange has seen a significant number of deficiencies based on a failure to meet the Beneficial Holders standards over the last several years.

The Exchange has issued deficiency notifications to 39 ETPs for non-compliance with the Beneficial Holders standards since 2015. Of those 39 ETPs, 30 attained compliance with the Beneficial Holder standards after the deficiency notice was issued. This means that more than three quarters of these ETPs had to go through the process of requesting and justifying an extension,[8] dealing with shareholder uncertainty, waste of internal resources, potentially engage outside counsel, etc. all to end up remaining listed on the Exchange. This false positive rate is unnecessarily high and makes clear that a 12-month threshold is an inappropriately short time frame for the Beneficial Holder standards. It only served as regulatory and administrative burdens for impacted issuers, which makes it more difficult for smaller issuers to compete because they have limited resources to overcome legal, marketing, or other obstacles that arise from the Beneficial Holders standards.

Changing the timeline for meeting the Beneficial Holders Rule from 12 months to 36 months would provide ETF Shares with a more reasonable runway to establish a track record and grow assets under management, both of which generally precede the accumulation of Beneficial Holders. Further, the Exchange believes that extending that runway will encourage smaller issuers to make the necessary capital expenditures to launch additional ETF

[3] The term ''ETF Shares'' means shares of stock issued by an Exchange-Traded Fund. *See* Exchange Rule 14.11(l)(3)(A). The term ''Exchange-Traded Fund'' has the same meaning as the term ''exchange-traded fund'' as defined in Rule 6c–11 under the Investment Act of 1940. *See* Exchange Rule 14.11(l)(3)(B).

[4] As it relates to this filing, ''Beneficial Holders'' shall mean beneficial holders and, where applicable in a particular continued listing standard, record holders.

[5] The Exchange notes that its Rules related to the listing and trading of other product types (that is, products that are not ETF Shares as defined above) have similar requirements related to Beneficial Holders which the Exchange is not proposing to change at this time. Specifically, the Exchange is only proposing to amend the Beneficial Holders Rules as it pertains to ETF Shares because such product type represents the vast majority of products listed on the Exchange. The Exchange may consider proposing to amend the Beneficial Holders standards for other product types in a future proposal.

[6] The Exchange notes that a different proposal to modify the Beneficial Holders Rules was disapproved by the Commission on December 29, 2020. *See* Securities Exchange Act No. 90819 (December 29, 2020) 86 FR 332 (January 5, 2021) (SR–CboeBZX–2020–036) (the ''Prior Disapproval'').

[7] The Exchange notes that ETF Shares is a type of ETP.

[8] Exchange Rule 14.12(f)(2) provides that the Listings Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to certain listing standards, including a failure to meet a continued listing requirement contained in Rule 14.11. Generally, Exchange staff may grant up to 180 calendar days from the date of the staff's initial deficiency notification.

Shares, as well as help both large and small issuers by allowing them to continue to list and promote products that they believe can succeed and that they are willing to continue paying for, all of which will help to foster competition and innovation in the ETP marketplace.

Second, the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to de-list products rather than continuing to list products that do not garner investor interest, meaning that the rule does not provide any meaningful ''pruning'' function for the industry.[9] Rather, the Exchange has found that, as currently constructed, the 12 month Beneficial Holders standards have instead resulted in the forced termination of ETPs that issuers believed were still economically viable. While some observers might argue that forced delisting of an ETP based on a failure to meet the Beneficial Holders standards is a good way to reduce the number of ETPs in the marketplace that have not drawn meaningful market interest, the Exchange disagrees with this sentiment. First, there are significant costs associated with both the initial launch and continued operation of an ETP and the Exchange has found that the ecosystem tends to prune itself of ETPs without meaningful investor interest. In fact, the Exchange has had 148 products that have voluntarily delisted since 2018,[10] creating meaningful turnover in products which issuers believe are not economically viable. Second, the Exchange contests the underlying assumption that the number of Beneficial Holders is even a meaningful measure of market interest in an ETP. While a very high Beneficial Holder count would most certainly indicate an ETP's success, the absence of Beneficial Holders is not necessarily a good measure of market interest or the amount of assets held by the ETP.

Further to this point, the Beneficial Holders standards are not rules that an ETP issuer is incentivized to cut close or exceed by the smallest amount possible. Unlike many other quantitative or disclosure based listing requirements, an ETP issuer is incentivized to have as many Beneficial Holders as possible and would almost certainly prefer that they were able to meet and exceed the applicable Beneficial Holders standard as soon as possible after beginning trading on the Exchange. As such, extending the time period from 12 months to 36 months will not provide issuers of ETF Shares with a longer window to intentionally keep the number of Beneficial Holders lower, but, rather, will only extend the period during which a series of ETF Shares could have fewer than 50 Beneficial Holders in specific instances where an issuer is unable to meet the 50 Beneficial Holders threshold but still believes that the series of ETF Shares is viable and worth the cost of continued operation. Again, it takes money and resources to launch and operate an ETP and where an issuer does not believe that an ETP is economically viable, both common sense and prior experience point to issuers delisting these products.

Finally, the Exchange believes that making this change does not create any significant change in the risk of manipulation for ETF Shares listed on the Exchange for several reasons. First, a time extension to meet the requirement would present no new issues because the Exchange already has no Beneficial Holder requirement for the first 12 months of trading ETF Shares on the Exchange. Any risk that is present during months 12 through 36 of initial listing would also be present during the first 12 months as provided under current rules. The Exchange believes that the Beneficial Holders standards are generally intended to ensure that products that do not have broad ownership and could be susceptible to manipulation by a few parties are not able to list on the Exchange after they've had sufficient time to diversify their ownership base. Leaving aside the issue of whether an open-ended ETP with creation and redemption processes would really be subject to manipulation by virtue of narrow ownership, the Exchange believes that, for all of the reasons explained above, 36 months is a more appropriate amount of time to consider sufficient time to diversify a series of ETF Shares ownership base.

Further to this point, the Exchange has in place a robust surveillance program for ETPs that allows it to monitor trading of ETPs, including ETF Shares, during all trading sessions on the Exchange and it believes are sufficient to deter and detect violations of Exchange rules and the applicable federal securities laws. These surveillances generally focus on detecting securities trading outside of their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Further, the Exchange or the Financial Industry Regulatory Authority (''FINRA''),[11] on behalf of the Exchange, or both, communicate as needed regarding trading in ETPs with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''). The Exchange believes these robust surveillance procedures have successfully mitigated manipulation concerns during an ETPs first 12 months of listing on the Exchange, during which there is currently no Beneficial Holder requirement, and further believes that these surveillance procedures will act to mitigate any manipulation concerns that arise from extending the compliance period for the Beneficial Holders Rules from 12 months to 36 months.

The Exchange also believes that the other continued listing standards in the Exchange's rules or representations that constitute continued listing standards in Exchange rule filings (the disclosure obligations applicable under Rule 6c–11 of the Investment Company Act of 1940 for series of ETF Shares) are generally sufficient to mitigate manipulation concerns associated with ETF Shares. During the first 12 months of trading on the Exchange when the Beneficial Holders standards do not apply, these disclosure obligations, in conjunction with the Exchange's surveillance program (as discussed above), are generally deemed sufficient to prevent any manipulation concerns in Exchange-listed ETPs. As such, the Exchange believes that extending the period from 12 months to 36 months does not significantly increase any risk of manipulation that wasn't already generally deemed acceptable for the first 12 months that an ETP was listed. Again, the Exchange is not proposing to eliminate the Beneficial Holders Rule, but merely to extend the period for a series of ETF Shares to meet the 50 Beneficial Holder requirement.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[12] in general and section 6(b)(5) of the Act[13] in particular in that it is designed to promote just and

[9] Approximately 43 ETPs have voluntarily delisted within their first year listed on the Exchange since 2015. The Exchange notes that a subset of this group might also include those who didn't want to spend the extra funds to get an extension to the requirement.

[10] There are currently 613 ETPs listed on the Exchange and 777 have been listed on the Exchange for at least some period since 2018, meaning that there's been a nearly 19% voluntary turnover of ETPs listed on the Exchange since 2018.

[11] 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.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule changes are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would prevent the premature delisting of ETF Shares that have not had sufficient time to build up to 50 Beneficial Holders without significantly impacting the manipulation concerns that the Beneficial Holders Rule is intended to address.

The Exchange believes it is appropriate to increase the period of time for a series of ETF Shares to comply with the applicable Beneficial Holders Rule from 12 months to 36 months because: (i) it would bring the rule more in line with the life cycle of an ETP; (ii) the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to de-list products rather than continuing to list products that do not garner investor interest; and (iii) extending the period from 12 to 36 months will not meaningfully impact the manipulation concerns that the Beneficial Holders Rule is intended to address.

First, the ETP space is more competitive than it has ever been—with more than 2,000 ETPs listed on U.S. national securities exchanges competing for investor assets, the natural cycle for an average ETP to gain traction in the market is growing longer and longer. As more and more ETPs have come to market, many distribution platforms have become more restrictive about the ETPs that they allow on their systems, often requiring a minimum existing track record (*e.g.,* at least 12 months) and meeting certain thresholds for assets under management (*e.g.,* at least $100 million) for an ETP to be added. Similarly, many larger entities are unwilling to invest in ETPs that do not have at least one calendar year track record. All of these factors have contributed to the natural slowing of the average ETP's growth cycle and, unsurprisingly, the Exchange has seen a significant number of deficiencies based on a failure to meet the applicable Beneficial Holders standards over the last several years.

The Exchange has issued deficiency notifications to 39 ETPs for non-compliance with the Beneficial Holders standards since 2015. Of those 39 ETPs, 30 attained compliance with the Beneficial Holder standards after the deficiency notice was issued. This means that more than three quarters of these ETPs had to go through the process of requesting and justifying an extension,[14] dealing with shareholder uncertainty, waste of internal resources, potentially engage outside counsel, etc. all to end up remaining listed on the Exchange. This false positive rate is unnecessarily high and makes clear that a 12-month threshold is an inappropriately short time frame for the Beneficial Holder standards. It only served as regulatory and administrative burdens for impacted issuers, which makes it more difficult for smaller issuers to compete because they have limited resources to overcome legal, marketing, or other obstacles that arise from the Beneficial Holders requirement.

Changing the timeline for meeting the Beneficial Holders Rules from 12 months to 36 months would provide ETF Shares with a more reasonable runway to establish a track record and grow assets under management, both of which generally precede the accumulation of Beneficial Holders. Further, the Exchange believes that extending that runway will encourage smaller issuers to make the necessary capital expenditures to launch additional ETF Shares, as well as help both large and small issuers by allowing them to continue to list and promote products that they believe can succeed and that they are willing to continue paying for, all of which will help to foster competition and innovation in the ETP marketplace.

Second, the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to de-list products rather than continuing to list products that do not garner investor interest, meaning that the rule does not provide any meaningful ''pruning'' function for the industry.[15] Rather, the Exchange has found that, as currently constructed, the 12 month Beneficial Holders Rule has instead resulted in the forced termination of ETPs that issuers believed were still economically viable. While some observers might argue that forced delisting of an ETP based on a failure to meet the Beneficial Holders Rule is a good way to reduce the number of ETPs in the marketplace that have not drawn meaningful market interest, the Exchange disagrees with this sentiment. First, there are significant costs associated with both the initial launch and continued operation of an ETP and the Exchange has found that the ecosystem tends to prune itself of ETPs without meaningful investor interest. In fact, the Exchange has had 148 products that have voluntarily delisted since 2018,[16] creating meaningful turnover in products which issuers believe are not economically viable. Second, the Exchange contests the underlying assumption that the number of Beneficial Holders is even a meaningful measure of market interest in an ETP. While a very high Beneficial Holder count would most certainly indicate an ETP's success, the absence of Beneficial Holders is not necessarily a good measure of market interest or the amount of assets held by the ETP.

Further to this point, the Beneficial Holders Rule is not a rule that an ETP issuer is incentivized to cut close or exceed by the smallest amount possible. Unlike many other quantitative or disclosure based listing requirements, an ETP issuer is incentivized to have as many Beneficial Holders as possible and would almost certainly prefer that they were able to meet and exceed the Beneficial Holders Rule as soon as possible after beginning trading on the Exchange. As such, extending the time period from 12 months to 36 months will not provide issuers with a longer window to intentionally keep the number of Beneficial Holders lower, but, rather, will only extend the period during which a series of ETF Shares could have fewer than 50 Beneficial Holders in specific instances where an issuer is unable to meet the 50 Beneficial Holders threshold but still believes that the ETP is viable and worth the cost of continued operation. Again, it takes money and resources to launch and operate an ETP and where an issuer does not believe that an ETP is economically viable, both common sense and prior experience point to issuers delisting these products.

Finally, the Exchange believes that making this change does not create any

[14] Exchange Rule 14.12(f)(2) provides that the Listings Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to certain listing standards, including a failure to meet a continued listing requirement contained in Rule 14.11. Generally, Exchange staff may grant up to 180 calendar days from the date of the staff's initial deficiency notification.

[15] Approximately 43 ETPs have voluntarily delisted within their first year listed on the Exchange since 2015. The Exchange notes that a subset of this group might also include those who didn't want to spend the extra funds to get an extension to the requirement.

[16] There are currently 613 ETPs listed on the Exchange and 777 have been listed on the Exchange for at least some period since 2018, meaning that there's been a nearly 19% voluntary turnover of ETPs listed on the Exchange since 2018.

significant change in the risk of manipulation for ETF Shares listed on the Exchange for several reasons. First, a time extension to meet the requirement would present no new issues because the Exchange already has no Beneficial Holder requirement for the first 12 months of trading ETF Shares on the Exchange. Any risk that is present during months 12 through 36 of initial listing would also be present during the first 12 months as provided under current rules. The Exchange believes that the rule is generally intended to ensure that products that do not have broad ownership and could be susceptible to manipulation by a few parties are not able to list on the Exchange after they've had sufficient time to diversify their ownership base. Leaving aside the issue of whether an open-ended ETP with creation and redemption processes would really be subject to manipulation by virtue of narrow ownership, the Exchange believes that, for all of the reasons explained above, 36 months is a more appropriate amount of time to consider sufficient time to diversify an ETP's ownership base.

Further to this point, the Exchange has in place a robust surveillance program for ETPs that allows it to monitor trading of ETPs during all trading sessions on the Exchange and it believes are sufficient to deter and detect violations of Exchange rules and the applicable federal securities laws. These surveillances generally focus on detecting securities trading outside of their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Further, the Exchange or the FINRA,[17] on behalf of the Exchange, or both, communicate as needed regarding trading in ETPs with other markets and other entities that are members of the ISG. The Exchange believes these robust surveillance procedures have successfully mitigated manipulation concerns during an ETPs first 12 months of listing on the Exchange, during which there is currently no Beneficial Holder requirement, and further believes that these surveillance procedures will act to mitigate any manipulation concerns that arise from extending the compliance period for the Beneficial Holders Rule from 12 months to 36 months.

The Exchange also believes that the other continued listing standards in the Exchange's rules or representations that constitute continued listing standards in Exchange rule filings (the disclosure obligations applicable under Rule 6c–11 of the Investment Company Act of 1940 for series of ETF Shares) are generally sufficient to mitigate manipulation concerns associated with the ETF Shares. During the first 12 months of trading on the Exchange when the Beneficial Holders Rule does not apply, these disclosure obligations, in conjunction with the Exchange's surveillance program (as discussed above), are generally deemed sufficient to prevent any manipulation concerns in Exchange-listed ETF Shares. As such, the Exchange believes that extending the period from 12 months to 36 months will not significantly increase any risk of manipulation that wasn't already generally deemed acceptable for the first 12 months that a series of ETF Shares was listed. Again, the Exchange is not proposing to eliminate the Beneficial Holders Rule, but merely to extend the period for a series ETF Shares to meet the 50 Beneficial Holder requirement.

The proposed rule change is also designed to protect investors and the public interest because the Exchange is only proposing to amend the continued listing requirement related to Beneficial Holders and all ETPs listed on the Exchange would continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act.

*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. Instead, the Exchange believes that the proposed rule change would help to encourage smaller issuers to make the necessary capital expenditures to launch additional ETF Shares, as well as help both large and small issuers by allowing them to continue to list and promote products that they believe can succeed and that they are willing to continue paying for, which will enhance competition among market participants, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–062 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–CboeBZX–2023–062. 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

[17] 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.

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–CboeBZX–2023–062 and should be submitted on or before September 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–18896 Filed 8–31–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–087, OMB Control No. 3235–0078]**

## Submission for OMB Review; Comment Request; Extension: Rule 15c3–3

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15c3–3 (17 CFR 240.15c3–3), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). Furthermore, notice is given regarding new collections of information that were previously proposed in Rule 18a–4 (OMB No. 3235–0700) and that were moved to this Rule 15c3–3 (OMB No. 3235–0078) based on comments received during the rulemaking process.

With respect to the extension of the previously approved collection of information, Rule 15c3–3 requires that a broker-dealer that holds customer securities obtain and maintain possession and control of fully paid and excess margin securities they hold for customers. In addition, the Rule requires that a broker-dealer that holds customer funds make either a weekly or monthly computation to determine whether certain customer funds need to be segregated in a special reserve bank account for the exclusive benefit of the firm's customers. It also requires that a broker-dealer maintain a written notification from each bank where a Special Reserve Bank Account is held acknowledging that all assets in the account are for the exclusive benefit of the broker-dealer's customers, and to provide written notification to the Commission (and its designated examining authority) under certain, specified circumstances. Finally, broker-dealers that sell securities futures products (''SFP'') to customers must provide certain notifications to customers and make a record of any changes of account type.

A broker-dealer required to maintain the Special Reserve Bank Account prescribed by Rule 15c3–3 must obtain and retain a written notification from each bank in which it has a Special Reserve Bank Account to evidence the bank's acknowledgement that assets deposited in the Account are being held by the bank for the exclusive benefit of the broker-dealer's customers. In addition, a broker-dealer must immediately notify the Commission and its designated examining authority if it fails to make a required deposit to its Special Reserve Bank Account. Finally, a broker-dealer that effects transactions in SFPs for customers will also have paperwork burdens to make a record of each change in account type.

The Commission staff estimates a total annual time burden of approximately 1,109,518 hours and a total annual cost burden of approximately $3,516,241 to comply with the existing information collection requirements of the rule.

In 2019, the Commission adopted amendments to establish segregation and notice requirements for broker-dealers with respect to their security-based swap activity. The Commission staff estimates a total annual time burden of approximately 19,487 hours and a total annual cost burden of approximately $13,860 to comply with the information collection requirements of the 2019 amendments to the rule.

The Commission staff thus estimates that the aggregate annual information collection burden associated with Rule 15c3–3 is approximately 1,129,005 hours and $3,530,101.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website, *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by October 2, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: August 29, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–18968 Filed 8–31–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98228; File No. SR–Phlx–2023–38]**

## Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 8 Rules

August 28, 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 14, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules at Options 8 concerning Floor Trading.

The text of the proposed rule change is available on the Exchange's website at

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Phlx proposes to amend Options 8, Section 11, Floor Market Maker and Lead Market Maker Appointment, and reserve current Options 8, Section 16, Trading for Joint Account. Each change will be described below.

Options 8, Section 11

The Exchange is proposing to amend Options 8, Section 11, Floor Market Maker and Lead Market Maker Appointment. Specifically, the Exchange proposes to remove the current burdensome process within Options 8, Section 11(b) regarding Floor Market Maker [3] options assignments.

Today, pursuant to Options 8, Section 11(b), a Floor Market Maker shall notify the Exchange of each option, on an issue-by-issue basis, in which such Floor Market Maker intends to be assigned to make markets. Exchange options transactions initiated by such Market Maker on the Trading Floor for any account in which he had an interest shall to the extent prescribed by the Exchange be in such assigned classes. Such notification shall be in writing on a form prescribed by the Exchange (''Floor Market Maker Assignment Form''). Any change to such Floor Market Maker Assignment Form shall be made in writing by the Floor Market Maker prior to the end of the next business day in which such change is to take place. Receipt of the properly completed Floor Market Maker Assignment Form by a duly qualified Floor Market Maker applicant constitutes acceptance by the Exchange of such Floor Market Maker's assignment in, or termination of assignment in (as indicated on the Floor Market Maker Assignment Form), the options listed on such Floor Market Maker Assignment Form. All such assignments shall not be effective, and shall be terminated, in the event that such Floor Market Maker applicant fails to qualify as a Floor Market Maker on the Exchange.

The Exchange is proposing to remove the rule text related to notifying the Exchange of each options class in which such Floor Market Maker intends to be assigned and, instead, provide that a Floor Market Maker has an assignment to trade open outcry in all options classes traded on the Exchange.[4] This proposed rule text is similar to Cboe Exchange, Inc. (''Cboe'') Rule 5.50(e).[5]

Today, a Floor Market Maker may only quote in open outcry on the Exchange's Trading Floor and may not enter electronic quotations into the electronic System.[6] Today, Floor Market Makers may be called upon by an Options Exchange Official to make a market in a trading crowd.[7] Further, Phlx requires that at least one Floor Market Maker is present at the trading post prior to representing an order for execution.[8] By assigning a Floor Marker Maker in all options classes traded on the Exchange, similar to Cboe, Phlx believes it will attract additional liquidity to its trading floor by allowing Floor Market Makers to quote in all options classes traded on Phlx without an administrative barrier.[9] An approved Floor Market Maker is permitted to quote [10] in all options classes provided the Floor Market Maker is properly registered [11] and remains in good standing.[12] The process described in Options 8, Section 11(b) is a notification process, not an approval process. This proposed method of assignment will remove the burdensome manual process of completing a Floor Market Maker Assignment Form for the benefit of both Phlx members who must file the form and Exchange staff who must track assignments.

As provided in Options 8, Section 11(a), the Exchange, in its discretion, may require a unit to obtain additional staff depending upon the number of assigned options classes and associated order flow. The Exchange proposes to amend Options 3, Section 11(a) to specify that ''The Exchange, in its discretion, may require a unit to obtain additional staff depending upon the number of assigned options classes that is being quoted and associated order flow.'' This change is being made as a Floor Market Maker will be assigned in all options classes pursuant to this proposal and the Exchange would monitor the amount of quoting activity in utilizing its discretion.

Options 8, Section 16

The Exchange proposes to reserve Options 8, Section 16, Trading for a Joint Account, which requires the disclosure of accounts held jointly with other members. This rule was put in place to address conflicts of interest among members. Options 8, Section 16 is unnecessary because, today, there is no trading conducted in joint accounts on the trading floor. Also, Options 8, Section 16 is unnecessary because General 9, Section 67, Participation in Joint Accounts, requires, among other information, disclosure of other ownership and financial information.[13]

[3] The term ''Floor Market Maker'' is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. *See* Phlx Options 8, Section 1(a)(4).

[4] The Exchange also proposes to remove the rule text prescribing that such notification should be in writing, how to make changes to the Floor Market Maker Assignment Form, and acceptance of the form by the Exchange.

[5] Cboe Rule 5.50(e) provide that, ''During Regular Trading Hours, a Market-Maker has an appointment to trade open outcry in all classes traded on the Exchange. A TPH organization that is registered as a Market-Maker may only trade in open outcry through one of its nominees. A Market-Maker must be physically present in the trading crowd to trade in open outcry.''

[6] The Options 8 rules govern trading on Phlx's trading floor. A Floor Market Maker may not stream quotes. *See supra* note 3.

[7] *See* Options 8, Section 27(c) and (d).

[8] *See* Options 8, Section 28(a).

[9] Today, a Floor Market Maker that fails to notify the Exchange in a timely manner would not be permitted to quote in certain options in which they have not been assigned.

[10] Floor Market Makers are not subject to continuous quoting requirements pursuant to Options 8, Section 27(a). Further, Floor Market Makers are required to trade either (a) 1,000 contracts and 300 transactions, or (b) 10,000 contracts and 100 transactions, on the Exchange each quarter. Transactions executed in the trading crowd where the contra-side is an ROT are not included. *See* Options 8, Section 27(f). In meeting the trading requirements, Floor Market Makers are not required to quote in all assigned options series.

[11] *See* Options 8, Section 8.

[12] Pursuant to Options 8, Section 11(b), ''All such assignments shall not be effective, and shall be terminated, in the event that such Floor Market Maker applicant fails to qualify as a Floor Market Maker on the Exchange.'' Of note, the Exchange is not amending the process of assignment and approval to become the Floor Lead Market Maker. The term ''Floor Lead Market Maker'' is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange's trading floor. *See* Options 8, Section 1(a)(3).

[13] General 9, Section 67 requires a joint account to be reported to the Exchange by any member, member organization, or partner or stockholder therein, participating in such joint account before any transactions are effected on the Exchange for such joint account and shall include in substance

Today, all members (electronic and floor) are currently subject to General 9, Section 67, Participation in Joint Accounts, however only Phlx floor members are also subject to Options 8, Section 16. While Options 8, Section 16 requires prior approval of a joint account [14] to initiate the purchase or sale on the Exchange of any security for any account in which he, his member organization or a participant therein, is directly or indirectly interested with any person other than such member organization or participant therein, General 9, Section 67, requires the reporting of joint accounts and permits Phlx staff to disapprove any joint account. Further, General 9, Section 67 requires a Phlx member to report participation in such joint account before any transactions are effected on the Exchange for such joint account.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(5) of the Act,[16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Options 8, Section 11

The Exchange's proposal to amend Options 8, Section 11, Floor Market Maker and Lead Market Maker Appointment, is consistent with the Act and the protection of investors and the general public because assigning a Floor Marker Maker in all options classes traded on the Exchange will enable Phlx to attract additional liquidity to its trading floor by allowing Floor Market Makers to quote in all options classes traded on Phlx without any burdensome administrative barriers. Furthermore, the proposal will remove impediments to and perfect the mechanism of a free and open market by removing the manual process of completing a Floor Market Maker Assignment Form for the benefit of both Phlx members who must file the form and Exchange staff who must track assignments.

With respect to protecting investors and the general public, Phlx continues to have rules in place to maintain orderly markets on its trading floor. Today, a Floor Market Maker may only quote in open outcry on the Exchange's Trading Floor and may not enter electronic quotations into the electronic System. Floor Market Makers may be called upon by an Options Exchange Official to make a market in a trading crowd.[17] Further, Phlx requires that at least one Floor Market Maker is present at the trading post prior to representing an order for execution.[18] An assigned Floor Market Maker is permitted to quote [19] in all options classes provided the Floor Market Maker is properly registered [20] and remains in good standing.[21] This proposed rule text is similar to Cboe Rule 5.50(e).[22]

Amending Options 3, Section 11(a) to specify that ''The Exchange, in its discretion, may require a unit to obtain additional staff depending upon the number of assigned options classes that is being quoted and associated order flow'' is consistent with the Act and the protection of investors because the Exchange would monitor the amount of quoting activity in utilizing its discretion going forward.

Options 8, Section 16

The Exchange's proposal to reserve Options 8, Section 16, Trading for a Joint Account, is consistent with the Act and the protection of investors and the general public because the rule is unnecessary. Today, there is no trading conducted in joint accounts on the trading floor. Also, Options 8, Section 16 is unnecessary because General 9, Section 67, Participation in Joint Accounts, requires, among other information, disclosure of other ownership and financial information.[23] While Options 8, Section 16 requires prior approval of a joint account [24] to initiate the purchase or sale on the Exchange of any security for any account in which he, his member organization or a participant therein, is directly or indirectly interested with any person other than such member organization or participant therein, General 9, Section 67, requires the reporting of joint accounts and permits Phlx staff to disapprove any joint account. Further, General 9, Section 67 requires a Phlx member to report participation in such joint account before any transactions are effected on the Exchange for such joint account.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Options 8, Section 11

The Exchange's proposal to amend Options 8, Section 11, Floor Market Maker and Lead Market Maker Appointment, does not impose an intra-market burden on competition because all Floor Marker Makers will be assigned in all options classes traded on the Exchange, provided the Floor Market Maker continues to qualify as a Floor Market Maker on the Exchange. The proposal will not require Floor Market Makers to quote in additional options series to meet their trading requirements [25] unless they elect to do so.

the following: (1) Names of persons participating in such account and their respective interest therein; (2) Purpose of such account; (3) Amount of commitments in such account; and (4) A copy of any written agreement or instrument in writing relating to such account. *See* General 9, Section 67(b).

[14] The Exchange notes that the approval is not on a transaction basis, rather it is on an account basis.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Options 8, Section 27(c) and (d).

[18] *See* Options 8, Section 28(a).

[19] Floor Market Makers are not subject to continuous quoting requirements pursuant to Options 8, Section 27(a). Further, Floor Market Makers are required to trade either (a) 1,000 contracts and 300 transactions, or (b) 10,000 contracts and 100 transactions, on the Exchange each quarter. Transactions executed in the trading crowd where the contra-side is an ROT are not included. *See* Options 8, Section 27(f). In meeting the trading requirements, Floor Market Makers are not required to quote in all assigned options series.

[20] *See* Options 8, Section 8.

[21] Pursuant to Options 8, Section 11(b), ''All such assignments shall not be effective, and shall be terminated, in the event that such Floor Market Maker applicant fails to qualify as a Floor Market Maker on the Exchange.'' Of note, the Exchange is not amending the process of assignment and approval to become the Floor Lead Market Maker. The term ''Floor Lead Market Maker'' is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange's trading floor. *See* Options 8, Section 1(a)(3).

[22] Cboe Rule 5.50(e) provide that, ''During Regular Trading Hours, a Market-Maker has an appointment to trade open outcry in all classes traded on the Exchange. A TPH organization that is registered as a Market-Maker may only trade in open outcry through one of its nominees. A Market-Maker must be physically present in the trading crowd to trade in open outcry.''

[23] General 9, Section 67 requires a joint account to be reported to the Exchange by any member, member organization, or partner or stockholder therein, participating in such joint account before any transactions are effected on the Exchange for such joint account and shall include in substance the following: (1) Names of persons participating in such account and their respective interest therein; (2) Purpose of such account; (3) Amount of commitments in such account; and (4) A copy of any written agreement or instrument in writing relating to such account. *See* General 9, Section 67(b).

[24] The Exchange notes that the approval is not on a transaction basis, rather it is on an account basis.

[25] Floor Market Makers are not subject to continuous quoting requirements pursuant to Options 8, Section 27(a). Further, Floor Market Makers are required to trade either (a) 1,000 contracts and 300 transactions, or (b) 10,000 contracts and 100 transactions, on the Exchange each quarter. Transactions executed in the trading

Continued

The Exchange's proposal to amend Options 8, Section 11, Floor Market Maker and Lead Market Maker Appointment, does not impose an inter-market burden on competition because Cboe [26] also appoints its Market-Maker to trade open outcry in all classes traded on Cboe. Additionally, other options trading floors may elect to adopt a similar rule.

Amending Options 3, Section 11(a) to specify that ''The Exchange, in its discretion, may require a unit to obtain additional staff depending upon the number of assigned options classes that is being quoted and associated order flow'' does not impose an undue burden on intra-market competition because the Exchange would continue to apply this discretion in a fair manner by treating all similarly-situated Floor Market Makers in the same manner.

Amending Options 3, Section 11(a) to specify that ''The Exchange, in its discretion, may require a unit to obtain additional staff depending upon the number of assigned options classes that is being quoted and associated order flow'' does not impose an undue burden on inter-market competition because other options trading floors markets may adopt a similar discretion.

Options 8, Section 16

The Exchange's proposal to reserve Options 8, Section 16, Trading for a Joint Account, does not impose an intra-market burden on competition as no Phlx member on the trading floor would be subject to the rule. Additionally, all Phlx members and member organizations would be required to comply with General 9, Section 67.

The Exchange's proposal to reserve Options 8, Section 16, Trading for a Joint Account, does not impose an inter-market burden on competition because other options trading floors may adopt similar rules.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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) of the Act [27] and Rule 19b–4(f)(6) thereunder.[28]

A proposed rule change filed under Rule 19b–4(f)(6) [29] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [30] 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 Exchange may implement the proposed change and alleviate an administrative burden. The Exchange states that assigning Floor Market Makers in all options classes traded on the Exchange will enable Phlx to attract additional liquidity to its trading floor allowing Floor Market Makers to quote in all options classes traded on Phlx, without any burdensome administrative barrier, and that the proposal will also remove the manual process of completing a Floor Market Maker Assignment Form for the benefit of both Phlx members and Exchange staff. 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. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[31]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–Phlx–2023–38 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–Phlx–2023–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR–Phlx–2023–38 and should be submitted on or before September 22, 2023.

crowd where the contra-side is an ROT are not included. *See* Options 8, Section 27(f). In meeting the trading requirements, Floor Market Makers are not required to quote in all assigned options series.

[26] *See* Cboe Rule 5.50(e).

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[29] 17 CFR 240.19b–4(f)(6).

[30] 17 CFR 240.19b–4(f)(6)(iii).

[31] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–18895 Filed 8–31–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98232; File No. SR–Phlx–2023–07]**

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent Certain P.M.-Settled Pilots

August 28, 2023.

On February 23, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the pilot program to permit the listing and trading of options based on 1/100 the value of the Nasdaq-100 Index and the Exchange's nonstandard expirations pilot program. The proposed rule change was published for comment in the **Federal Register** on March 2, 2023.[3]

On April 7, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On May 11, 2023, the Exchange submitted Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[6] On May 31, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change and published Amendment No. 1 for notice and comment.[7]

Section 19(b)(2) of the Exchange Act[8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on March 2, 2023.[9] The 180th day after publication of the proposed rule change is August 29, 2023. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to section 19(b)(2) of the Exchange Act,[10] designates October 28, 2023, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–Phlx–2023–07).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–18897 Filed 8–31–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #18112 and #18113; IOWA Disaster Number IA–00131]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Iowa

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–4732–DR), dated 08/25/2023.

*Incident:* Flooding.

*Incident Period:* 04/24/2023 through 05/13/2023.

**DATES:** Issued on 08/25/2023.

*Physical Loan Application Deadline Date:* 10/24/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/28/2024.

**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 President's major disaster declaration on 08/25/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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:*

Allamakee, Clayton, Des Moines, Dubuque, Jackson, Lee, Scott.

*The Interest Rates are:*

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations with Credit Available Elsewhere ... | 2.375 |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 2.375 |
| *For Economic Injury:* | |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 2.375 |

The number assigned to this disaster for physical damage is 18112 6 and for economic injury is 18113 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez, Jr.,**

*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2023–18892 Filed 8–31–23; 8:45 am]

**BILLING CODE 8026–09–P**

[32] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96980 (February 24, 2023), 88 FR 13161.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 97260, 88 FR 22498 (April 13, 2023).

[6] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-phlx-2023-07/srphlx202307.htm.*

[7] *See* Securities Exchange Act Release No. 97624, 88 FR 37107 (June 6, 2023).

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3 and accompanying text.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #18102 and #18103; Alaska Disaster Number AK–00062]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alaska

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4730–DR), dated 08/23/2023.

*Incident:* Flooding.

*Incident Period:* 05/12/2023 through 06/03/2023.

**DATES:** Issued on 08/23/2023.

*Physical Loan Application Deadline Date:* 10/23/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/23/2024.

**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 President's major disaster declaration on 08/23/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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:* Bering Strait REAA, Copper River REAA, Kuspuk REAA, Lower Yukon REAA, Yukon Flats REAA.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations with Credit Available Elsewhere | 2.375 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.375 |
| *For Economic Injury:* | |
| Non-Profit Organizations without Credit Available Elsewhere | 2.375 |

The number assigned to this disaster for physical damage is 18102 6 and for economic injury is 18103 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez, Jr.,**

*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2023–18952 Filed 8–31–23; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #18100 and #18101; Alaska Disaster Number AK–00059]**

### Presidential Declaration of a Major Disaster for the State of Alaska

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4730–DR), dated 08/23/2023.

*Incident:* Flooding.

*Incident Period:* 05/12/2023 through 06/03/2023.

**DATES:** Issued on 08/23/2023.

*Physical Loan Application Deadline Date:* 10/23/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/23/2024.

**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 President's major disaster declaration on 08/23/2023, 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 (Physical Damage and Economic Injury Loans):* Copper River REAA, Kuspuk REAA, Lower Kuskokwim REAA, Lower Yukon REAA, Yukon Flats REAA.

*Contiguous Counties (Economic Injury Loans Only):*

Alaska: Alaska Gateway REAA, Bering Strait REAA, Chugach REAA, City and Borough of Yakutat, Delta/Greely REAA, Fairbanks North Star Borough, Iditarod Area REAA, Kashunamiut (Chevak) REAA, Lake and Peninsula Borough, Matanuska-Susitna Borough, North Slope Borough, Southwest Region REAA, Yukon-Koyukuk REAA, Yupiit REAA.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 5.000 |
| Homeowners without Credit Available Elsewhere | 2.500 |
| 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 18100 6 and for economic injury is 18101 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez, Jr.,**

*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2023–18951 Filed 8–31–23; 8:45 am]

**BILLING CODE 8026–09–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. AB 55 (Sub-No. 812X)]**

### CSX Transportation, Inc.—Abandonment Exemption—in Cuyahoga County, Ohio

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 1.3-mile rail line that runs between milepost BJB 73.21 and milepost BJB 74.51 on its Cleveland Subdivision in Cuyahoga County, Ohio (the Line). The Line traverses U.S. Postal Service Zip Codes 44113 and 44115.

CSXT has certified that: (1) no local freight traffic has moved over the Line during the past two years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or has

been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] this exemption will be effective on October 1, 2023, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/railbanking requests under 49 CFR 1152.29 must be filed by September 11, 2023.[3] Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed by September 21, 2023.

All pleadings, referring to Docket No. AB 55 (Sub-No. 812X), must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on CSXT's representative, Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

CSXT has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by September 8, 2023. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/railbanking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by CSXT's filing of a notice of consummation by September 1, 2024, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: August 29, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2023–18981 Filed 8–31–23; 8:45 am]

**BILLING CODE 4915–01–P**

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

## TENNESSEE VALLEY AUTHORITY

### Sugar Camp Energy LLC Mine No. 1 Significant Boundary Revision 8 Environmental Impact Statement

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Notice of intent.

**SUMMARY:** The Tennessee Valley Authority (TVA) intends to prepare an Environmental Impact Statement evaluating the proposed expansion of mining operations (proposed mine expansion) by Sugar Camp Energy, LLC (Sugar Camp) to extract TVA-owned coal reserves in Franklin, Hamilton, and Jefferson counties, Illinois. The proposed 22,414-acre expansion area contains 21,868 acres of coal reserves owned by TVA that are under a coal lease agreement with Sugar Camp. TVA will consider whether to approve Sugar Camp's application to mine TVA-owned coal reserves within the project area. Additionally, TVA will evaluate the divestiture of TVA's mineral rights and associated land rights in Franklin, Hamilton and Jefferson counties, Illinois.

**DATES:** To ensure considerations, comments on the scope, alternatives being considered, and environmental issues must be received or postmarked, emailed, or submitted online no later than October 2, 2023.

**ADDRESSES:** Written comments should be sent to Elizabeth Smith, NEPA Specialist, TVA, 400 W. Summit Hill Drive #WT11B, Knoxville, Tennessee 37902. Comments may be sent submitted online at *https://www.tva.gov/NEPA* or by email at *NEPA@tva.gov.*

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Smith by phone at 865–632–3053, by email at *esmith14@tva.gov,* or by mail at the address above.

**SUPPLEMENTARY INFORMATION:** This notice is provided in accordance with the Council on Environmental Quality regulations (40 CFR parts 1500 to 1508) and TVA procedures for implementing the National Environmental Policy Act (NEPA). TVA is a federal corporation and instrumentality of the United States government, created in 1933 by an act of Congress to foster the social and economic well-being of the residents of the Tennessee Valley region. As part of its diversified energy strategy, TVA completed a series of land and coal mineral acquisitions from the 1960s through the mid-1980s that resulted in the ownership of approximately 65,000 acres of coal reserves. These reserves consist of approximately 1.35 billion tons of Illinois coal, including portions of the Springfield (also known as Number [No.] 5) and Herrin (also known as No. 6) coal seams. TVA executed a coal lease agreement with Sugar Camp in July 2002 to mine portions of the TVA Illinois coal reserves in an environmentally sound manner, as subject to environmental reviews in accordance with NEPA and other applicable laws and regulations. Based in part on TVA's evolving electricity generation priorities, and TVA's diminishing need for coal to supply TVA's electricity generating portfolio, TVA is considering divesting itself of these same land and mineral acquisitions.

#### Background

On January 4, 2023, Sugar Camp submitted Permit 382 Significant Boundary Revision (SBR) 8 application to Illinois Department of Natural Resources (IDNR) proposing to expand its underground longwall mining operations at its Sugar Camp Mine No. 1 in Franklin, Hamilton, and Jefferson counties, Illinois, by approximately

22,414 acres (the project area). TVA-owned coal reserves underlie approximately 21,868 acres of the project area. Under the proposal, Sugar Camp would extract approximately 122 million raw tons of TVA-owned coal over a 25-year period (this excludes 45M tons currently permitted). Underground mining would be performed using room and pillar and continuous mining techniques during a development period, followed by longwall mining and associated planned subsidence (controlled settlement of the ground surface). Planned subsidence would occur within the project area once the coal has been removed through longwall mining methods. Sugar Camp would utilize its existing Sugar Camp Mine No. 1 facilities to process and ship the extracted coal, and expansion of these facilities is not needed to support the proposed mine expansion. Sugar Camp would also construct approximately six bleeder ventilation shafts (bleeder shafts, which ventilate the underground mine area) and install associated utilities needed to operate the bleeder shafts within the project area.

Under the terms of the lease agreement, Sugar Camp cannot commence mining of TVA-owned coal reserves until completion of all environmental reviews required under applicable laws and regulations have been finalized. TVA intends to prepare an Environmental Impact Statement (EIS) to consider whether to approve Sugar Camp's application to mine the TVA-owned coal reserves underlying the project area and/or divest all remaining TVA-owned mineral reserves in Illinois.

The EIS initiated by TVA will assess the environmental impact of approving the mining of TVA-owned coal under the mine plan and/or divesting all TVA-owned mineral reserves in IL. In doing so, TVA will address the cumulative impacts from other coal mining activities and identified federal and private actions. The cumulative impacts considered will include approved or completed activities associated with Sugar Camp Mine No. 1.

The operations of Sugar Camp Mine No. 1 have previously been subject to TVA review and approval. In 2008, Sugar Camp obtained Underground Coal Mine (UCM) Permit No. 382 from IDNR for underground longwall mining operations within approximately 12,103 acres in Franklin and Hamilton counties; the original permit did not include TVA-owned coal reserves. In 2010, Sugar Camp applied to IDNR for an expansion associated with UCM Permit No. 382 to mine TVA-owned coal under an additional 817-acre area. The permit was issued in May 2010. In 2011, TVA prepared an Environmental Assessment (EA) to document the potential effects of Sugar Camp's proposed mining of TVA-owned coal underlying a 2,600-acre area.

In November 2017, Sugar Camp obtained approval from IDNR to expand Sugar Camp Mine No. 1 by 37,972 acres. This proposal included the expansion of operations along the northern perimeter of the original mine perimeter, into a 2,250-acre area referred to as Viking District No. 2. In November 2018, TVA completed an EA that addressed expansion of mining operations into Viking District No. 2. In May 2019, TVA supplemented this EA to consider Sugar Camp's proposal to expand its mining into a 155-acre area within the Viking District No. 3, adjacent to Viking District No. 2.

In August 2019, TVA issued a Notice of Intent in the **Federal Register** to complete an EIS for the mining of approximately 12,125 acres of TVA-owned coal reserves associated with SBR No. 6 of UCM Permit No. 382. In October 2020, TVA issued the Final EIS outlining the analysis of alternatives associated with this additional mining of TVA coal reserves. In November 2020, TVA published a Record of Decision and approved Sugar Camp's application to mine the additional TVA-owned coal reserves under the IDNR-approved SBR No. 6.

**Alternatives**

TVA has initially identified four alternatives for evaluation in the EIS associated with the proposed purpose and need. These include a No Action Alternative and three Action Alternatives. Under the No Action Alternative, TVA would not approve the requested expansion to mine TVA-owned coal within the project area. Under Action Alternative A, TVA would implement the terms of the existing coal lease agreement, evaluate, and potentially approve the plan to mine 21,868 acres of TVA-owned coal as submitted by Sugar Camp in the current SBR of UCM Permit No. 382. Under Action Alternative B, TVA would implement the terms of the existing coal lease agreement, evaluate, and potentially allow mining of the 21,868 acres of TVA-owned coal, and consider divesting the remaining TVA-owned mineral rights/reserves including coal, oil, and gas in IL, and all associated surface rights. Under Action Alternative C, TVA considers divesting all remaining TVA-owned mineral rights/reserves including coal, oil, and gas in IL, and all associated surface rights, and would not approve Sugar Camp's expansion request as detailed under UCM Permit No. 382.

The EIS will evaluate ways to mitigate impacts that cannot be avoided. The description and analysis of these alternatives in the EIS will inform decision makers, other agencies, and the public about the potential for environmental impacts associated with the proposed mine expansion and/or divesting TVA-owned mineral rights. TVA solicits comment on whether there are other alternatives that should be assessed in the EIS. TVA also requests information and analyses that may be relevant to the project.

**Resource Areas and Issues To Be Considered**

Public scoping is integral to the process for implementing NEPA and ensures that (1) issues are identified early and properly studied, (2) issues of little significance do not consume substantial time and effort, and (3) the analysis of identified issues is thorough and balanced. This EIS will identify the purpose and need of the Action Alternatives and will contain descriptions of the existing environmental and socioeconomic resources within the area that could be affected by the proposed mine expansion. Evaluation of potential environmental impacts to these resources will include, but not be limited to, air quality and greenhouse gas emissions, surface water, groundwater, wetlands, floodplains, vegetation, wildlife, threatened and endangered species, land use, natural areas and parks and recreation, geology, soils, prime farmland, visual resources, noise, cultural resources, socioeconomics and environmental justice, solid and hazardous waste, public and occupational health and safety, utilities, and transportation. The EIS will analyze measures that would avoid, minimize, or mitigate environmental effects.

The final range of issues to be addressed in the environmental review will be determined, in part, from scoping comments received. TVA is particularly interested in public input on the scope of the EIS, alternatives being considered, and environmental issues that should be addressed as part of this EIS. The preliminary identification of reasonable alternatives and environmental issues in this notice is not meant to be exhaustive or final.

**Public Participation**

The public is invited to submit comments on the scope of the EIS no later than the date identified in the

**DATES** section of this notice. Federal, state, and local agencies and Native American Tribes are also invited to provide comments. Information about this project is available on the TVA web page at *www.tva.gov/nepa,* including a link to an online public comment page. Any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection.

After consideration of comments received during the scoping period, TVA will develop a scoping document that will summarize public and agency comments that were received and identify the schedule for completing the EIS process. Following analysis of the resources and issues, TVA will prepare a draft EIS for public review and comment tentatively scheduled for fall 2024; the final EIS and decision is tentatively scheduled for completion in early 2025. In finalizing the EIS and in making its final decision, TVA will consider the comments that it receives on the draft EIS.

*Authority:* 40 CFR 1501.9.

**Rebecca Tolene,**

*Vice President, Environment and Sustainability.*

[FR Doc. 2023–18756 Filed 8–31–23; 8:45 am]

**BILLING CODE 8120–08–P**

## TENNESSEE VALLEY AUTHORITY

### Hillsboro III Solar Project

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Notice of intent.

**SUMMARY:** The Tennessee Valley Authority (TVA) intends to prepare an environmental impact statement (EIS) for the purchase of electricity generated by the proposed Hillsboro III Solar Project in Lawrence County, Alabama. The EIS will assess the potential environmental effects of constructing, operating, and maintaining the proposed 200-megawatt (MW) alternating current (AC) solar facility. The proposed 200 MW AC solar facility would occupy approximately 1,500 acres of the 3,761-acre Project Study Area. Public comments are invited concerning the scope of the EIS, alternatives being considered, and environmental issues that should be addressed as a part of this EIS. TVA is also requesting data, information, and analysis relevant to the proposed action from the public; affected federal, state, tribal, and local governments, agencies, and offices; the scientific community; industry; or any other interested party.

**DATES:** The public scoping period begins with the publication of this Notice of Intent in the **Federal Register**. To ensure consideration, comments must be postmarked, emailed, or submitted online no later than October 2, 2023.

**ADDRESSES:** Written comments should be sent to Elizabeth Smith, NEPA Specialist, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11B, Knoxville, Tennessee 37902. Comments may be submitted online at: *www.tva.gov/nepa,* or by email to *nepa@tva.gov.* Please note that TVA encourages comments submitted electronically.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Smith by email at *esmith14@tva.gov,* by phone at (865) 632–3053, or by mail at the address above.

**SUPPLEMENTARY INFORMATION:** This notice is provided in accordance with the Council on Environmental Quality's Regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing the NEPA (18 CFR 1318). TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy.

#### Background

In June 2019, TVA completed the final 2019 Integrated Resource Plan (IRP) and associated EIS. The IRP is a comprehensive study of how TVA will meet the demand for electricity in its service territory over the next 20 years. The 2019 IRP recommends solar expansion and anticipates growth in all scenarios analyzed, with most scenarios anticipating 5,000–8,000 MW and one anticipating up to 14,000 MW by 2038. Customer demand for cleaner energy prompted TVA to release a Request for Proposal (RFP) for renewable energy resources (2022 Carbon-Free RFP).

TVA is considering entering into a Power Purchase Agreement (PPA) with Urban Grid Solar to purchase 200 MW AC of power generated by the proposed Hillsboro III Solar Project, hereafter referred to as the Project. The proposed 200 MW AC solar facility would occupy approximately 1,500 acres of the 3,761-acre Project Study Area which is located entirely in Lawrence County, Alabama. The project site is north of Wheeler, Alabama along US Highway 72 Alternate between Courtland and Hillsboro, Alabama. The project site is mostly farmland with areas of woody wetlands, deciduous forest, and hay/pasture. The land surplus is to accommodate relocating the array if any areas need to be avoided as a result of the NEPA review. A map showing the project site is available at *www.tva.gov/nepa.*

#### Preliminary Proposed Action and Alternatives

In addition to a No Action Alternative, TVA will evaluate the action alternative of purchasing power from the proposed Hillsboro III Solar Project under the terms of a PPA. In evaluating alternatives, TVA considered other solar proposals, prior to selecting the Hillsboro III site for further evaluation. Part of the screening process included a review of transmission options, including key connection points to TVA's transmission system. The Hillsboro site stood out as a viable option for connectivity. Environmental and cultural considerations are also included in TVA's screening. For the proposed site, the solar developer plans to consider the establishment of an alternative footprint so that impacts to cultural and/or biological resources could be avoided. The EIS will also evaluate ways to mitigate impacts that cannot be avoided. The description and analysis of these alternatives in the EIS will inform decision makers, other agencies, and the public about the potential for environmental impacts associated with the proposed solar facility. TVA solicits comments on whether there are other alternatives that should be assessed in the EIS.

#### Project Purpose and Need

The Hillsboro III Solar Project that was submitted as a result of TVA's 2022 Carbon-Free RFP will help TVA meet immediate needs for additional renewable generating capacity in response to customer demands and fulfill the renewable energy goals established in the 2019 IRP. To meet these goals, public scoping is integral to the process for implementing NEPA and ensures that (1) issues are identified early and properly studied, (2) issues of little significance do not consume substantial time and effort, and (3) the analysis of identified issues is thorough and balanced. This EIS will identify the purpose and need of the project and will contain descriptions of the existing environmental and socioeconomic resources within the area that could be affected by the proposed solar facility, including the documented historical, cultural, and environmental resources. Evaluation of potential environmental impacts to these resources will include, but not be limited to, air quality and greenhouse gas emissions, surface

water, groundwater, wetlands, floodplains, vegetation, wildlife, threatened and endangered species, land use, natural areas and parks and recreation, geology, soils, prime farmland, visual resources, noise, cultural resources, socioeconomics and environmental justice, solid and hazardous waste, public and occupational health and safety, utilities, and transportation.

Based on a preliminary evaluation of these resources, potential impacts to vegetation and wildlife due to the conversion of deciduous forest of various ages to early maintained grass-dominated fields may occur. Impacts to water resources would likely be minor with the use of best management practices and avoidance of siting project components in or near streams, wetlands, and riparian areas to the extent feasible. Land use would be impacted by the conversion of farmland to industrial use and the elimination of current farming operations. This would also result in visual impacts. Beneficial impacts are expected by facilitating the development of renewable energy and thereby increasing local job opportunities, as well as improving regional air quality and reducing carbon emissions. The EIS will analyze measures that would avoid, minimize, or mitigate environmental effects. The final range of issues to be addressed in the environmental review will be determined, in part, from scoping comments received.

### Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

Public scoping is integral to the process for implementing NEPA and ensures that issues are identified early and properly studied, issues of little significance do not consume substantial time and effort, and the analysis of those issues is thorough and balanced. The final range of issues to be addressed in the environmental review will be determined, in part, from scoping comments received. TVA is particularly interested in public input on other reasonable alternatives that should be considered in the EIS. The preliminary identification of reasonable alternatives and environmental issues in this notice is not meant to be exhaustive or final.

### Public Participation

The public is invited to submit comments on the scope of this EIS no later than the date identified in the **DATES** section of this notice. Federal, state, and local agencies and Native American Tribes are also invited to provide comments. Information about this project is available on the TVA web page at *www.tva.gov/nepa,* including a link to an online public comment page. Any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection. After consideration of comments received during the scoping period, TVA will develop and distribute a scoping document that will summarize public and agency comments that were received and identify the schedule for completing the EIS process. Following analysis of the issues, TVA will prepare the draft EIS for public review and comment; expected to be released fall of 2024. TVA anticipates the final EIS in fall 2025. In finalizing the EIS and in making its final decision, TVA will consider the comments that it receives on the draft.

**Rebecca Tolene,**

*Vice President, Environment and Sustainability.*

[FR Doc. 2023–18757 Filed 8–31–23; 8:45 am]

**BILLING CODE 8120–08–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on the I–35 Capital Express Central Project in Texas

**AGENCY:** Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), Department of Transportation.

**ACTION:** Notice of limitation on claims for judicial review of actions by TxDOT and Federal agencies.

**SUMMARY:** This notice announces actions taken by TxDOT and Federal agencies that are final. The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by TxDOT pursuant to an assignment agreement executed by FHWA and TxDOT. These actions grant licenses, permits, and approvals for the I–35 Capital Express Central project, from US 290E to US290W/SH 71 in Travis County, Texas.

**DATES:** By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of TxDOT and Federal agency actions on the I–35 Capital Express Central project will be barred unless the claim is filed on or before the deadline. For the I–35 Capital Express Central project the deadline is January 29, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Patrick Lee, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2358; email: *Patrick.Lee@txdot.gov.* TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The I–35 Capital Express Central project will extend from US 290E to US290W/SH 71 in Austin, Travis County, Texas. The project will remove the existing I–35 decks, lower the roadway, and add two non-tolled high-occupancy vehicle managed lanes in each direction. The project will also reconstruct east-west cross-street bridges, add shared-use paths, and make additional safety and mobility improvements within the project limits. The project is approximately 8 miles in length.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Impact Statement (FEIS), the Record of Decision (ROD) issued on August 18, 2023, and other documents in the TxDOT project file. The FEIS, ROD and other documents in the TxDOT project file are available by contacting the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone: (512) 832–7000.

The environmental review, consultation, and other actions required by applicable Federal environmental laws for the I–35 Capital Express Central project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.

Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the I–35 Capital Express Central project in the State of Texas.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of

1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [54 U.S.C. 312501 *et seq.*]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377] (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

*Authority:* 23 U.S.C. 139(l)(1).

**Michael T. Leary,**

*Director, Planning and Program Development, Federal Highway Administration.*

[FR Doc. 2023–18407 Filed 8–31–23; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2023–0153]**

### Agency Information Collection Activities; Renewal of an Approved Information Collection: Truck and Bus Maintenance Requirements and Their Impact on Safety

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments; correction.

**SUMMARY:** In a notice published in the **Federal Register** on August 24, 2023, FMCSA announced its plan to submit the ''Truck and Bus Maintenance Requirements and Their Impact on Safety'' Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval and invited public comment. The notice incorrectly stated that comments must be received on or before September 1, 2023, which needs to be corrected to allow for a 60-day comment period. This notice makes that correction.

**DATES:** This correction is effective September 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Mike Lukuc, Program Manager, Technology Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 385–238; *mike.lukuc@dot.gov.*

**SUPPLEMENTARY INFORMATION:** On August 24, 2023, FMCSA published a notice (88 FR 58057) inviting public comment on the ''Truck and Bus Maintenance Requirements and Their Impact on Safety'' ICR. The notice incorrectly listed September 1, 2023, as the date by which comments are due. Through this document FMCSA corrects that date to allow for a 60-day comment period.

In FR Doc. 2023–18236, appearing on page 58057 in the **Federal Register** of August 24, 2023, the following corrections is made:

1. On page 58057, the comment period ''September 1, 2023'' is corrected to read ''October 23, 2023''.

Issued under the authority of 49 CFR 1.87.

**Thomas P. Keane,**

*Associate Administrator, Office of Research and Registration.*

[FR Doc. 2023–18912 Filed 8–31–23; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2010–0060]**

### Norfolk Southern Railway's Request To Operate During a Temporary Outage of Its Positive Train Control System

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of availability, request for comments, and notice of planned decision.

**SUMMARY:** This document provides the public with notice that, on August 28, 2023, Norfolk Southern Railway (NS) submitted a request for amendment (RFA) to its FRA-certified positive train control (PTC) system. On August 28, 2023, NS experienced a system-wide outage of its PTC back office, temporarily impacting the operations of NS and its tenant railroads. NS is seeking FRA's authorization under FRA's PTC regulations to continue operations, with certain restrictions, while NS's PTC system is temporarily disabled.

**DATES:** FRA will review comments received by September 21, 2023. FRA may consider comments received after that date to the extent practicable.

**ADDRESSES:**

*Comments:* Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0060. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

**FOR FURTHER INFORMATION CONTACT:** Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

**SUPPLEMENTARY INFORMATION:** In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making

certain changes to an FRA-certified PTC system or the associated FRA-approved PTC Safety Plan or disabling the PTC system, a host railroad must submit, and obtain FRA's approval of, an RFA under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification or discontinuance of a signal or train control system. Accordingly, this notice informs the public that, on August 28, 2023, NS submitted an RFA to its PTC system under 49 CFR 236.1021(m), and that RFA is available in Docket No. FRA–2010–0060. Interested parties are invited to comment on NS's RFA by submitting written comments or data.

FRA typically invites the public to comment on such RFAs for a period of 20 days, as FRA must issue a decision to the railroad within 45 days of receipt of the RFA. 49 CFR 236.1021(e), (m)(3)(i). However, FRA's PTC regulations, at § 236.1021(m)(3)(ii), recognize that FRA may issue a decision before the standard 45-day decision deadline in emergencies or under other circumstances necessitating immediate approval. Given the circumstances and impact to NS's entire network, FRA intends to issue a decision immediately, subject to conditions and other limitation to ensure rail safety. FRA will review and consider any comments received during the comment period, even after issuing a decision.

**Privacy Act Notice**

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC

**Carolyn R. Hayward-Williams,**

*Director, Office of Railroad Systems and Technology.*

[FR Doc. 2023–18996 Filed 8–31–23; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### U.S. Maritime Transportation System National Advisory Committee; Notice of Public Meeting

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** The Maritime Administration (MARAD) announces a public meeting of the U.S. Maritime Transportation System National Advisory Committee (MTSNAC) to develop and discuss advice and recommendations for the U.S. Department of Transportation on issues related to the marine transportation system.

**DATES:** The meeting will be held on Wednesday, September 20, 2023, from 9:00 a.m. to 4:30 p.m. and Thursday, September 21, 2023, from 9:00 a.m. to 4:30 p.m. Eastern Daylight Time (EDT). Requests to attend the meeting must be received by 5:00 p.m. EDT on the prior week, Monday, September 11, 2023, to facilitate entry. Requests for accommodations for a disability must be received by the day before the meeting, Tuesday, September 19, 2023. Those requesting to speak during the public comment period of the meeting must submit a written copy of their remarks to DOT no later than by the prior week, Monday, September 11, 2023. Requests to submit written materials for review during the meeting must also be received by the prior week, Monday, September 11, 2023.

**ADDRESSES:** The meeting will be held at the DOT Conference Center at 1200 New Jersey Ave. SE, Washington, DC 20590. Any Committee related request should be sent to the person listed in the following section.

**FOR FURTHER INFORMATION CONTACT:** Capt. Jeffrey Flumignan, Designated Federal Officer, at *MTSNAC@dot.gov* or (347) 491–2349. Maritime Transportation System National Advisory Committee, 1200 New Jersey Avenue SE W21–307, Washington, DC 20590. Please visit the MTSNAC website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0.*

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The MTSNAC is a Federal advisory committee that advises the U.S. Secretary of Transportation through the Maritime Administrator on issues related to the maritime transportation system. The MTSNAC was established in 1999 and mandated in 2007 by the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The MTSNAC is codified at 46 U.S.C. 50402 and operates in accordance with the provisions of the Federal Advisory Committee Act.

**II. Agenda**

The agenda will include (1) welcome, opening remarks, and introductions; (2) administrative items; (3) subcommittee break-out sessions; (4) updates to the Committee on the subcommittee work; (5) public comments; (6) discussions relevant to formulate recommendations; and (7) presentation of recommendations. A final agenda will be posted on the MTSNAC internet website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0* at least one week in advance of the meeting.

**III. Public Participation**

The meeting will be open to the public. Members of the public who wish to attend in person must RSVP to the person listed in the **FOR FURTHER INFORMATION CONTACT** section with your name and affiliation. Seating will be limited and available on a first-come-first-serve basis.

*Services for Individuals with Disabilities:* The public meeting is physically accessible to people with disabilities. The U.S. Department of Transportation is committed to providing all participants equal access to this meeting. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*Public Comments:* A public comment period will commence at approximately 11:45 a.m. EST on September 20, 2023, and again on September 21, 2023, at the same time. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Commenters will be placed on the

agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting or preferably emailed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Additional written comments are welcome and must be filed as indicated below.

*Written comments:* Persons who wish to submit written comments for consideration by the Committee must send them to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

(Authority: 49 CFR part 1.93(a); 5 U.S.C. 552b; 41 CFR parts 102–3; 5 U.S.C. app. sections 1–16.)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

**Information Memorandum to the Secretary**

*From:* Rear Admiral Ann C. Phillips, USN (Ret.), Maritime Administrator, X–61719.

*Prepared by:* William (Bill) Paape, Associate Administrator for Ports & Waterways, X–5005.

*Subject:* Notification of a Public Meeting of the U.S. Maritime Transportation System, National Advisory Committee on September 20th & 21st, 2023.

**Summary**

DOT Order 1120.3D requires the submission of an information memorandum to the Secretary that briefly describes the committee's upcoming meeting agenda.

The agenda will include (1) welcome, opening remarks, and introductions; (2) administrative items; (3) subcommittee break-out sessions; (4) updates to the Committee on the subcommittee work; (5) public comments; (6) discussions relevant to formulate recommendations for improving the maritime transportation system and (7) presentation of recommendations.

**Background**

The MTSNAC is a statutory advisory committee responsible for advising the Secretary of Transportation on matters relating to the United States maritime transportation system and its seamless integration with other segments of the transportation system, including the viability of the United States Merchant Marine. The MTSNAC is codified at 46 U.S.C. 50402 and operated in accordance with the Federal Advisory Committee Act and DOT Order 1120.3D. The National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283) amended the MTSNAC's statutory authorization, including changes to the size and membership composition of the Committee. The purpose of MTSNAC is to address matters relating to the U.S. marine transportation system and its seamless integration with other segments of the transportation system, including the viability of the U.S. merchant marine. The MTSNAC shall undertake information-gathering activities, develop technical advice, and present recommendations to the Administrator on matters including, but not limited to, the following:

a. How to strengthen U.S. Maritime capabilities essential to National security and economic prosperity.

b. Ways to ensure the availability of a diverse and inclusive U.S. maritime workforce that will support the sealift resource needs of the National Security Strategy.

c. Ways to support the enhancement of U.S. port infrastructure and performance; and,

d. Ways to enable maritime industry innovation in information, safety, environmental impact, and other areas.

The Committee's work will align with the Agency's mission and primary guiding documents, such as the *Goals and Objectives for a Stronger Maritime Nation: A Report to Congress.*

**Attachments**

- Meeting Agenda.

**For More Information**

Bill Paape, Associate Administrator for Ports & Waterways, 202–748–4641 (cell).

Capt. Jeff Flumignan, Designated Federal Officer, 212–668–2064 (office) or 202–977–8647 (cell).

**Agenda**

*U.S. Maritime Transportation System National Advisory Committee, Wednesday, September 20, 2023*

09:00 a.m. Call to Order & Roll Call: *Jeff Flumignan, Designated Federal Officer*

Item 1 Welcome and comments from the MTSNAC Chairman: *Robert ''Bob'' Wellner, Chairman, Maritime Transportation System National Advisory Committee*

Item 2 Chair Guidance and Breakout Session—Breakout Rooms: *Staff Liaisons to facilitate breakout sessions and prioritize Issue Areas and Desired Outcomes*

Item 3 Reconvene and Update to Chairman: *Bob Wellner, Chairman, Maritime Transportation System National Advisory Committee*

Item 4 Public Comments (if required): *Jeff Flumignan, Designated Federal Official*

Item 5 Break for Lunch

Item 6 Sub-Committee Breakout Sessions in Breakout Rooms: *Staff Liaisons to facilitate breakout sessions and prioritize Issue Areas and Desired Outcomes*

Item 7 Reconvene full Committee and Brief Update Report to Chair by Sub-Committee Chairs (current): *Bob Wellner, Chairman, Maritime Transportation System National Advisory Committee*

Item 8 Closing Remarks and Adjournment: *Bob Wellner—Chairman, Maritime Transportation System National Advisory Committee*

*U.S. Maritime Transportation System National Advisory Committee, Thursday, September 21, 2023*

09:00 a.m. Call to Order & Roll Call: *Jeff Flumignan, Designated Federal Official*

Item 9 Welcome & Opening Statements: *Bob Wellner—Chairman, Maritime Transportation System National Advisory Committee*

Item 10 Chair Guidance and Breakout Session—Breakout Rooms: *Staff Liaisons to facilitate breakout sessions and prioritize Issue Areas and Desired Outcomes*

Item 11 Reconvene and Update to Chairman: *Bob Wellner, Chairman, Maritime Transportation System National Advisory Committee*

Item 12 Public Comments (if required): *Jeff Flumignan, Designated Federal Official*

Item 13 Break for Lunch

Item 14 Chair Guidance and Breakout Session—Breakout Rooms: *Staff Liaisons to facilitate breakout sessions and prioritize Issue Areas and Desired Outcomes*

Item 15 Reconvene and Presentation of Recommendations: *Bob Wellner, Chairman, Maritime Transportation System National Advisory Committee*

Item 16 Remarks by the Maritime Administrator: *Rear Admiral Ann C. Phillips, USN (Ret.), Maritime Administrator*

Item 17 Closing Remarks and Way Ahead: *William ''Bill'' Paape, Associate Administrator for Ports and Waterways*

Item 18 Closing Remarks and Adjournment: *Bob Wellner, Chairman, Maritime Transportation System National Advisory*

*Committee*

[FR Doc. 2023–18935 Filed 8–31–23; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF THE TREASURY

### Open Meeting of the Federal Advisory Committee on Insurance

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces that the U.S. Department of the Treasury's Federal Advisory Committee on Insurance (FACI) will meet in the Cash Room at the U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC, and also via videoconference on Tuesday, September 26, 2023, from 1:30 p.m.–4:30 p.m. Eastern Time. The meeting will be open to the public. The FACI provides non-binding recommendations and advice to the Federal Insurance Office (FIO) in the U.S. Department of the Treasury.

**DATES:** Tuesday, September 26, 2023, from 1:30 p.m.–4:30 p.m. Eastern Time.

**ADDRESSES:** The meeting will be held in the Cash Room, Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220 and also via videoconference.

*Attendance:* The meeting is open to the public, and the site is accessible to individuals with disabilities. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must register online. Attendees may visit *https://events.treasury.gov/s/event-template/a2m3d000000102lAAA* and fill out a secure online registration form. A valid email address will be required to complete online registration. (Note: online registration will close on September 19th or when capacity is reached.) The public can also attend remotely via live webcast: *www.yorkcast.com/treasury/events/2023/09/26/faci.*

The webcast will also be available through the FACI's website: *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/federal-advisory-committee-on-insurance-faci.* Please refer to the FACI's website for up-to-date information on this meeting. Requests for reasonable accommodations under section 504 of the Rehabilitation Act should be directed to Snider Page, Office of Civil Rights and Diversity, Department of the Treasury at (202) 622–0341, or *snider.page@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** John Gudgel, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (202) 622–1748 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is provided in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. 1009(a)(2), through implementing regulations at 41 CFR 102–3.150.

*Public Comment:* Members of the public wishing to comment on the business of the FACI are invited to submit written statements by either of the following methods:

*Electronic Statements*

- Send electronic comments to *faci@treasury.gov.*

*Paper Statements*

- Send paper statements in triplicate to the Federal Advisory Committee on Insurance, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220.

In general, the Department of the Treasury will make submitted comments available upon request without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. Requests for public comments can be submitted via email to *faci@treasury.gov.* The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

*Tentative Agenda/Topics for Discussion:* This will be the third FACI meeting of 2023. In this meeting, the FACI will continue to discuss topics related to climate-related financial risk and the insurance sector, and will also discuss cyber insurance developments and international insurance issues. The FACI will also receive status updates from each of its subcommittees and from FIO on its activities, as well as consider any new business.

**Steven Seitz,**

*Director, Federal Insurance Office.*

[FR Doc. 2023–18975 Filed 8–31–23; 8:45 am]

**BILLING CODE 4810–AK–P**

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for the United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of final action regarding retroactive application of Parts A and B, Subpart 1 of Amendment 821 (Amendment 8 of the amendments submitted to Congress on April 27, 2023), pertaining to criminal history.

**SUMMARY:** The Sentencing Commission hereby gives notice of an amendment to the policy statement and commentary in the *Guidelines Manual* that provides for a reduction in a defendant's term of imprisonment as a result of an amended guideline range. The amendment includes Parts A and B, Subpart 1 of Amendment 821 (Amendment 8 of the amendments submitted to Congress on April 27, 2023) in the policy statement as an amendment that may be available for retroactive application. The amendment also provides a special instruction requiring that any order granting sentence reductions based on Part A or Part B, Subpart 1 of Amendment 821 shall not take effect until February 1, 2024, or later.

**DATES:** The effective date of this amendment is November 1, 2023. However, as a result of the special instruction, any order reducing a defendant's term of imprisonment based on the retroactive application of Part A or Part B, Subpart 1 of Amendment 821 cannot take effect until February 1, 2024, or later.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Dukes, Senior Public Affairs Specialist, (202) 502–4597.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day

of May each year pursuant to 28 U.S.C. 994(p). Absent action of the Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Section 3582(c)(2) of title 18, United States Code, provides that ''in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.'' Pursuant to 28 U.S.C. 994(u), ''[i]f the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.'' The Commission lists in § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2).

On April 27, 2023, the Commission submitted to the Congress amendments to the sentencing guidelines, policy statements, official commentary, and Statutory Index, which become effective on November 1, 2023, unless Congress acts to the contrary. *See* 88 FR 28254 (May 3, 2023). Parts A and B, Subpart 1 of Amendment 821 (Amendment 8 of the amendments submitted to Congress on April 27, 2023), pertaining to criminal history, have the effect of lowering guideline ranges for certain defendants. The Commission has now promulgated an amendment to include Parts A and B, Subpart 1 of Amendment 821 in the listing in § 1B1.10(d) as an amendment that may be available for retroactive application. The amendment also provides a special instruction requiring that any order granting sentence reductions based on Part A or Part B, Subpart 1 of Amendment 821 shall not take effect until February 1, 2024, or later, and includes commentary explaining and clarifying this special instruction.

The amendment to § 1B1.10 set forth in this notice and the text of the amendments submitted to Congress on April 27, 2023 (published in 88 FR 28254 (May 3, 2023)) are also available on the Commission's website at *www.ussc.gov*.

*Authority:* 28 U.S.C. 994(a), (o), (u); USSC Rules of Practice and Procedure 2.2, 4.1, 4.1A.

**Carlton W. Reeves,**

*Chair.*

1. *Amendment:* Section 1B1.10 is amended—

in subsection (d) by striking ''and 782 (subject to subsection (e)(1))'' and inserting ''782 (subject to subsection (e)(1)), and 821 (parts A and B, subpart 1 only and subject to subsection (e)(2))'';

and in subsection (e)—

in the heading, by striking ''*Instruction*'' and inserting ''*Instructions*'';

and by adding at the end the following new paragraph (2):

''(2) The court shall not order a reduced term of imprisonment based on Part A or Part B, Subpart 1 of Amendment 821 unless the effective date of the court's order is February 1, 2024, or later.''.

The Commentary to § 1B1.10 captioned ''Application Notes'' is amended—

by redesignating Notes 7 and 8 as Notes 8 and 9, respectively;

and by inserting after Note 6 the following new Note 7:

''7. *Application to Amendment 821 (Parts A and B, Subpart 1 Only).*—As specified in subsection (d), the parts of Amendment 821 that are covered by this policy statement are Parts A and B, Subpart 1 only, subject to the special instruction at subsection (e)(2). Part A amended § 4A1.1 (Criminal History Category) to limit the overall criminal history impact of ''status points'' (*i.e.,* the additional criminal history points given to defendants for the fact of having committed the instant offense while under a criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status). Part B, Subpart 1 created a new Chapter Four guideline at § 4C1.1 (Adjustment for Certain Zero-Point Offenders) to provide a decrease of two levels from the offense level determined under Chapters Two and Three for defendants who did not receive any criminal history points under Chapter Four, Part A and whose instant offense did not involve specified aggravating factors.

The special instruction at subsection (e)(2) delays the effective date of orders reducing a defendant's term of imprisonment to a date no earlier than February 1, 2024. A reduction based on the retroactive application of Part A or Part B, Subpart 1 of Amendment 821 that does not comply with the requirement that the order take effect no earlier than February 1, 2024, is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. 3582(c)(2). Subsection (e)(2), however, does not preclude the court from conducting sentence reduction proceedings and entering orders under 18 U.S.C. 3582(c)(2) and this policy statement before February 1, 2024, provided that any order reducing the defendant's term of imprisonment has an effective date of February 1, 2024, or later.''.

*Reason for Amendment:* The Commission has determined that the targeted changes to the criminal history rules made in Parts A and B, Subpart 1 of Amendment 821 should be applied retroactively. Accordingly, this amendment expands the listing in subsection (d) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) to implement the directive in 28 U.S.C. 994(u) with respect to guideline amendments that may be considered for retroactive application.

Part A of Amendment 821 limits the overall criminal history impact of ''status points'' (*i.e.,* the additional criminal history points given to defendants for the fact of having committed the instant offense while under a criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status) under § 4A1.1 (Criminal History Category). Part B, Subpart 1 of Amendment 821 creates a new Chapter Four guideline at § 4C1.1 (Adjustment for Certain Zero-Point Offenders) providing a decrease of two levels from the offense level determined under Chapters Two and Three for defendants who did not receive any criminal history points under Chapter Four, Part A and whose instant offense did not involve specified aggravating factors.

In making this determination, the Commission considered the following factors, among others: (1) the purpose of the amendment; (2) the magnitude of the change in the guideline range made by the amendment; and (3) the difficulty of applying the amendment retroactively. *See* § 1B1.10, comment. (backg'd.). Applying those standards to Amendment 821, the Commission determined that, among other factors:

(1) The purpose of these targeted amendments is to balance the Commission's mission of implementing data-driven sentencing policies with its duty to craft penalties that reflect the statutory purposes of sentencing and to reflect ''advancement in knowledge of

human behavior as it relates to the criminal justice process.'' *See* 28 U.S.C. 991(b). The Commission determined that the policy reasons underlying the prospective application of the amendment apply with equal force to individuals who are already sentenced.

In relation to Part A, the Commission determined that accounting for status on a more limited basis continues to serve the broader purposes of sentencing while also addressing other concerns raised regarding the impact of status points. The Commission also determined that the changes made by Part A reflect updated research suggesting that status points' ability to predict future recidivism—a core justification for their use—may be less than the original Commission may have expected.

In implementing Part B, Subpart 1, the Commission sought, in part, to fulfill one of its core congressional directives to ensure that ''the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.'' *See* 28 U.S.C. 994(j). The Commission further determined that the changes made by Part B, Subpart 1 reflect its statutory mission to provide for penalties that are ''sufficient, but not greater than necessary'' by recognizing that individuals with zero criminal history points have considerably lower recidivism rates than other sentenced individuals, as well as the fact that courts generally depart and vary more often in cases involving individuals with zero criminal history points as compared with other individuals.

(2) The Commission determined that the changes in Parts A and B, Subpart 1 of Amendment 821 would meaningfully impact the sentence of many currently incarcerated individuals. The Commission estimates that 11,495 currently incarcerated individuals would have a lower guideline range as the result of retroactive application of Part B, Subpart 1 of Amendment 821, with an average sentence reduction of 14 months (or 11.7%). The Commission further estimates that 7,272 currently incarcerated individuals would have a lower guideline range as the result of retroactive application of Part A of Amendment 821, with an average sentence reduction of 15 months (or 17.6%).

(3) The Commission determined that applying Part A of Amendment 821 retroactively, requiring the recalculation of criminal history points and making the determination as to whether the individual would fall within a lower criminal history category, presents minimal difficulty. While recognizing that consideration of the exclusionary criteria in Part B, Subpart 1 of Amendment 821 could result in an increased administrative burden, the Commission concluded that any such burden is manageable.

The Commission concludes that consideration of these factors supports a policy determination that a reduced guideline range is sufficient to achieve the purposes of sentencing and that, in the sound discretion of the court, a reduction in the term of imprisonment may be appropriate for previously sentenced, qualified defendants. In making this determination, the Commission remains cognizant of the fact that public safety will be considered in every case because § 1B1.10 requires the court, in determining whether and to what extent a reduction in the term of imprisonment is warranted, to consider the nature and seriousness of the danger to any person or the community that may be posed by such a reduction. *See* § 1B1.10, comment. (n.1(B)(ii)).

At the same time, the Commission also determined that the agencies of the federal criminal justice system responsible for reentry into society need time to prepare, and to help the released individuals prepare, for that reentry. The Commission concluded that a three-month delay in the effective date of any orders granting sentence reductions under Amendment 821 is needed (1) to give courts adequate time to obtain and review the information necessary to make an individualized determination in each case of whether a sentence reduction is appropriate, (2) to ensure that, to the extent practicable, all individuals who are to be released have the opportunity to participate in reentry programs and transitional services, such as placement in halfway houses, while still in the custody of the Bureau of Prisons, which increases their likelihood of successful reentry to society and thereby promotes public safety, and (3) to permit those agencies that will be responsible for individuals after their release to prepare for the increased responsibility.

Therefore, the Commission added a Special Instruction at subsection (e) providing that a reduced term of imprisonment based on retroactive application of Amendment 821 shall not be ordered unless the effective date of the court's order is February 1, 2024, or later. An application note clarifies that this special instruction does not preclude the court from conducting sentence reduction proceedings before February 1, 2024, as long as any order reducing the term of imprisonment has an effective date of February 1, 2024, or later.

[FR Doc. 2023–18977 Filed 8–31–23; 8:45 am]

**BILLING CODE 2210–40–P**

## UNITED STATES SENTENCING COMMISSION

### Final Priorities for Amendment Cycle

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of final priorities.

**SUMMARY:** In June 2023, the Commission published a notice of proposed policy priorities for the amendment cycle ending May 1, 2024. After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Dukes, Senior Public Affairs Specialist, (202) 502–4597.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2024. While continuing to address legislation or other matters requiring more immediate action, the Commission has decided to limit its consideration of specific guideline amendments for this amendment cycle. Instead, in light of the 40th anniversary of the Sentencing Reform Act, the Commission anticipates focusing on a number of projects examining the degree to which current sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in the Sentencing Reform Act. *See* 28 U.S.C. 991(b)(2). The Commission expects to continue work on many of these priorities beyond the

upcoming amendment cycle. The Commission previously published a notice of proposed policy priorities for the amendment cycle ending May 1, 2024. *See* 88 FR 39907 (June 20, 2023).

Pursuant to 28 U.S.C. 994(g), the Commission intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority.

The Commission has identified the following priorities for the amendment cycle ending May 1, 2024:

(1) Assessing the degree to which certain practices of the Bureau of Prisons are effective in meeting the purposes of sentencing as set forth in 18 U.S.C. 3553(a)(2) and considering any appropriate responses including possible consideration of recommendations or amendments.

(2) Compilation and dissemination of information on court-sponsored programs relating to diversion, alternatives-to-incarceration, and reentry (*e.g.,* Pretrial Opportunity Program, Conviction And Sentence Alternatives (CASA) Program, Special Options Services (SOS) Program, Supervision to Aid Re-entry (STAR) Program) through the Commission's website and possible workshops and seminars sharing best practices for developing, implementing, and assessing such programs.

(3) Examination of the *Guidelines Manual,* including exploration of ways to simplify the guidelines and possible consideration of amendments that might be appropriate.

(4) Continuation of its multiyear study of the *Guidelines Manual* to address case law concerning the validity and enforceability of guideline commentary, and possible consideration of amendments that might be appropriate.

(5) Continued examination of the career offender guidelines, including (A) updating the data analyses and statutory recommendations set forth in the Commission's 2016 report to Congress, titled *Career Offender Sentencing Enhancements;* (B) devising and conducting workshops to discuss the scope and impact of the career offender guidelines, including discussion of possible alternative approaches to the ''categorical approach'' in determining whether an offense is a ''crime of violence'' or a ''controlled substance offense''; and (C) possible consideration of amendments that might be appropriate.

(6) Examination of the treatment of youthful offenders and offenses involving youths under the *Guidelines Manual,* including possible consideration of amendments that might be appropriate.

(7) Consideration of possible amendments to the *Guidelines Manual* to prohibit the use of acquitted conduct in applying the guidelines.

(8) Further examination of federal sentencing practices on a variety of issues, possibly including: (A) the prevalence and nature of drug trafficking offenses involving methamphetamine; (B) drug trafficking offenses resulting in death or serious bodily injury; (C) comparison of sentences imposed in cases disposed of through trial versus plea; (D) continuation of the Commission's studies regarding recidivism; and (E) other areas of federal sentencing in need of additional research.

(9) Implementation of any legislation warranting Commission action.

(10) Resolution of circuit conflicts as warranted, pursuant to the Commission's authority under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991).

(11) Consideration of other miscellaneous issues coming to the Commission's attention.

*Authority:* 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 2.2, 5.2.

**Carlton W. Reeves,**

*Chair.*

[FR Doc. 2023–18976 Filed 8–31–23; 8:45 am]

**BILLING CODE 2210–40–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0020]**

## Agency Information Collection Activity Under OMB Review: Designation of Beneficiary Government Life Insurance and Supplemental Designation of Beneficiary Government Life Insurance

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** 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,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0020.''

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov*. Please refer to ''OMB Control No. 2900–0020'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Authority:* 44 U.S.C. 3501–21.

*Title:* Designation of Beneficiary Government Life Insurance VA Form 29–336 and Supplemental Designation of Beneficiary Government Life Insurance VA Form 29–336a.

*OMB Control Number:* 2900–0020.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* These forms are used by the insured to designate beneficiaries and select an optional settlement to be used when the insurance matures by death. The information is required to determine the claimant's eligibility to receive the proceeds. The information on the form is required by law, 38 U.S.C. 1917, 1949 and 1952.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 122 on June 27, 2023, page 41721.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 13,917 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 83,500.

By direction of the Secretary:

**Dorothy Glasgow,**

*VA PRA Clearance Officer, (Alt.) Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2023–18924 Filed 8–31–23; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

Vol. 88 Friday,
No. 169 September 1, 2023

Part II

## Department of Education

48 CFR Chapter 34
Department of Education Acquisition Regulation; Final Rule

## DEPARTMENT OF EDUCATION

### 48 CFR Chapter 34

**[Docket ID ED–2023–OFO–0002]**

**RIN 1890–AA20**

## Department of Education Acquisition Regulation

**AGENCY:** Office of Finance and Operations, Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary modifies the Department of Education Acquisition Regulation (EDAR) to revise aspects of those regulations that are out-of-date or redundant with other U.S. Department of Education (Department) policies and procedures and to accurately implement the current Federal Acquisition Regulation (FAR) and Department policies.

**DATES:** These regulations are effective October 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** April Bolton-Smith, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C277, Washington, DC 20202–4331. Telephone: (202) 453–6317. Email: *April.Bolton-Smith@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

**SUPPLEMENTARY INFORMATION:** On February 16, 2023, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (88 FR 10218) to modify the EDAR. In the preamble to the NPRM, on pages 10218 through 10224, the Secretary discussed how the proposed regulations would update and revise aspects of the EDAR regulations that are out-of-date or redundant with other U.S. Department of Education (Department) policies and procedures and would accurately implement the current Federal Acquisition Regulation (FAR) and Department policies.

*Public Comment:* In response to the Secretary's invitation in the NPRM, the Department did not receive any comments within the scope of the rule; however, as a result of our further review of the proposed regulations since publication of the NPRM, we have made changes as follows. Generally, we do not address technical and other minor changes.

### Analysis of Comments and Changes

*Comment:* None.

*Discussion:* The NPRM proposed that, under section 3416.505, the Deputy Director of Contracts and Acquisition Management (CAM) would serve as the agency head designee for purposes of FAR 16.505(b)(8). In further reviewing section 3416.505, the Department decided that, because there are two contracting activities at the Department (CAM and Federal Student Aid Acquisitions), it would not be appropriate to designate only one of them for this purpose.

*Changes:* As a result of our further review, we have updated section 3416.505 to indicate that the task order and delivery-order contract ombudsman is the competition advocate within each of the two contracting activities.

*Comment:* None.

*Discussion:* The NPRM proposed that the Senior Procurement Executive be the agency head for purposes of FAR 17.104(b). Upon further review, the Department decided that, to provide each contracting activity with the flexibility to modify multi-year contract requirements to fit its unique needs, the appropriate official for making determinations under FAR 17.104(b) should be the Head of the Contracting Activity (HCA), not the Senior Procurement Executive.

*Changes:* As a result of our further review, we have revised section 3417.104 to identify the HCA as the agency head for purposes of FAR 17.104(b).

*Comment:* None.

*Discussion:* Upon further review of proposed sections 3404.710, 3417.207, and 3452.204–70, the Department decided that the contractor, not the requiring activity, would be best positioned to initially identify the types of Federal records that it would receive, create, work with, or otherwise handle during the course of contract performance, because the contractor would know what records it would plan to receive, create, work with, or otherwise handle as part of its proposal. Given the importance of knowing what records the contractor will receive, create, and work with during the course of contract performance, the Department determined that this information is needed as close to start of contract performance as possible, and that the requiring activity must still ensure the accuracy and completeness of the records inventory and, if necessary, make unilateral changes to ensure that all records are identified and captured by the records inventory.

*Changes:* As a result of our further review, the Department has revised section 3404.710 to remove paragraph (a), which required the contracting officer to obtain a records inventory from the requiring activity. The Department also removed paragraph (c) of section 3417.207, which prohibited a contracting officer from exercising an option until receiving a current records inventory from the requiring activity. Finally, the Department revised part C.4.(a)–(c) of the records management contract clause in section 3452.204–70. These revisions reflect that the contractor is required to provide the records inventory as a contract deliverable 60 business days after award, and the Department will accept or reject the records inventory within 60 business days after receipt. Additionally, the contractor must provide a revised records inventory to the Department within 5 business days after receiving, creating, or maintaining a record series or system that is not currently included in the inventory. The Department will have 60 business days to accept or reject the revised the records inventory. Finally, the revisions permit the Department to review and update the records inventory as needed and to provide a revised inventory to the contractor.

*Comment:* None.

*Discussion:* The NPRM proposed in section 3452.239–71 that the contractor ''at all times, maintain compliance with the most current version of the Department security requirements'' set forth in a separate document titled ''Department Information Security and Privacy Requirements.'' Upon further review of this section, the Department decided to include a notice requirement to ensure that a contractor is aware of changes to the security requirements. Additionally, because changes in requirements could impact costs and schedules, the Department decided to include a formal process with timelines for a contractor to request an equitable adjustment to the contract price or delivery schedule.

*Changes:* As a result of our further review, the Department has revised section 3452.239–71 to include a requirement that the Department notify the contractor when the ''Department Information Security and Privacy Requirements'' document has been updated. Additionally, the Department revised section 3452.239–71 to require the contractor to submit a request for an equitable adjustment to the contract price or delivery schedule within 30 days from the date of receiving notice of the change to the ''Department Information Security and Privacy Requirements'' document, if any such change causes a material increase or decrease in the cost of, or the time required for, performance of any part of the work under a contract.

**Executive Orders 12866, 13563, and 14094**

**Regulatory Impact Analysis**

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles stated in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866 (as amended by Executive Order 14094).

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We issue these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, territorial, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

**Regulatory Flexibility Act Certification**

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.,* as amended by the Small Business Regulatory Flexibility Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act, the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The rule updates the EDAR; it does not directly regulate any small entities. As a result, a regulatory flexibility analysis is not required.

**Paperwork Reduction Act of 1995**

These regulations do not contain any information collection requirements.

**Intergovernmental Review**

The EDAR is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

**Assessment of Educational Impact**

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**List of Subjects**

*48 CFR Parts 3401, 3402, 3404, 3405, 3406, 3407, 3408, 3409, 3412, 3413, 3414, 3415, 3416, 3417, 3422, 3424, 3425, 3427, 3428, 3430, 3431, 3437, 3439, 3445, 3447, and 3452*

Government procurement.

*48 CFR Part 3403*

Antitrust, Conflict of interest, Government procurement.

*48 CFR Part 3419*

Government procurement, Small businesses.

*48 CFR Parts 3432, 3442, and 3443*

Accounting, Government procurement.

*48 CFR Part 3433*

Administrative practice and procedure, Government procurement.

Dated: August 3, 2023.

**Miguel A. Cardona,**

*Secretary of Education.*

■ For the reasons discussed in the preamble, the Secretary amends title 48 of the Code of Federal Regulations by revising chapter 34 to read as follows:

**CHAPTER 34—DEPARTMENT OF EDUCATION ACQUISITION REGULATION**

**SUBCHAPTER A—GENERAL**

PART 3401 ED ACQUISITION REGULATION SYSTEM
PART 3402 DEFINITIONS OF WORDS AND TERMS
PART 3403 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST
PART 3404 ADMINISTRATIVE AND INFORMATION MATTERS

**SUBCHAPTER B—ACQUISITION PLANNING**

PART 3405 PUBLICIZING CONTRACT ACTIONS
PART 3406 COMPETITION REQUIREMENTS
PART 3407 ACQUISITION PLANNING
PART 3408 REQUIRED SOURCES OF SUPPLIES AND SERVICES.
PART 3409 CONTRACTOR QUALIFICATIONS
PART 3412 ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**

PART 3413 SIMPLIFIED ACQUISITION PROCEDURES
PART 3414 SEALED BIDDING
PART 3415 CONTRACTING BY NEGOTIATION
PART 3416 TYPES OF CONTRACTS
PART 3417 SPECIAL CONTRACTING METHODS

**SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**

PART 3419 SMALL BUSINESS PROGRAMS
PART 3422 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS
PART 3424 PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION.
PART 3425 FOREIGN ACQUISITION

**SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS**

PART 3427 PATENTS, DATA, AND COPYRIGHTS
PART 3428 BONDS AND INSURANCE
PART 3430 COST ACCOUNTING STANDARDS ADMINISTRATION
PART 3431 CONTRACT COST PRINCIPLES AND PROCEDURES
PART 3432 CONTRACT FINANCING
PART 3433 PROTESTS, DISPUTES, AND APPEALS

**SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING**

PART 3437 SERVICE CONTRACTING
PART 3439 ACQUISITION OF INFORMATION TECHNOLOGY

**SUBCHAPTER G—CONTRACT MANAGEMENT**

PART 3442 CONTRACT ADMINISTRATION AND AUDIT SERVICES
PART 3443 CONTRACT MODIFICATIONS
PART 3445 GOVERNMENT PROPERTY
PART 3447 TRANSPORTATION

**SUBCHAPTER H—CLAUSES AND FORMS**

PART 3452 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**SUBCHAPTER A—GENERAL**

## PART 3401—ED ACQUISITION REGULATION SYSTEM

Sec.

3401.000 Scope of part.

**Subpart 3401.1—Purpose, Authority, Issuance**

3401.104 Applicability.

**Subpart 3401.3—Agency Acquisition Regulations**

3401.303 Publication and codification.

**Subpart 3401.4—Deviations**

3401.403 Individual deviations.
3401.404 Class deviations.

**Subpart 3401.6—Career Development, Contracting Authority, and Responsibilities**

3401.601 General.
3401.602–3 Ratification of unauthorized commitments.
3401.604–70 Contract clause.

**Authority:** 5 U.S.C. 301 and 20 U.S.C. 1018a.

### 3401.000 Scope of part.

This part establishes a system of Department of Education (Department) acquisition regulations, referred to as the Education Acquisition Regulation (EDAR), for the codification and publication of policies and procedures of the Department that implement and supplement the Federal Acquisition Regulation (FAR).

### Subpart 3401.1—Purpose, Authority, Issuance

#### 3401.104 Applicability.

(a) The FAR and the EDAR apply to all Department contracts, as defined in FAR part 2, except where expressly excluded. The EDAR implements or supplements the FAR and incorporates, together with the FAR, Department policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the Agency, including its sub-organizations, and contractors or prospective contractors.

(b) The statue at 20 U.S.C. 1018a provides the Performance-Based Organization (PBO) with procurement authority and flexibility associated with sections (a) through (l) of the statute.

### Subpart 3401.3—Agency Acquisition Regulations

#### 3401.303 Publication and codification.

(a) The EDAR is issued as chapter 34 of title 48 of the CFR.

(1) The FAR numbering illustrations at FAR 1.105–2 apply to the EDAR.

(2) The EDAR numbering system corresponds with the FAR numbering system. An EDAR citation will include the prefix ''34'' prior to its corresponding FAR part citation; *e.g.,* FAR 25.108–2 would have corresponding EDAR text numbered as EDAR 3425.108–2.

(3) Supplementary material for which there is no counterpart in the FAR will be codified with a suffix beginning with ''70'' or, in cases of successive sections and subsections, will be numbered in the 70 series (*i.e.,* 71–79). These supplementing sections and subsections will appear to the closest corresponding FAR citation; *e.g.,* FAR subpart 16.4 may be augmented in the EDAR by citing EDAR 3416.470 and FAR 16.403 may be augmented in the EDAR by citing EDAR 3416.403–70. (*Note:* These citations are for illustrative purposes only and may not actually appear in the published EDAR). For example:

TABLE 1 TO PARAGRAPH (a)(3)

| FAR | Is implemented as | Is augmented as |
|---|---|---|
| 15 ..... | 3415 ..... | 3415.70 |
| 15.1 ..... | 3415.1 ..... | 3415.170 |

TABLE 1 TO PARAGRAPH (a)(3)—Continued

| FAR | Is implemented as | Is augmented as |
|---|---|---|
| 15.101 ..... | 3415.101 ..... | 3415.101–70 |
| 15.101–1 .. | 3415.101–1 .... | 3415.101–170 |

(c) Guidance that is unique to an organization with Head of the Contracting Activity (HCA) authority contains that activity's acronym directly preceding the cite. The following activity acronyms apply: FSA—Federal Student Aid.

### Subpart 3401.4—Deviations

#### 3401.403 Individual deviations.

An individual deviation from the FAR or the EDAR must be approved by the Senior Procurement Executive (SPE).

#### 3401.404 Class deviations.

A class deviation from the FAR or the EDAR must be approved by the Chief Acquisition Officer (CAO).

### Subpart 3401.6—Career Development, Contracting Authority, and Responsibilities

#### 3401.601 General.

(a) Contracting authority is vested in the Secretary. The Secretary has delegated this authority to the CAO. The Secretary has also delegated contracting authority to the SPE, giving the SPE broad authority to perform functions dealing with the management direction of the entire Department's procurement system, including implementation of its unique procurement policies, regulations, and standards. Limitations to the extent of this authority and successive delegations are set forth in the respective memorandums of delegations.

#### 3401.602–3 Ratification of unauthorized commitments.

(a) *Definitions.* As used in this subpart, *commitment* includes issuance of letters of intent and arrangements for free vendor services or use of equipment with the promise or the appearance of commitment that a contract, modification, or order will, or may, be awarded.

(b) *Policy.* (1) The Government is not bound by agreements with, or contractual commitments made to, prospective contractors by individuals who do not have delegated contracting authority or by contracting officers acting in excess of the limits of their delegated authority. Unauthorized commitments do not follow the appropriate process for the expenditure of Government funds. Consequently, the Government may not be able to ratify certain actions, putting a contractor at risk for taking direction from a Federal official other than the contracting officer. See FAR 1.602–1. Government employees responsible for unauthorized commitments are subject to disciplinary action.

(2) The HCA must review and sign or reject all ratification requests, with the exception that the Chief of the Contracting Office is authorized to review and sign or reject ratification requests for unauthorized commitments up to $25,000.

#### 3401.604–70 Contract clause.

Contracting officers must insert a clause substantially the same as the clause at 3452.201–70 (Contracting Officer's Representative (COR)), in all solicitations and contracts for which a COR will be (or is) appointed.

## PART 3402—DEFINITIONS OF WORDS AND TERMS

### Subpart 3402.1—Definitions

Sec.
3402.101 Definitions.

### Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

**Authority:** 5 U.S.C. 301 and 20 U.S.C. 1018a.

### Subpart 3402.1—Definitions

#### 3402.101 Definitions.

As used in this chapter—

*Chief of the Contracting Office* or *COCO* means an official serving in the contracting activity (Contracts and Acquisition Management (CAM) or FSA Acquisitions) as the manager of a group that awards and administers contracts for a principal office of the Department. See also definition of *Head of the Contracting Activity* or *HCA* in this section.

*Department* or *ED* means the United States Department of Education.

*Head of the Contracting Activity* or *HCA* means those officials within the Department who have responsibility for and manage an acquisition organization and usually hold unlimited procurement authority. The Executive Director, Federal Student Aid Acquisitions, is the HCA for FSA. The Director, Contracts and Acquisitions Management (CAM), is the HCA for all other Departmental program offices and all boards, commissions, and councils under the management control of the Department.

*Performance-Based Organization* or *PBO* is the office within the Department that is mandated by Public Law 105–244 to carry out Federal student assistance or aid programs and report to Congress on an annual basis. It may also be referred to as ''Federal Student Aid.''

*Requiring activity* means the principal office charged with meeting or supporting a mission and delivering requirements. The requiring activity is responsible for obtaining funding or developing the program objectives. The requiring activity may also be the organizational unit that submits a written requirement or statement of need for services required by a contract.

*Senior Procurement Executive* or *SPE* means the single agency official appointed as such by the head of the agency and delegated broad responsibility for acquisition functions, including issuing agency acquisition policy and reporting on acquisitions agency-wide. The SPE also acts as the official one level above the contracting officer when the HCA is acting as a contracting officer.

### Subpart 3402.2—Definitions Clause

#### 3402.201 Contract clause.

The contracting officer must insert the clause at 3452.202–1 (Definitions—Department of Education) in all solicitations and contracts in which the clause at FAR 52.202–1 is required.

## PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### Subpart 3403.1—Safeguards

Sec.
3403.104 Procurement integrity.
3403.104–7 Violations or possible violations.

### Subpart 3403.2—Contractor Gratuities to Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.
3403.204 Treatment of violations.

### Subpart 3403.3—Reports of Suspected Antitrust Violations

3403.301 General.

### Subpart 3403.4—Contingent Fees

3403.405 Misrepresentation or violations of the covenant against contingent fees.

### Subpart 3403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

3403.602 Exceptions.

### Subpart 3403.7—Voiding and Rescinding Contracts

3403.704 Policy.
3403.705 Procedures.

### Subpart 3403.9—Whistleblower Protections for Contractor Employees

3403.905 Procedures for investigating complaints.

3403.906 Remedies.

**Authority:** 5 U.S.C. 301.

## Subpart 3403.1—Safeguards

3403.104 Procurement integrity.

### 3403.104–7 Violations or possible violations.

(d)(2)(ii)(B) The Senior Procurement Executive (SPE) is the agency head for the purposes of FAR 3.104–7(d)(2)(ii)(B).

## Subpart 3403.2—Contractor Gratuities to Government Personnel

### 3403.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause at FAR 52.203–3 must be reported to the HCA in writing detailing the circumstances.

(b) The HCA evaluates the report with the assistance of the Designated Agency Ethics Officer. If the HCA determines that a violation may have occurred, the HCA refers the report to the SPE for disposition.

## Subpart 3403.3—Reports of Suspected Antitrust Violations

### 3403.204 Treatment of violations.

(a) The SPE is the agency head's designee for purposes of FAR 3.204.

## Subpart 3403.3—Reports of Suspected Antitrust Violations

### 3403.301 General.

(b) Any Departmental personnel who have evidence of a suspected antitrust violation in an acquisition must—

(1) Report that evidence through the HCA to the Office of the General Counsel for referral to the Attorney General; and

(2) Provide a copy of that evidence to the SPE.

## Subpart 3403.4—Contingent Fees

### 3403.405 Misrepresentation or violations of the covenant against contingent fees.

Any Departmental personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees, must report the matter promptly in accordance with the procedures in 3403.203.

## Subpart 3403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

### 3403.602 Exceptions.

The SPE is the agency head's designee for purposes of FAR 3.602.

## Subpart 3403.7—Voiding or Rescinding Contracts

### 3403.704 Policy.

(a) The Senior Procurement Executive (SPE) is the agency head's designee for the purpose of FAR 3.704.

### 3403.705 Procedures.

(a) *Reporting.* The SPE is the agency's head designed for the purposes of FAR 3.705.

## Subpart 3403.9—Whistleblower Protections for Contractor Employees

### 3403.905 Procedures for investigating complaints.

(c) The Senior Procurement Executive (SPE) is the agency head's designee for purposes of FAR 3.905.

### 3403.906 Remedies.

(a) The SPE is the agency head's designee for the purposes of FAR 3.906.

# PART 3404—ADMINISTRATIVE AND INFORMATION MATTERS

Sec.
3404.000 Scope of part.
3404.001 Definitions.

Subpart 3404.4—Safeguarding Classified Information Within Industry

3404.470 Contractor security vetting requirements.
3404.470–1 Contract clause.

Subpart 3404.7—Contractor Records Retention

3404.710 Contracting officer records management responsibilities.
3404.770 Contract clause.

Subpart 3404.8—Government Contract Files

3404.804 Closeout of contract files.
3404.804–5 Procedures for closing out contract files.

**Authority:** 5 U.S.C. 301; 40 U.S.C. 12(c); and 41 U.S.C. 3102.

### 3404.000 Scope of part.

### 3404.001 Definitions.

*Federal record,* as defined in 44 U.S.C. 3301, includes all recorded information, regardless of form or characteristics, made or received by the Department under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Department or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the U.S. Government or because of the informational value of data in them.

*Records inventory* means a descriptive listing of each Federal record series or system that a contractor creates, receives, or maintains in performance of the contract, together with an indication of its location, retention, custodian, volume, and other pertinent data.

## Subpart 3404.4—Safeguarding Classified Information Within Industry

### 3404.470 Contractor security vetting requirements.

### 3404.470–1 Contract clause.

The contracting officer must include the clause at 3452.204–71 (Contractor security vetting requirements) in solicitations and contracts when it is anticipated that contractor employees will have access to proprietary or sensitive Department information including *Controlled Unclassified Information* as defined in 32 CFR 2002.4(h), Department Information Technology (IT) systems, contractor systems operated with Department data or interfacing with Department systems, Department facilities/space, and/or perform duties in a school or in a location where children are present.

## Subpart 3404.7—Contractor Records Retention

### 3404.710 Contracting officer records management responsibilities.

Upon notification from the contractor of any unlawful or accidental removal, defacing, alteration, or destruction of Federal records, including all forms of mutilation, the contracting officer must notify the requiring activity, the Department Records Officer, and the HCA within one business day.

### 3404.770 Contract clause.

The contracting officer must insert the clause at 3452.204–70 (Records management) in all solicitations and contracts where the contractor will receive, create, work with, or otherwise handle Federal records, as defined in 44 U.S.C. 3301(a), regardless of the medium in which the record exists.

## Subpart 3404.8—Government Contact Files

### 3404.804 Closeout of contract files.

### 3404.804–5 Procedures for closing out contract files.

(a)(16) The contractor has provided written affirmation that the contractor

has transferred all Federal records that the contractor created, received, or maintained in performance of the contract to the Federal Government, and the contractor has not retained a copy of any Federal record that contains information covered by 32 CFR part 2002 or that is generally protected from public disclosure by an exemption under the Freedom of Information Act (FOIA) with the exception, for the purposes of FOIA, of information that exclusively implicates the exemption 4 interests of the contractor.

**SUBCHAPTER B—ACQUISITION PLANNING**

## PART 3405—PUBLICIZING CONTRACT ACTIONS

**Subpart 3405.2—Synopses of Proposed Contract Actions**

Sec.
3405.202 Exceptions.
3405.203 Publicizing and response time.
3405.205 Special situations.
3405.207 Preparation and transmittal of synopses.
3405.270 Notices to perform market surveys.

**Subpart 3405.5—Paid Advertisements**

3405.502 Authority.

**Authority:** 5 U.S.C. 301 and 20 U.S.C. 1018a.

### Subpart 3405.2—Synopses of Proposed Contract Actions

#### 3405.202 Exceptions.

(a)(15) FSA—Issuance of a synopsis is not required when the firm to be solicited has previously provided a module for the system under a contract that contained cost, schedule, and performance goals and the contractor met those goals.

#### 3405.203 Publicizing and response time.

(c) FSA—Notwithstanding other provisions of the FAR, a bid or proposal due date of less than 30 days is permitted after issuance of a synopsis for acquisitions for noncommercial items. However, if time permits, a bid or proposal due date that affords potential offerors reasonable time to respond and fosters quality submissions should be established.

#### 3405.205 Special situations.

(g) *FSA—Module of a previously awarded system.* Federal Student Aid must satisfy the publication requirements for sole source and competitive awards for a module of a previously awarded system by publishing a notice of intent on the governmentwide point of entry, not less than 30 days before issuing a solicitation. This notice is not required if a contractor who is to be solicited to submit an offer previously provided a module for the system under a contract that contained cost, schedule, and performance goals, and the contractor met those goals.

#### 3405.207 Preparation and transmittal of synopses.

(c) *General format for* ''*Description*''. FSA—In phase one of a two-phase source selection as described in 3415.302–70, the contracting officer must publish a notice in accordance with FAR subpart 5.2, except that the notice must include only the following:

(1) Notification that the procurement will be conducted using the specific procedures included in 3415.302–70.

(2) A general notice of the scope or purpose of the procurement that provides sufficient information for sources to make informed business decisions regarding whether to participate in the procurement.

(3) A description of the basis on which potential sources are to be selected to submit offers in the second phase.

(4) A description of the information that is to be required to be submitted if the request for information is made separate from the notice.

(5) Any other information that the contracting officer deems is appropriate.

(g) *Modular contracting.* FSA—When modular contracting authority is being utilized, the notice must invite comments and support if it is believed that modular contracting is not suited for the requirement being procured.

#### 3405.270 Notices to perform market surveys.

(a) If a sole source contract is anticipated, the issuance of a notice of a proposed contract action that is detailed enough to permit the submission of meaningful responses and the subsequent evaluation of the responses by the Federal Government constitutes an acceptable market survey.

(b) The notice must include—

(1) A clear statement of the supplies or services to be procured;

(2) Any capabilities or experience required of a contractor and any other factor relevant to those requirements;

(3) A statement that all responsible sources submitting a proposal, bid, or quotation must be considered;

(4) Name, business address, and phone number of the Contracting Officer; and

(5) Justification for a sole source and the identity of that source.

### Subpart 3405.5—Paid Advertisements

#### 3405.502 Authority.

Authority to approve publication of paid advertisements in newspapers is delegated to the HCA.

## PART 3406—COMPETITION REQUIREMENTS

Sec.
3406.001 Applicability.

**Subpart 3406.3—Other Than Full and Open Competition**

3406.302–2 Unusual and compelling urgency.
3406.302–5 Authorized or required by statute.

**Subpart 3406.5—Advocates for Competition**

3406.501 Requirement.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 418(a) and (b); and 20 U.S.C. 1018a.

#### 3406.001 Applicability.

(b) FSA—This part does not apply to proposed contracts and contracts awarded based on other than full and open competition when the conditions for successive systems modules set forth in 3417.70 are utilized.

### Subpart 3406.3—Other than Full and Open Competition

#### 3406.302–2 Unusual and compelling urgency.

(d)(1)(ii) The SPE is the agency head's designee for the purposes of FAR 6.302–2(d)(1)(ii).

(d)(2)(ii) The SPE is the agency head's designee for the purposes of FAR 6.302–2(d)(2)(ii).

#### 3406.302–5 Authorized or required by statute.

(a) *Authority.* (1) Citations: 20 U.S.C. 1018a.

(2) Noncompetitive awards of successive modules for systems are permitted when the conditions set forth in 3417.70 are met.

### Subpart 3406.5—Advocates for Competition

#### 3406.501 Requirement.

The Competition Advocate for the Department is the Deputy Director, Contracts and Acquisitions Management.

## PART 3407—ACQUISITION PLANNING

**Subpart 3407.1—Acquisition Plans**

Sec.
3407.103 Agency-head responsibilities.

**Authority:** 5 U.S.C. 301.

### Subpart 3407.1—Acquisition Plans

#### 3407.103 Agency-head responsibilities.

The SPE is the agency head's designee for the purposes of FAR 7.103.

## PART 3408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

### Subpart 3408.8—Acquisition of Printing and Related Supplies

Sec.
3408.871 Paperwork reduction.

**Authority:** 5 U.S.C. 301, unless otherwise noted.

### Subpart 3408.8—Acquisition of Printing and Related Supplies

#### 3408.871 Paperwork reduction.

The contracting officer must insert the clause at 3452.208–72 (Paperwork Reduction Act) in all solicitations and contracts in which the contractor will develop forms or documents for public use.

## PART 3409—CONTRACTOR QUALIFICATIONS

### Subpart 3409.4—Debarment, Suspension, and Ineligibility

Sec.
3409.400 Scope of subpart.
3409.401 Applicability.
3409.403 Definitions.
3409.406 Debarment.
3409.406–3 Procedures.
3409.407 Suspension.
3409.407–3 Procedures.

### Subpart 3409.5—Organizational and Consultant Conflicts of Interest

3409.502 Applicability.
3409.503 Waiver.
3409.506 Procedures.
3409.507 Solicitation provision and contract clause.
3409.507–1 Solicitation provision.
3409.507–2 Contract clause.

**Authority:** 5 U.S.C. 301.

### Subpart 3409.4—Debarment, Suspension, and Ineligibility

#### 3409.400 Scope of subpart.

This subpart implements FAR subpart 9.4 by detailing policies and procedures governing the debarment and suspension of organizations and individuals from participating in ED contracts and subcontracts.

#### 3409.401 Applicability.

This subpart applies to all procurement debarment and suspension actions initiated by ED. This subpart does not apply to nonprocurement debarment and suspension.

#### 3409.403 Definitions.

The SPE is designated as the *debarring official* and *suspending official* as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.406 and 9.407.

#### 3409.406 Debarment.

#### 3409.406–3 Procedures.

(b) *Decisionmaking process.* (1) Contractors proposed for debarment may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment. The contractor must submit additional information within 30 days of receipt of the notice of proposal to debar, as described in FAR 9.406–3(c).

(2) In actions not based upon a conviction or civil judgment, if the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, the contractor may request a fact-finding conference. If the Debarring Official determines that there is a genuine dispute of material fact, the Debarring Official will conduct fact-finding and base the decision in accordance with FAR 9.406–3(b)(2) and (d) through (f).

#### 3409.407 Suspension.

#### 3409.407–3 Procedures.

(b) *Decisionmaking process.* (1) Contractors suspended in accordance with FAR 9.407 may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension. The contractor must submit this information and argument within 30 days of receipt of the notice of suspension, as described in FAR 9.407–3(c).

(2) In actions not based upon an indictment, if the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the contractor may request a fact-finding conference. The Suspending Official will conduct fact-finding and base the decision in accordance with FAR 9.407–3(b)(2) and (d) and (e).

### Subpart 3409.5—Organizational and Consultant Conflicts of Interest

#### 3409.502 Applicability.

This subpart applies to all ED contracts except contracts with other Federal agencies. However, this subpart applies to contracts with the Small Business Administration (SBA) under the 8(a) program.

#### 3409.503 Waiver.

The HCA is designated as the official who may waive any general rule or procedure of FAR subpart 9.5 or of this subpart.

#### 3409.506 Procedures.

(a) If the effects of a potential or actual conflict of interest cannot be avoided, neutralized, or mitigated before award, the prospective contractor is not eligible for that award. If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized, or mitigated, ED will terminate the contract unless the HCA deems continued performance to be in the best interest of the Federal Government.

(b) The HCA is designated as the official to conduct reviews and make final decisions under FAR 9.506(b) and (c).

#### 3409.507 Solicitation provision and contract clause.

#### 3409.507–1 Solicitation provision.

The contracting officer must insert the provision in 3452.209–70 (Conflict of interest certification) in all solicitations for services above the simplified acquisition threshold.

#### 3409.507–2 Contract clause.

The contracting officer must insert the clause at 3452.209–71 (Conflict of interest) in all contracts for services above the simplified acquisition threshold.

## PART 3412—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

### Subpart 3412.2—Special Requirements for the Acquisition of Commercial Products and Commercial Services

Sec.
3412.203 Procedures for solicitation, evaluation, and award.

### Subpart 3412.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

3412.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.
3412.302 Tailoring of provisions and clauses for the acquisition of commercial products and commercial services.

**Authority:** 5 U.S.C. 301 and 20 U.S.C. 1018a.

### Subpart 3412.2—Special Requirements for the Acquisition of Commercial Products and Commercial Services

#### 3412.203 Procedures for solicitation, evaluation, and award.

As specified in 3413.003, simplified acquisition procedures for commercial products and commercial services may be used without regard to any dollar or timeframe limitations described in FAR subpart 13.5 when acquired by the FSA and used for its purposes.

### Subpart 3412.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

#### 3412.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

(f)(1) The clause at 3452.224–70 has been authorized for inclusion in acquisitions of commercial products and commercial services. Refer to 3424.70 for provisions related to the use of this clause.

(2) [Reserved]

#### 3412.302 Tailoring of provisions and clauses for the acquisition of commercial products and commercial services.

The HCA is authorized to approve waivers in accordance with FAR 12.302(c). The approved waiver may be either for an individual contract or for a class of contracts for the specific item. The approved waiver and supporting documentation must be incorporated into the contract file.

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

## PART 3413—SIMPLIFIED ACQUISITION PROCEDURES

Sec.

3413.000 Scope of part.
3413.003 Policy.

### Subpart 3413.3—Simplified Acquisition Methods

3413.303 Blanket purchase agreements (BPAs).
3413.303–5 Purchases under BPAs.

**Authority:** 5 U.S.C. 301 and 20 U.S.C. 1018a.

#### 3413.000 Scope of part.

#### 3413.003 Policy.

(c)(1)(iii) FSA may use simplified acquisition procedures for commercial items without regard to any dollar or time frame limitations described in FAR subpart 13.5.

(iv) FSA may use simplified acquisition procedures for non-commercial items up to $1,000,000 when the acquisition is set aside for small businesses, pursuant to 3419.502.

### Subpart 3413.3—Simplified Acquisition Methods

#### 3413.303 Blanket purchase agreements (BPAs).

#### 3413.303–5 Purchases under BPAs.

(b) Individual purchases under blanket purchase agreements for commercial items may exceed the simplified acquisition threshold but shall not exceed the threshold for the test program for certain commercial items in FAR 13.500(a).

## PART 3414—SEALED BIDDING

### Subpart 3414.4—Opening of Bids and Award of Contract

Sec.

3414.407 Mistakes in bids.
3414.407–3 Other mistakes disclosed before award.

**Authority:** 5 U.S.C. 301.

### Subpart 3414.4—Opening of Bids and Award of Contract

#### 3414.407 Mistakes in bids.

#### 3414.407–3 Other mistakes disclosed before award.

Authority is delegated to the HCA to make determinations under FAR 14.407–3(a) through (d).

## PART 3415—CONTRACTING BY NEGOTIATION

### Subpart 3415.2—Solicitation and Receipt of Proposals and Information

Sec.

3415.209 Solicitation provisions and contract clauses.

### Subpart 3415.3—Source Selection

3415.302 Source selection objective.
3415.302–70 Two-phase source selection.

### Subpart 3415.6—Unsolicited Proposals

3415.605 Content of unsolicited proposals.
3415.606 Agency procedures.

**Authority:** 5 U.S.C. 301 and 20 U.S.C. 1018a.

### Subpart 3415.2—Solicitation and Receipt of Proposals and Information

#### 3415.209 Solicitation provisions and contract clauses.

(a) The Freedom of Information Act (FOIA), 5 U.S.C. 552, may require ED to release data contained in an offeror's proposal even if the offeror has identified the data as restricted in accordance with the provision in FAR 52.215–1(e). The solicitation provision in 3452.215–70 (Release of restricted data) informs offerors that ED is required to consider release of restricted data under FOIA and Executive Order 12600.

(b) The contracting officer must insert the provision in 3452.215–70, in all solicitations that include a reference to FAR 52.215–1 (Instructions to Offerors—Competitive Acquisitions).

### Subpart 3415.3—Source Selection

#### 3415.302 Source selection objective.

#### 3415.302–70 Two-phase source selection.

(a) *Use.* FSA may utilize a two-phase process to solicit offers and select a source for award. The contracting officer can choose to use this optional method of solicitation when deemed beneficial to the FSA in meeting its needs as a PBO.

(b) *Phase one*—(1) *Publicizing.* The contracting officer must publish a notice in accordance with FAR subpart 5.2, except that the notice must include limited information as specified in 3405.207.

(2) *Information submitted by offerors.* Each offeror must submit basic information such as the offeror's qualifications, the proposed conceptual approach, costs likely to be associated with the approach, and past performance data, together with any additional information requested by the contracting officer.

(3) *Selection for participating in second phase.* The contracting officer must select the offerors that are eligible to participate in the second phase of the process. The contracting officer must limit the number of the selected offerors to the number of sources that the contracting officer determines is appropriate and in the best interests of the Federal Government.

(c) *Phase two.* (1) The contracting officer must conduct the second phase of the source selection consistent with FAR subparts 15.2 and 15.3, except as provided by 3405.207.

(2) Only sources selected in the first phase will be eligible to participate in the second phase.

### Subpart 3415.6—Unsolicited Proposals

#### 3415.605 Content of unsolicited proposals.

(d) Each unsolicited proposal must contain the following certification:

UNSOLICITED PROPOSAL CERTIFICATION BY OFFEROR

This is to certify, to the best of my knowledge and belief, that—

a. This proposal has not been prepared under Federal government supervision;

b. The methods and approaches stated in the proposal were developed by this offeror;

c. Any contact with employees of the Department of Education has been within the

limits of appropriate advance guidance set forth in FAR 15.604; and

d. No prior commitments were received from Departmental employees regarding acceptance of this proposal.

Date:

Organization:

Name:

Title:

(This certification must be signed by a responsible person authorized to enter into contracts on behalf of the organization.)

**3415.606 Agency procedures.**

(b)(1) The HCA or designee is the contact point to coordinate the receipt, control, and handling of unsolicited proposals.

(2) Offerors must direct unsolicited proposals to the HCA.

## PART 3416—TYPES OF CONTRACTS

### Subpart 3416.3—Cost-Reimbursement Contracts

Sec.
3416.303 Cost-sharing contracts.
3416.307 Contract clauses.

### Subpart 3416.4—Incentive Contracts

3416.402 Application of predetermined, formula-type incentives.
3416.402–2 Performance incentives.
3416.470 Award-term contracting.

### Subpart 3416.5—Indefinite-Delivery Contracts

3416.505 Ordering.

### Subpart 3416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3416.603 Letter contracts.
3416.603–3 Limitations.

**Authority:** 5 U.S.C. 301 and 20 U.S.C. 1018a.

### Subpart 3416.3—Cost-Reimbursement Contracts

**3416.303 Cost-sharing contracts.**

(b) *Application.* Costs that are not reimbursed under a cost-sharing contract may not be charged to the Federal Government under any other grant, contract, cooperative agreement, or other arrangement.

**3416.307 Contract clauses.**

(a) If the clause at FAR 52.216–7 (Allowable Cost and Payment) is used in a contract with a hospital, the contracting officer must modify the clause by deleting the words ''Federal Acquisition Regulation (FAR) subpart 31.2'' from paragraph (a)(1) and substituting ''45 CFR part 75, appendix IX.''

(b) The contracting officer must insert the clause at 3452.216–70 (Additional cost principles) in all solicitations of and resultant cost-reimbursement contracts with nonprofit organizations other than educational institutions, hospitals, or organizations listed in 2 CFR part 200, subpart E.

### Subpart 3416.4—Incentive Contracts

**3416.402 Application of predetermined, formula-type incentives.**

**3416.402–2 Performance incentives.**

(b) Award-term contracting may be used for performance-based contracts or task orders. See 3416.470 for the definition of *award-term contracting* and implementation guidelines.

**3416.470 Award-term contracting.**

(a) *Definition.* Award-term contracting is a method, based upon a pre-determined plan in the contract, to extend the contract term for superior performance and to reduce the contract term for substandard or poor performance.

(b) *Applicability.* A Contracting Officer may authorize use of an award-term incentive contract for acquisitions where the quality of contractor performance is of a critical or highly important nature. The basic contract term may be extended on the basis of the Federal Government's determination of the excellence of the contractor's performance. Additional periods of performance, which are referred to in this section as ''award terms,'' are available for possible award to the contractor. As award term(s) are awarded, each additional period of performance will immediately follow the period of performance for which the award term was granted. The contract may end at the base period of performance if the Federal Government determines that the contractor's performance does not reflect a level of performance as described in the award-term plan. Award-term periods may only be earned based on the evaluated quality of the performance of the contractor. Meeting the terms of the contract is not justification to award an award-term period. The use of an award-term plan does not exempt the contract from the requirements of FAR 17.207, with respect to performing due diligence prior to extending a contract term.

(c) *Approvals.* The Contracting Officer must justify the use of an award-term incentive contract in writing. The award-term plan approving official will be appointed by the HCA.

(d) *Disputes.* The Federal Government unilaterally makes all decisions regarding award-term evaluations, points, methodology used to calculate points, and the degree of the contractor's success.

(e) *Award-term limitations.* (1) Award periods may be earned during the base period of performance and each option period, except the last option period. Award-term periods may not be earned during the final option year of any contract.

(2) Award-term periods may not exceed twelve months.

(3) The potential award-term periods will be priced, evaluated, and considered in the initial contract selection process.

(f) *Implementation of extensions or reduced contract terms.* (1) An award term is contingent upon a continuing need for the supplies or services and the availability of funds. Award terms may be cancelled prior to the start of the period of performance at no cost to the Federal Government if there is not a continued need or available funding.

(2) The extension or reduction of the contract term is affected by a bilateral contract modification.

(3) Award-term periods occur after the period for which the award term was granted. Award-term periods effectively move option periods to later contract performance periods.

(4) Contractors have the right to decline the award of an award-term period. A contractor loses its ability to earn additional award terms if an earned Award-Term Period is declined.

(5) Changes to the contract award-term plan must be mutually agreed upon.

(g) *Clause.* Insert a clause substantially the same as the clause at 3452.216–71 (Award-term) in all solicitations and resulting contracts where an award-term incentive contract is anticipated.

### Subpart 3416.5—Indefinite-Delivery Contracts

**3416.505 Ordering.**

(b)(8) *Task order and delivery-order ombudsman.* The competition advocate at each contracting activity shall act as the task order and delivery-order contract ombudsman for purposes of FAR 16.505(b)(8).

### Subpart 3416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

**3416.603 Letter contracts.**

**3416.603–3 Limitations.**

If the HCA is to sign a letter contract as the contracting officer, the SPE signs the written determination under FAR 16.603–3.

## PART 3417—SPECIAL CONTRACTING METHODS

**Subpart 3417.1—Multiyear Contracting**

Sec.
3417.104 General.

**Subpart 3417.2—Options**

3417.204 Contracts.
3417.207 Exercise of options.

**Subpart 3417.5—Interagency Acquisitions**

3417.501 General.

**Subpart 3417.70—Modular Contracting**

3417.700 Modular contracting.

**Authority:** 31 U.S.C. 1535 and 20 U.S.C. 1018a.

### Subpart 3417.1—Multiyear Contracting

**3417.104 General.**

(b) The Head of the Contracting Activity (HCA) is the agency head for the purposes of FAR 17.104(b).

### Subpart 3417.2—Options

**3417.204 Contracts.**

(e) Except as otherwise provided by law, contract periods that exceed the five-year limitation specified in FAR 17.204(e) must be approved by—

(1) The HCA for individual contracts; or

(2) The SPE for classes of contracts.

**3417.207 Exercise of options.**

(f)(2) The Federal Government may accept price reductions offered by contractors at any time during contract performance. Acceptance of price reductions offered by contractors will not be considered renegotiations as identified in this subpart if they were not initiated or requested by the Federal Government.

(h) If a contract provision allows an option to be exercised within a specified time frame after funds become available, it must also specify that the date on which funds ''become available'' is the actual date funds become available to the contracting officer for obligation.

### Subpart 3417.5—Interagency Acquisitions

**3417.501 General.**

No other Federal department or agency may purchase property or services under contracts established or administered by FSA unless the purchase is approved by SPE for the requesting Federal department or agency.

### Subpart 3417.70—Modular Contracting

**3417.700 Modular contracting.**

(a) FSA may incrementally conduct successive procurements of modules of overall systems. Each module must be useful in its own right or useful in combination with the earlier procurement modules. Successive modules may be procured on a sole source basis under the following circumstances:

(1) Competitive procedures are used for awarding the contract for the first system module; and

(2) The solicitation for the first module included the following:

(i) A general description of the entire system that was sufficient to provide potential offerors with reasonable notice of the general scope of future modules;

(ii) Other sufficient information to enable offerors to make informed business decisions to submit offers for the first module; and

(iii) A statement that procedures, *i.e.,* the sole source awarding of follow-on modules, could be used for the subsequent awards.

(b) [Reserved]

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

## PART 3419—SMALL BUSINESS PROGRAMS

**Subpart 3419.2—Policies**

Sec.
3419.201 General policy.
3419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).

**Subpart 3419.5—Small Business Total Set-Asides, Partial Set-Asides, and Reserves**

3419.502 Setting aside acquisitions.
3419.502–8 Rejecting Small Business Administrative recommendations.
3419.502–70 Methods of conducting set-asides.

**Subpart 3419.8—Contracting With the Small Business Administration (the 8(a) Program)**

3419.810 SBA appeals.
3419.812 Contract administration.

**Authority:** 5 U.S.C. 301 and 20 U.S.C. 1018a.

### Subpart 3419.2—Policies

**3419.201 General policy.**

**3419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).**

The Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for facilitating the implementation of the Small Business Act, as described in FAR 19.201. The OSDBU develops rules, policy, procedures, and guidelines for the effective administration of ED's small business program.

### Subpart 3419.5—Small Business Total Set-Asides, Partial Set-Asides, and Reserves

**3419.502 Setting aside acquisitions.**

**3419.502–8 Rejecting Small Business Administration recommendations.**

(d) The SPE is the agency head for the purposes of FAR 19.502–8.

**3419.502–70 Methods of conducting set-asides.**

(a) Simplified acquisition procedures as described in FAR part 13 for the procurement of noncommercial services for FSA requirements may be used under the following circumstances:

(1) The procurement does not exceed $1,000,000;

(2) The procurement is conducted as a small business set-aside pursuant to section 15(a) of the Small Business Act;

(3) The price charged for supplies associated with the services are expected to be less than 20 percent of the total contract price;

(4) The procurement is competitive; and

(5) The procurement is not for construction.

(b) [Reserved]

### Subpart 3419.8—Contracting With the Small Business Administration (the 8(a) Program)

**3419.810 SBA appeals.**

(a) The SPE is the agency head for the purposes of FAR 19.810.

**3419.812 Contract administration.**

(d) The HCA is the agency head for the purposes of FAR 19.812(d).

## PART 3422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

**Subpart 3422.10—Service Contract Labor Standards**

Sec.
3422.1002 Statutory and Executive order requirements.
3422.1002–1 General.

**Authority:** 5 U.S.C. 301.

### Subpart 3422.10—Service Contract Labor Standards

**3422.1002 Statutory and Executive order requirements.**

**3422.1002–1 General.**

Consistent with 29 CFR 4.145, the five-year limitation set forth in the Service Contract Act of 1965, as amended (Service Contact Act), applies to each period of the contract individually, not the cumulative period of base and option periods. Accordingly, no contract subject to the Service

Contract Act issued by the Department of Education will have a base period or option period that exceeds five years.

## PART 3424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

### Subpart 3424.1—Protection of Individual Privacy

Sec.
3424.103 Procedures.
3424.170 Protection of human subjects.

### Subpart 3424.2—Freedom of Information Act

3424.201 Authority.
3424.203 Policy.

### Subpart 3424.7—The Family Educational Rights and Privacy Act

3424.701 Authority.
3424.702 Policy.
3424.703 Procedures.
3424.704 Contract clause.

**Authority:** 5 U.S.C. 301.

## Subpart 3424.1—Protection of Individual Privacy

### 3424.103 Procedures.

(a) If the Privacy Act of 1974 (Privacy Act) applies to a contract, the contracting officer must specify in the contract the disposition to be made of the system or systems of records upon completion of performance. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to ED, or to keep the records but take certain measures to keep the records confidential and protect the individual's privacy.

(b) If a notice of the system of records has not been published in the **Federal Register**, the contracting officer may proceed with the acquisition but must not award the contract until the notice is published, unless the contracting officer determines, in writing, that portions of the contract may proceed without maintaining information subject to the Privacy Act. In this case, the contracting officer may—

(1) Award the contract, authorizing performance only of those portions not subject to the Privacy Act; and

(2) After the notice is published and effective, authorize performance of the remainder of the contract.

### 3424.170 Protection of human subjects.

In this section, *research* means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. (34 CFR 97.102(d)) Research is considered to involve human subjects when a researcher obtains information about a living individual through intervention or interaction with the individual or obtains personally identifiable private information about an individual. Some categories of research are exempt in accordance with 34 CFR part 97.

(a) The contracting officer must insert the provision in 3452.224–71 (Notice about research activities involving human subjects) in any solicitation where a resultant contract will include, or is likely to include, research activities involving human subjects covered under 34 CFR part 97.

(b) The contracting officer must insert the clause at 3452.224–72 (Research activities involving human subjects) in any solicitation that includes the provision in 3452.224–71 (Notice about research activities involving human subjects) and in any resultant contract.

## Subpart 3424.2—Freedom of Information Act

### 3424.201 Authority.

The Department's regulations implementing the Freedom of Information Act, 5 U.S.C. 552, are in 34 CFR part 5.

### 3424.203 Policy.

(b) The Department's policy is to release all information incorporated into a contract and documents that result from the performance of a contract to the public under the Freedom of Information Act. The release or withholding of documents requested will be made on a case-by-case basis. Contracting officers must advise offerors and prospective contractors of the possibility that their submissions may be released under the Freedom of Information Act, not withstanding any restrictions that are included at the time of proposal submission. A clause substantially the same as the clause at 3452.224–70 (Release of information under the Freedom of Information Act) must be included in all solicitations and contracts.

## Subpart 3424.7—The Family Educational Rights and Privacy Act

### 3424.701 Authority.

This subpart implements the Family Educational Rights and Privacy Act (FERPA or the Act), 20 U.S.C. 1232g. Additional FERPA-implementing regulations are found at 34 CFR part 99.

### 3424.702 Policy.

It is the Department's policy to designate as its authorized representative, for purposes of compliance with FERPA, any contractor that will collect or receive access to personally identifiable information (PII) from student education records in connection with the conduct of an audit, evaluation, study, compliance review, or other Federal law enforcement activity. The Department will notify such contractors, or prospective contractors, prior to award or during contract performance of their obligations to protect student privacy in compliance with FERPA. Further, the Department will incorporate into all relevant solicitations and contracts the provisions and clauses needed to implement FERPA requirements. The aforementioned policies do not apply to Federal Student Aid (FSA) contracts for the origination, servicing, or collection of student financial aid, provided such contracts do not include tasks relating to the conduct of an audit, evaluation, study, compliance review, or other enforcement activity.

### 3424.703 Procedures.

During acquisition planning, the requiring activity, in consultation with the Department's Senior Agency Official for Privacy (SAOP) and Director of the Student Privacy Policy Office (SPPO Director), must review requirements to determine whether the contract will require the Department to share PII from students' education records with its contractor or authorize its contractor to collect such PII from students' education records for the purposes of conducting a study, evaluation, or audit of a federally supported education program, or the enforcement of Federal legal requirements that relate to such education programs. The requiring activity must notify the contracting officer of the determination.

### 3424.704 Contract clause.

The contracting officer must insert the clause at 3452.224–73 in all solicitations and contracts, including those for the acquisition of commercial products or commercial services, when a requiring activity has provided notification that a contractor will collect or receive access to PII from student education records in connection with carrying out an audit, evaluation, study, compliance review, or other Federal law enforcement activity on behalf of the Department. The contracting officer must fill out paragraph (b) of the clause at 3452.224–73 with the type(s) of PII to be collected or accessed by contractor.

## PART 3425—FOREIGN ACQUISITION

### Subpart 3425.1—Buy American—Supplies

Sec.
3425.103 Exceptions.

**Authority:** 5 U.S.C. 301.

### Subpart 3425.1—Buy American—Supplies

#### 3425.103 Exceptions.

The HCA approves determinations under FAR 25.103(b)(2)(i).

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

## PART 3427—PATENTS, DATA, AND COPYRIGHTS

### Subpart 3427.4—Rights in Data and Copyrights

Sec.
3427.409 Solicitation provisions and contract clauses.

**Authority:** 5 U.S.C. 301.

### Subpart 3427.4—Rights in Data and Copyrights

#### 3427.409 Solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at 3452.227–70 (Publication and publicity) in all solicitations and contracts other than purchase orders.

(b) The contracting officer must insert the clause at 3452.227–71 (Advertising of awards) in all solicitations and contracts other than purchase orders.

(c) The contracting officer must insert the clause at 3452.227–72 (Use and non-disclosure agreement) in all contracts over the simplified acquisition threshold, and in contracts under the simplified acquisition threshold, as appropriate.

(d) The contracting officer must insert the clause at 3452.227–73 (Limitations on the use or disclosure of Government-furnished information marked with restrictive legends) in all contracts of third party vendors who require access to Government-furnished information including other contractors' technical data, proprietary information, or software.

## PART 3428—BONDS AND INSURANCE

### Subpart 3428.3—Insurance

Sec.
3428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
3428.311–2 Agency solicitation provisions and contract clauses.

**Authority:** 5 U.S.C. 301.

### Subpart 3428.3—Insurance

#### 3428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

#### 3428.311–2 Agency solicitation and contract clauses.

The contracting officer must insert the clause at 3452.228–70 (Required insurance) in all solicitations and contracts when a cost-reimbursement contract is contemplated.

## PART 3430—COST ACCOUNTING STANDARDS ADMINISTRATION

### Subpart 3420.2—CAS Program Requirements

Sec.
3430.201 Contract requirements.
3430.201–5 Waiver.

**Authority:** 5 U.S.C. 301; 40 U.S.C. 121(c); and 41 U.S.C. 3102.

### Subpart 3430.201—CAS Program Requirements

#### 3430.201 Contract requirements.

#### 3430.201–5 Waiver.

(a) The Senior Procurement Executive (SPE) is the head of the agency for the purposes of FAR 30.201–5(a) and (b).

## PART 3431—CONTRACT COST PRINCIPLES AND PROCEDURES

### Subpart 3431.1—Applicability

Sec.
3431.101 Objectives.

### Subpart 3431.2—Contracts With Commercial Organizations

3421.205 Selected costs.
3431.205–71 Noncontractor travel.

**Authority:** 5 U.S.C. 301; 40 U.S.C. 121(c); and 41 U.S.C. 3102.

### Subpart 3431.1—Applicability

#### 3431.101 Objectives.

The Senior Procurement Executive (SPE) is the agency head's designee for the purposes of FAR 31.101.

### Subpart 3431.2—Contracts With Commercial Organizations

#### 3431.205 Selected costs.

#### 3431.205–71 Noncontractor travel.

The contracting officer may insert the clause at 3452.231–71 (Invitational travel costs) in solicitations and contracts when travel by other than Federal or contractor personnel will be required in performance of the contract.

## PART 3432—CONTRACT FINANCING

Sec.
3432.000 Scope of part.
3432.006 Reduction or suspension of contract payments upon finding of fraud.
3432.006–3 Responsibilities.

### Subpart 3432.4—Advance Payments for Other Than Commercial Acquisitions

3432.402 General.
3432.407 Interest.

### Subpart 3432.7—Contract Funding

3432.706 Contract clauses.
3432.706–2 Clauses for limitation of cost or funds.

**Authority:** 5 U.S.C. 301.

#### 3432.000 Scope of part.

#### 3432.006 Reduction or suspension of contract payments upon finding of fraud.

#### 3432.006–3 Responsibilities.

(b) Department personnel must report immediately and in writing any apparent or suspected instance where the contractor's request for advance, partial, or progress payments is based on fraud. The report must be made to the contracting officer and the Assistant Inspector General for Investigations. The report must outline the events, acts, or conditions which indicate the apparent or suspected violation and include all pertinent documents. The Assistant Inspector General for Investigations will investigate, as appropriate. If appropriate, the Office of the Inspector General will provide a report to the SPE.

### Subpart 3432.4—Advance Payments for Other Than Commercial Acquisitions

#### 3432.402 General.

The HCA is delegated the authority to make determinations under FAR 32.402(c)(1)(iii). This authority may not be redelegated.

#### 3432.407 Interest.

The HCA is designated as the official who may authorize advance payments without interest under FAR 32.407(d).

### Subpart 3432.7—Contract Funding

#### 3432.706 Contract clauses.

#### 3432.706–2 Clauses for limitation of cost or funds.

(c) The contracting officer must insert the clause at 3452.232–70 (Limitation of cost or funds) in all solicitations and contracts where a limitation of cost or limitation of funds clause is utilized.

(d) The contracting officer must insert the provision in 3452.232–71 (Incremental funding) in a solicitation if a cost-reimbursement contract using incremental funding is contemplated.

(e)(1) The contracting officer must insert the clause at 3452.232–72 (Limitation of Government's obligation) in solicitations and resultant incrementally funded fixed-price contracts or contract line items (CLIN(s)) of such contracts only if—

(i) Sufficient funds are not available to the Department at the time of contract award or exercise of option to fully fund the contract, option, or CLIN(s); and

(ii) The contract (excluding any options), any exercised option, or CLIN(s)—

(A) Is for severable services; and

(B) Does not exceed one year in length; and

(C) Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or

(D) Congress has otherwise authorized incremental funding.

(2) When a partially funded contract contains the clause at 3452.232–72 (Limitation of Government's obligation) upon learning that the contractor is approaching the price of the contract or the limit of the funds allotted to the contract or specified CLIN(s) or upon receipt of the contractor's notice under paragraph (b) of the clause at 3452.232–72, the contracting officer must promptly obtain funding information pertinent to the continuation of the applicable CLIN(s) or contract and notify the contractor in writing. This notification must provide that—

(i)(A) Additional funds have been allotted, in a specified amount;

(B) The contract or applicable CLIN(s) is not to be further funded;

(C) The contract or applicable CLIN(s) is to be terminated; or

(D) The Government is considering whether to allot additional funds;

(ii) The contractor is entitled by the contract terms to stop work on applicable CLIN(s) when the funding limit is reached; and

(iii) Any work beyond the funding limit will be at the contractor's risk.

(3) Upon learning that a partially funded contract will receive no further funds, the contracting officer must promptly give the contractor written notice of the decision not to provide funds.

(4) The contracting officer must ensure that sufficient funds are allotted to the contract or applicable CLIN(s) to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

(5) The Government must not accept supplies or services under an incrementally funded contract or CLIN(s) once funding limits are reached until the contracting officer has given the contractor notice, to be confirmed in writing, that funds are available.

(6) Government personnel encouraging a contractor to continue work in the absence of funds will incur a violation of Revised Statutes section 3679 (31 U.S.C. 1341) that may subject the violator to civil or criminal penalties.

(7) An incrementally funded fixed-price contract and/or CLIN(s) must be fully funded as soon as funds are available.

(8) The contracting officer must insert the information required in the table in paragraph (l) of the clause at 3452.232–72. Since the funds allotted must cover costs of termination of the applicable CLIN(s) for the Government's convenience, the contractor must provide the last date of performance subject to the contracting officer's concurrence. The contracting officer may revise the contractor's notification period in paragraph (b) of the clause from ''ninety'' to ''thirty'' or ''sixty'' days, as appropriate.

## PART 3433—PROTESTS, DISPUTES, AND APPEALS

### Subpart 3433.1—Protests

Sec.

3433.103 Protests to the agency.

**Authority:** 5 U.S.C. 301.

### Subpart 3433.1—Protests

#### 3433.103 Protests to the agency.

(d)(4)(i) All protests to the agency must be submitted to the contracting officer identified in the solicitation. Interested parties may request an independent review of their protest as an alternative to consideration by the contracting officer. If a protest is silent on this matter, the contracting officer will decide the protest. The Department will not consider an appeal of the contracting officer's protest decision.

(ii) If the protester requests an independent review, the HCA will decide the protest. In the event the HCA is not at least one level above the contracting officer, or if the HCA has been substantially involved in the procurement, the SPE will decide the protest.

(iii) Contracting officers must include the provision at 3452.233–70 in solicitations.

(f)(3) The contracting officer's HCA must approve the justification or determination to continue performance.

## SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

## PART 3437—SERVICE CONTRACTING

### Subpart 3437.1—Service Contracts—General

Sec.

3437.102 Policy.
3437.170 Observance of administrative closures.

### Subpart 3437.2—Advisory and Assistance Services

3437.204 Guidelines for determining availability of personnel.
3437.270 Services of consultants clauses.

### Subpart 3437.6—Performance-Based Acquisition

3437.601 General.
3437.670 Contract type.

**Authority:** 5 U.S.C. 301 and 20 U.S.C. 1018a.

### Subpart 3437.1—Service Contracts—General

#### 3437.102 Policy.

If a service contract requires one or more end items of supply, FAR subpart 37.1 and this subpart apply only to the required services.

#### 3437.170 Observance of administrative closures.

The contracting officer must insert the clause at 3452.237–71 (Observance of administrative closures) in all solicitations and contracts for services.

### Subpart 3437.2—Advisory and Assistance Services

#### 3437.204 Guidelines for determining availability of personnel.

The HCA is the agency head for the purposes of FAR 37.204.

#### 3437.270 Services of consultants clause.

The contracting officer must insert the clause at 3452.237–70 (Services of consultants) in all solicitations and resultant cost-reimbursement contracts for consultant services that do not provide services to Federal Student Aid (FSA).

### Subpart 3437.6—Performance-Based Acquisition

#### 3437.601 General.

It is the Department's policy that all new service contracts be performance-based, with clearly defined deliverable and performance standards. Any deviations from this policy must be fully justified in writing and approved by the HCA.

#### 3437.670 Contract type.

Award-term contracting may be used for performance-based contracts and task orders that provide opportunities for significant improvements and benefits to the Department. Use of award-term contracting must be approved in advance by the HCA.

## PART 3439—ACQUISITION OF INFORMATION TECHNOLOGY

### Subpart 3439.70—Department Requirements for Acquisition of Information Technology

Sec.

3439.701 Internet protocol version 6.
3439.702 Department information security and privacy requirements.

**Authority:** 5 U.S.C. 301 and 20 U.S.C. 1018a.

### Subpart 3439.70—Department Requirements for Acquisition of Information Technology

#### 3439.701 Internet protocol version 6.

The contracting officer must insert the clause at 3452.239–70 (internet protocol version 6 (IPv6)) in all solicitations and resulting contracts for hardware and software.

#### 3439.702 Department information security and privacy requirements.

The contracting officer must include the clause at 3452.239–71 (Department information security and privacy requirements) in all solicitations and contracts.

## SUBCHAPTER G—CONTRACT MANAGEMENT

## PART 3442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

### Subpart 3442.70—Contract Monitoring

Sec.
3442.7001 Litigation and claims clause.
3442.7002 Delays clause.

### Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

3442.7101 Policy and clause.

**Authority:** 5 U.S.C. 301.

### Subpart 3442.70—Contract Monitoring

#### 3442.7001 Litigation and claims clause.

The contracting officer must insert the clause at 3452.242–70 (Litigation and claims) in all solicitations and resultant cost-reimbursement contracts.

#### 3442.7002 Delays clause.

The contracting officer must insert the clause at 3452.242–71 (Notice to the Government of delays) in all solicitations and contracts other than purchase orders.

### Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

#### 3442.7101 Policy and clause.

(a) It is the policy of the Department that all meetings, conferences, and seminars be accessible to persons with disabilities.

(b) The contracting officer must insert the clause at 3452.242–73 (Accessibility of meetings, conferences, and seminars to persons with disabilities) in all solicitations and contracts where conferences are contemplated.

## PART 3443—CONTRACT MODIFICATIONS

### Subpart 3443.1—General

Sec.
3443.107 Contract clause.

**Authority:** 5 U.S.C. 301.

### Subpart 3443.1—General

#### 3443.107 Contract clause.

The contracting officer must insert a clause substantially the same as the clause at 3452.243–70 (Key personnel) in all solicitations and contracts in which it will be essential for the contracting officer to be notified that a change of designated key personnel is to take place by the contractor.

## PART 3445—GOVERNMENT PROPERTY

### Subpart 3445.3—Authorizing the Use and Rental of Government Property

Sec.
3445.302 Contracts with foreign governments or international organizations.

**Authority:** 5 U.S.C. 301.

### Subpart 3445.3—Authorizing the Use and Rental of Government Property

#### 3445.302 Contracts with foreign governments or international organizations.

Requests by, or for the benefit of, foreign governments or international organizations to use ED production and research property must be approved by the HCA. The HCA must determine the amount of cost to be recovered or rental charged, if any, based on the facts and circumstances of each case.

## PART 3447—TRANSPORTATION

### Subpart 3447.7—Foreign Travel

Sec.
3447.701 Foreign travel clause.

**Authority:** 5 U.S.C. 301.

### Subpart 3447.7—Foreign Travel

#### 3447.701 Foreign travel clause.

The contracting officer must insert the clause at 3452.247–70 (Foreign travel) in all solicitations and resultant cost-reimbursement contracts where foreign travel is contemplated.

## SUBCHAPTER H—CLAUSES AND FORMS

## PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### Subpart 3452.2—Text of Provisions and Clauses

Sec.
3452.201–70 Contracting Officer's Representative (COR).
3452.202–1 Definitions—Department of Education.
3452.204–70 Records management.
3452.204–71 Contractor security vetting requirements.
3452.208–72 Paperwork Reduction Act.
3452.209–70 Conflict of interest certification.
3452.209–71 Conflict of interest.
3452.215–70 Release of restricted data.
3452.216–70 Additional cost principles.
3452.216–71 Award-Term.
3452.224–70 Release of information under the Freedom of Information Act.
3452.224–71 Notice about research activities involving human subjects.
3452.224–72 Research activities involving human subjects.
3452.224–73 Protection of student privacy in compliance with FERPA.
3452.227–70 Publication and publicity.
3452.227–71 Advertising of awards.
3452.227–72 Use and non-disclosure agreement.
3452.227–73 Limitations on the use or disclosure of Government-furnished information marked with restrictive legends.
3452.228–70 Required insurance.
3452.231–71 Invitational travel costs.
3452.232–70 Limitation of cost or funds.
3452.232–71 Incremental funding.
3452.232–72 Limitation of Government's obligation.
3452.233–70 Agency level protests.
3452.237–70 Services of consultants.
3452.237–71 Observance of administrative closures.
3452.239–70 Internet protocol version 6 (IPv6).
3452.239–71 Department information security and privacy requirements.
3452.242–70 Litigation and claims.
3452.242–71 Notice to the Government of delays.
3452.242–73 Accessibility of meetings, conferences, and seminars to persons with disabilities.
3452.243–70 Key personnel.
3452.247–70 Foreign travel.

**Authority:** 5 U.S.C. 301.

### Subpart 3452.2—Text of Provisions and Clauses

#### 3452.201–70 Contracting Officer's Representative (COR).

As prescribed in 3401.604–70, insert a clause substantially the same as:

**Contracting Officer's Representative (COR) (Mar 2011)**

(a) The Contracting Officer's Representative (COR) is responsible for the technical aspects of the project, technical liaison with the contractor, and any other responsibilities that are specified in the contract. These responsibilities include inspecting all deliverables, including reports, and recommending acceptance or rejection to the contracting officer.

(b) The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes that affect the contract price, terms, or conditions. Any contractor requests for changes shall be

submitted in writing directly to the contracting officer or through the COR. No such changes shall be made without the written authorization of the contracting officer.

(c) The COR's name and contact information:

(d) The COR may be changed by the Government at any time, but notification of the change, including the name and address of the successor COR, will be provided to the contractor by the contracting officer in writing.

(End of Clause)

**3452.202–1 Definitions—Department of Education.**

As prescribed in 3402.201, insert the following clause in solicitations and contracts in which the clause at FAR 52.202–1 is required.

**Definitions—Department of Education (Mar 2011)**

(a) The definitions at FAR 2.101 are appended with those contained in Education Department Acquisition Regulations (EDAR) 3402.101.

(b) The EDAR is available via the internet at *www.ed.gov/policy/fund/reg/clibrary/edar.html.*

(End of Clause)

**3452.204–70 Records management.**

As prescribed in 3404.770, insert the following clause:

**Records Management (Oct 2023)**

*A. Applicability*

This clause applies to all Contractors and subcontractors that receive, create, work with, or otherwise handle Federal records, as defined in paragraph B, regardless of the medium in which the record exists.

*B. Definitions*

''Federal record,'' as defined in 44 U.S.C. 3301, means all recorded information, regardless of form or characteristics, made or received by the Department under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Department or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the U.S. Government or because of the informational value of data in them.

''Records inventory,'' as used in this clause, means a descriptive listing of each Federal record series or system that a Contractor creates, receives, or maintains in performance of its contract with the Department, together with an indication of its location, retention, custodian, volume, and other pertinent data.

*C. Requirements*

1. The Contractor shall comply with all applicable records management laws and regulations, as well as National Archives and Records Administration (NARA) records policies, including the Federal Records Act (44 U.S.C. chapters 21, 29, 31, and 33), NARA regulations at 36 CFR chapter XII, subchapter B, including 36 CFR part 1236, and those policies associated with the safeguarding of Federal records covered by the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a). These laws, regulations, and policies include the appropriate preservation of all Federal records, regardless of form or characteristics, mode of transmission, or state of completion.

2. In accordance with 36 CFR 1222.32, all data created for U.S. Government use and delivered to, or falling under the legal control of, the U.S. Government are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act, as amended (FOIA) (5 U.S.C. 552), and the Privacy Act, and must be managed and scheduled for disposition only as permitted by Federal statute or regulation.

3. In accordance with 36 CFR 1222.32, the Contractor shall maintain and manage all Federal records created for U.S. Government use, created during performance of this contract, and/or delivered to, or under the legal control of, the U.S. Government in accordance with Federal law. Electronic Federal records and associated metadata specified for delivery under this contract must be accompanied by sufficient technical documentation to facilitate their understanding and use.

4. (a) The Contractor shall provide a records inventory to the Contracting Officer Representative and Contracting Officer within 60 business days after contract or order award. The Department will review the records inventory for accuracy and accept or reject the records inventory within 60 business days after receipt.

(b) If the Contractor creates, receives, or maintains a Federal record series or system that is not included in the records inventory, the Contractor shall notify the Contracting Officer Representative and Contracting Officer within five business days of the Contractor's creation, receipt, or maintenance of such Federal record series or system, and provide the Contracting Officer with a revised records inventory. The Department will review the records inventory for accuracy and accept or reject the records inventory within 60 business days after receipt.

(c) The Department will periodically review, and may, in its sole discretion, update, the records inventory to ensure that it is current, accurate, and complete. The Department will provide the Contractor with a copy of any such updated records inventory.

5. The U.S. Government reserves the right to inspect, at any time, Contractor and subcontractor policies, procedures, and strategies for ensuring that Federal records are appropriately maintained.

6. The Contractor is responsible for preventing the alienation or unauthorized destruction of Federal records under this contract, including all forms of mutilation. Federal records may not be removed from the legal custody of the Department or destroyed except in accordance with the provisions of this contract and the Federal Records Act. Willful and unlawful destruction, damage, or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. The Contractor shall report any unlawful or accidental removal, defacing, alteration, or destruction of Federal records to the Contracting Officer within one business day.

7. The Contractor shall ensure that the appropriate personnel, administrative, technical, and physical safeguards are established to ensure the security and confidentiality of all Federal records in accordance with this contract and applicable law.

8. The Contractor shall not remove material from U.S. Government facilities or systems, or facilities or systems operated or maintained on the U.S. Government's behalf, without the express prior written authorization of the Contracting Officer.

9. The Contractor shall not create or maintain any Federal records containing any non-public Department information not specified or authorized by this contract.

10. (a) During the term of this contract, the Contractor shall not (i) disclose any Federal record, or any copy thereof, that contains information covered by 32 CFR part 2002 or FOIA (with the exception, for the purposes of FOIA, of information that exclusively implicates the exemption 4 interests of the Contractor); or (ii) sell any Federal record, or any copy thereof.

(b) After expiration or termination of this contract, the Contractor shall not retain or have access to any Federal record, or any copy thereof, that contains information covered by 32 CFR part 2002 or that is generally protected from public disclosure by an exemption under FOIA with the exception, for the purposes of FOIA, of information that exclusively implicates the exemption 4 interests of the Contractor.

(c) Under no circumstances shall the Contractor destroy Federal records except in accordance with the provisions of this contract and the Federal Records Act.

11. All Contractor employees assigned to this contract who create, work with, or otherwise handle Federal records are required to complete Department-provided records management training. The Contractor is responsible for confirming training has been completed according to Department policies, including initial training and any annual or refresher training.

12. The Contractor is required to notify the Contracting Officer of any contractual relationship (sub-contractor) in support of this contract requiring the disclosure of information, documentary material and/or Federal records generated under, or relating to, contracts. The Contractor (and any sub-contractor) is required to abide by U.S. Government and the Department's guidance for protecting sensitive, proprietary information, classified, and controlled unclassified information.

(a) The Contractor shall incorporate the substance of this clause, its terms and requirements including this paragraph, in all subcontracts requiring the disclosure to a subcontractor of information, documentary material, and/or Federal records generated under, or relating to, the performance of this contract, and require written subcontractor acknowledgement of the same.

(b) Violation by a subcontractor of any provision set forth in this clause will be attributed to the Contractor.

(End of Clause)

**3452.204–71 Contractor security vetting requirements.**

As prescribed in 3404.470–1, insert the following clause:

**Contractor Security Vetting Requirements (Oct 2023)**

(a) The Contractor and its subcontractors shall comply with Department of Education personnel, cyber, privacy, and security policy requirements set forth in ''Contractor Security Vetting Requirements'' at *http://www.ed.gov/fund/contract/about/bsp.html.*

(b) Contractor employees who will have access to proprietary or sensitive Department information including ''Controlled Unclassified Information'' as defined in 32 CFR 2002.4(h), Department IT systems, Contractor systems operated with Department data or interfacing with Department systems, or Department facilities or space, or perform duties in a school or in a location where children are present, must undergo a personnel security screening and receive a favorable determination and are subject to reinvestigation as described in the ''Contractor Vetting Security Requirements.'' Compliance with the ''Contractor Vetting Security Requirements,'' as amended, is required.

(c) The type of security investigation required to commence work on a Department contract is dictated by the position designation determination assigned by the Department. All Department Contractor positions are designated commensurate with their position risk/sensitivity, in accordance with title 5 of the Code of Federal Regulations (5 CFR 731.106) and OPM's Position Designation Tool (PDT) located at: *https://pdt.nbis.mil/.* The position designation determines the risk level and the corresponding level of background investigations required.

(d) The Contractor shall comply with all Contractor position designations established by the Department.

(e) The following are the Contractor employee positions required under this contract and their designated risk levels:

*High Risk (HR):* (Specify HR positions or Insert ''Not Applicable'')

*Moderate Risk (MR):* (Specify MR positions or Insert ''Not Applicable'')

*Low Risk (LR):* Specify LR positions or Insert ''Not Applicable'')

(f) For performance-based contracts where the Department has not identified required labor categories for Contractor positions, the Department considers the risk sensitivity of the services to be performed and the access to Department facilities and systems that will be required during performance, to determine the uniform Contractor position risk level designation for all Contractor employees who will be providing services under the contract. The uniform Contractor position risk level designation applicable to this performance-based contract is: (Contracting Officer to complete with overall risk level; or insert ''Not Applicable'').

(g) Only U.S. citizens will be eligible for employment on contracts requiring a Low Risk/Public Trust, Moderate Risk/Public Trust, High Risk/Public Trust, or a National Security designation.

(h) An approved waiver, in accordance with the ''Contractor Vetting Security Requirements,'' is required for any exception to the requirements of paragraph (g) of this section.

(i) The Contractor shall—

(1) Comply with the Principal Office (PO) processing requirements for personnel security screening;

(2) Ensure that no Contractor employee is placed in a higher risk position than for which the employee is approved;

(3) Ensure Contractor employees submit required security forms for reinvestigation in accordance with the time frames set forth in the ''Contractor Vetting Security Requirements'';

(4) Report to the COR any information (*e.g.,* personal conduct, criminal conduct, financial difficulties) that would raise a concern about the suitability of a Contractor employee or whether a Contractor employee's continued employment would promote the efficiency of the service or violate the public trust;

(5) Protect sensitive and Privacy Act-protected information, including ''Controlled Unclassified Information'' as defined in 32 CFR 2002.4(h), from unauthorized access, use, or misuse by its Contractor employees, prevent unauthorized access by others, and report any instances of unauthorized access, use, or misuse to the COR;

(6) Report to the COR any removal of a Contractor employee from a contract within one business day if removed for cause or within two business days if otherwise removed;

(7) Upon the occurrence of any of the events listed under paragraph (b) of the clause at FAR 52.204–9, Personal Identity Verification of Contractor Personnel, return a PIV ID to the COR within seven business days of the Contractor employee's departure; and

(8) Report to the COR any change to job activities that could result in a change in the Contractor employee's position or the need for increased security access.

(j) Failure to comply with any of the personnel security requirements in the ''Contractor Security Vetting Requirements'' at *http://www.ed.gov/fund/contract/about/bsp.html,* may result in a termination of the contract for default or cause.

(End of Clause)

**3452.208–72 Paperwork Reduction Act.**

As prescribed in 3408.871, insert the following clause in all relevant solicitations and contracts:

**Paperwork Reduction Act (Mar 2011)**

(a) The Paperwork Reduction Act of 1995 applies to contractors that collect information for use or disclosure by the Federal government. If the contractor will collect information requiring answers to identical questions from 10 or more people, no plan, questionnaire, interview guide, or other similar device for collecting information may be used without first obtaining clearance from the Chief Acquisition Officer (CAO) or the CAO's designee within the Department of Education (ED) and the Office of Management and Budget (OMB). Contractors and Contracting Officers' Representatives shall be guided by the provisions of 5 CFR part 1320, Controlling Paperwork Burdens on the Public, and should seek the advice of the Department's Paperwork Clearance Officer to determine the procedures for acquiring CAO and OMB clearance.

(b) The contractor shall obtain the required clearances through the Contracting Officer's Representative before expending any funds or making public contacts for the collection of information described in paragraph (a) of this clause. The authority to expend funds and proceed with the collection shall be in writing by the contracting officer. The contractor must plan at least 120 days for CAO and OMB clearance. Excessive delay caused by the Government that arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of Clause)

**3452.209–70 Conflict of interest certification.**

As prescribed in 3409.507–1, insert the following provision in all solicitations anticipated to result in contract actions for services above the simplified acquisition threshold:

**Conflict of Interest Certification (Mar 2011)**

(a)(1) The contractor, subcontractor, employee, or consultant, by signing the form in this clause, certifies that, to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to an organizational or personal conflict of interest, (see FAR subpart 9.5 for organizational conflicts of interest) (or apparent conflict of interest), for the organization or any of its staff, and that the contractor, subcontractor, employee, or consultant has disclosed all such relevant information if such a conflict of interest appears to exist to a reasonable person with knowledge of the relevant facts (or if such a person would question the impartiality of the contractor, subcontractor, employee, or consultant). Conflicts may arise in the following situations:

(i) *Unequal access to information.* A potential contractor, subcontractor, employee, or consultant has access to non-public information through its performance on a government contract.

(ii) *Biased ground rules.* A potential contractor, subcontractor, employee, or consultant has worked, in one government contract, or program, on the basic structure or ground rules of another government contract.

(iii) *Impaired objectivity.* A potential contractor, subcontractor, employee, or consultant, or member of their immediate family (spouse, parent, or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government

programs, in offering advice or recommendations to the government, or in providing technical assistance or other services to recipients of Federal funds as part of its contractual responsibility. ''Impaired objectivity'' includes but is not limited to the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:

(A) Financial interests or reasonably foreseeable financial interests in or in connection with products, property, or services that may be purchased by an educational agency, a person, organization, or institution in the course of implementing any program administered by the Department;

(B) Significant connections to teaching methodologies or approaches that might require or encourage the use of specific products, property, or services; or

(C) Significant identification with pedagogical or philosophical viewpoints that might require or encourage the use of a specific curriculum, specific products, property, or services.

(2) Offerors must provide the disclosure described above on any actual or potential conflict of interest (or apparent conflict of interest) regardless of their opinion that such a conflict or potential conflict (or apparent conflict of interest) would not impair their objectivity.

(3) In a case in which an actual or potential conflict (or apparent conflict of interest) is disclosed, the Department will take appropriate actions to eliminate or address the actual or potential conflict, including but not limited to mitigating or neutralizing the conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the conflict. In this clause, the term ''potential conflict'' means reasonably foreseeable conflict of interest.

(b) The contractor, subcontractor, employee, or consultant agrees that if ''impaired objectivity'', or an actual or potential conflict of interest (or apparent conflict of interest) is discovered after the award is made, it will make a full disclosure in writing to the contracting officer. This disclosure shall include a description of actions that the contractor has taken or proposes to take to avoid, mitigate, or neutralize the actual or potential conflict (or apparent conflict of interest).

(c) *Remedies.* The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid the appearance of a conflict of interest. If the contractor was aware of a potential conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the contracting officer, the Government may terminate the contract for default, or pursue such other remedies as may be permitted by law or this contract. These remedies include imprisonment for up to five years for violation of 18 U.S.C. 1001 and fines of up to $5000 for violation of 31 U.S.C. 3802. Further remedies include suspension or debarment from contracting with the Federal government. The contractor may also be required to reimburse the Department for costs the Department incurs arising from activities related to conflicts of interest. An example of such costs would be those incurred in processing Freedom of Information Act requests related to a conflict of interest.

(d) In cases where remedies short of termination have been applied, the contractor, subcontractor, employee, or consultant agrees to eliminate the organizational conflict of interest, or mitigate it to the satisfaction of the contracting officer.

(e) The contractor further agrees to insert in any subcontract or consultant agreement hereunder, provisions that conform substantially to the language of this clause, including specific mention of potential remedies and this paragraph (e).

(f) *Conflict of Interest Certification.*

The offeror, [insert name of offeror], hereby certifies that, to the best of its knowledge and belief, there are no present or currently planned interests (financial, contractual, organizational, or otherwise) relating to the work to be performed under the contract or task order resulting from Request for Proposal No. [insert number] that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) that would impinge on its ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term ''potential conflict'' means reasonably foreseeable conflict of interest. The offeror further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to the Government's satisfaction, such conflict of interest (or apparent conflict of interest).

Offeror's Name _____

RFP/Contract No. _____

Signature _____

Title _____

Date _____

(End of Provision)

**3452.209–71 Conflict of interest.**

As prescribed in 3409.507–2, insert the following clause in all contracts for services above the simplified acquisition threshold:

**Conflict of Interest (Mar 2011)**

(a)(1) The contractor, subcontractor, employee, or consultant has certified that, to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to an organizational or personal conflict of interest (see FAR subpart 9.5 for organizational conflicts of interest) (or apparent conflict of interest) for the organization or any of its staff, and that the contractor, subcontractor, employee, or consultant has disclosed all such relevant information if such a conflict of interest appears to exist to a reasonable person with knowledge of the relevant facts (or if such a person would question the impartiality of the contractor, subcontractor, employee, or consultant). Conflicts may arise in the following situations:

(i) *Unequal access to information*—A potential contractor, subcontractor, employee, or consultant has access to non-public information through its performance on a government contract.

(ii) *Biased ground rules*—A potential contractor, subcontractor, employee, or consultant has worked, in one government contract, or program, on the basic structure or ground rules of another government contract.

(iii) *Impaired objectivity*—A potential contractor, subcontractor, employee, or consultant, or member of their immediate family (spouse, parent, or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government programs, in offering advice or recommendations to the government, or in providing technical assistance or other services to recipients of Federal funds as part of its contractual responsibility. ''Impaired objectivity'' includes but is not limited to the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:

(A) Financial interests or reasonably foreseeable financial interests in or in connection with products, property, or services that may be purchased by an educational agency, a person, organization, or institution in the course of implementing any program administered by the Department;

(B) Significant connections to teaching methodologies that might require or encourage the use of specific products, property, or services; or

(C) Significant identification with pedagogical or philosophical viewpoints that might require or encourage the use of a specific curriculum, specific products, property, or services.

(2) Offerors must provide the disclosure described above on any actual or potential conflict (or apparent conflict of interest) of interest regardless of their opinion that such a conflict or potential conflict (or apparent conflict of interest) would not impair their objectivity.

(3) In a case in which an actual or potential conflict (or apparent conflict of interest) is disclosed, the Department will take appropriate actions to eliminate or address the actual or potential conflict (or apparent conflict of interest), including but not limited to mitigating or neutralizing the conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the conflict. In this clause, the term ''potential conflict'' means reasonably foreseeable conflict of interest.

(b) The contractor, subcontractor, employee, or consultant agrees that if ''impaired objectivity'', or an actual or potential conflict of interest (or apparent conflict of interest) is discovered after the award is made, it will make a full disclosure

in writing to the contracting officer. This disclosure shall include a description of actions that the contractor has taken or proposes to take, after consultation with the contracting officer, to avoid, mitigate, or neutralize the actual or potential conflict (or apparent conflict of interest).

(c) *Remedies.* The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid the appearance of a conflict of interest. If the contractor was aware of a potential conflict of interest prior to award or discovered an actual or potential conflict (or apparent conflict of interest) after award and did not disclose or misrepresented relevant information to the contracting officer, the Government may terminate the contract for default, or pursue such other remedies as may be permitted by law or this contract. These remedies include imprisonment for up to five years for violation of 18 U.S.C. 1001 and fines of up to $5000 for violation of 31 U.S.C. 3802. Further remedies include suspension or debarment from contracting with the Federal government. The contractor may also be required to reimburse the Department for costs the Department incurs arising from activities related to conflicts of interest. An example of such costs would be those incurred in processing Freedom of Information Act requests related to a conflict of interest.

(d) In cases where remedies short of termination have been applied, the contractor, subcontractor, employee, or consultant agrees to eliminate the organizational conflict of interest, or mitigate it to the satisfaction of the contracting officer.

(e) The contractor further agrees to insert in any subcontract or consultant agreement hereunder, provisions that conform substantially to the language of this clause, including specific mention of potential remedies and this paragraph (e).

(End of Clause)

**3452.215–70 Release of restricted data.**

As prescribed in 3415.209, insert the following provision in solicitations:

**Release of Restricted Data (Mar 2011)**

(a) Offerors are hereby put on notice that regardless of their use of the legend set forth in FAR 52.215–1(e), Restriction on Disclosure and Use of Data, the Government may be required to release certain data contained in the proposal in response to a request for the data under the Freedom of Information Act (FOIA). The Government's determination to withhold or disclose a record will be based upon the particular circumstance involving the data in question and whether the data may be exempted from disclosure under FOIA. In accordance with Executive Order 12600 and to the extent permitted by law, the Government will notify the offeror before it releases restricted data.

(b) By submitting a proposal or quotation in response to this solicitation:

(1) The offeror acknowledges that the Department may not be able to withhold or deny access to data requested pursuant to FOIA and that the Government's FOIA officials shall make that determination;

(2) The offeror agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by FOIA;

(3) The offeror acknowledges that proposals not resulting in a contract remain subject to FOIA; and

(4) The offeror agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under FOIA.

(c) Offerors are cautioned that the Government reserves the right to reject any proposal submitted with:

(1) A restrictive legend or statement differing in substance from the one required by the solicitation provision in FAR 52.215–1(e), Restriction on Disclosure and Use of Data, or

(2) A statement taking exceptions to the terms of paragraphs (a) or (b) of this provision.

(End of Provision)

**3452.216–70 Additional cost principles.**

Insert the following clause in solicitations and contracts as prescribed in 3416.307(b):

**Additional Cost Principles (Aug 1987)**

(a) *Bid and Proposal Costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and other agreements, including the development of scientific, cost, and other data needed to support the bids, proposals, and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs; bid and proposal costs of past accounting periods are unallowable as costs of the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs or pre-award costs.

(b) *Independent research and development costs.* Independent research and development is research and development that is not sponsored by Federal and non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocations of indirect costs of sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

(End of Clause)

**3452.216–71 Award-Term.**

As prescribed in 3416.470, insert a clause substantially the same as the following in all solicitations and contracts where an award-term arrangement is anticipated:

**Award-Term (Oct 2023)**

(a) The initial [insert initial contract term] contract term or ordering period may be extended or reduced on the basis of contractor performance, resulting in a contract term or an ordering period lasting at least [insert minimum contract term] years from the date of contract award, to a maximum of [insert maximum contract term] years after the date of contract award.

(b) The contractor's performance will be measured against stated standards by the performance monitors, who will report their findings to the Award Term Determining Official (or Board).

(c) Bilateral changes may be made to the award-term plan at any time. If agreement cannot be made within 60 days, the Government reserves the right to make unilateral changes prior to the start of an award-term period.

(d) The contractor will submit a brief written self-evaluation of its performance within X days after the end of the evaluation period. The self-evaluation report shall not exceed seven pages, and it may be considered in the Award Term Review Board's (ATRB's) (or Term Determining Official's) evaluation of the contractor's performance during this period.

(e) The contract term or ordering period requires bilateral modification to reflect the ATRB's decision. If the contract term or ordering period has one year remaining, the operation of the contract award-term feature will cease and the contract term or ordering period will not extend beyond the maximum term stated in the contract.

(f) Award terms that have not begun may be cancelled (rather than terminated), should the need for the items or services no longer exists. No equitable adjustments to the contract price are applicable, as this is not the same procedure as a termination for convenience.

(g) The decisions made by the ATRB or Term Determining Official may be made unilaterally. Alternate Dispute Resolution procedures shall be utilized when appropriate.

(End of Clause)

**3452.224–70 Release of information under the Freedom of Information Act.**

As prescribed in 3424.203, insert the following clause in solicitations and contracts.

**Release of Information Under the Freedom of Information Act (Mar 2011)**

By entering into a contract with the Department of Education, the contractor, without regard to proprietary markings, approves the release of the entire contract and all related modifications and task orders including, but not limited to:

(1) Unit prices, including labor rates;

(2) Statements of Work/Performance Work Statements generated by the contractor;

(3) Performance requirements, including incentives, performance standards, quality levels, and service level agreements;

(4) Reports, deliverables, and work products delivered in performance of the contract (including quality of service, performance against requirements/standards/service level agreements);

(5) Any and all information, data, software, and related documentation first provided under the contract;

(6) Proposals or portions of proposals incorporated by reference; and

(7) Other terms and conditions.

(End of Clause)

**3452.224–71 Notice about research activities involving human subjects.**

As prescribed in 3424.170, insert the following provision in any solicitation where a resultant contract will include, or is likely to include, research activities involving human subjects covered under 34 CFR part 97:

**Notice About Research Activities Involving Human Subjects (Oct 2023)**

(a) Applicable Regulations. In accordance with Department of Education regulations on the protection of human subjects, title 34, Code of Federal Regulations, part 97 (the Regulations), Contractors and subcontractors, engaged in covered (nonexempt) research activities are required to establish and maintain procedures for the protection of human subjects. In addition, the Contractor must notify other entities (known to the Contractor) engaged in the covered research activities of their responsibility to comply with the Regulations.

(b) Definitions.

(1) The Regulations define research as ''a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.'' (34 CFR 97.102(l)). If an activity follows a deliberate plan designed to develop or contribute to generalizable knowledge, it is research. Research includes activities that meet this definition, whether or not they are conducted under a program considered research for other purposes. For example, some demonstration and service programs may include research activities (34 CFR 97.102(l)).

(2) The Regulations define a human subject as a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual or obtains, uses, studies, analyzes, or generates identifiable private information. (34 CFR 97.102(e)(1)). Under this definition:

(i) The investigator gathers information about a living person through—

(A) Intervention—Manipulating the subject's environment for research purposes, as might occur when a new instructional technique is tested; or

(B) Interaction—Communicating or interacting with the individual, as occurs with surveys and interviews.

(ii) Identifiable private information is private information about a living person that can be linked to that individual (the identity of the subject is or may be readily ascertained by the investigator or associated with the information).

(iii) Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that an individual can reasonably expect will not be made public (for example, a school health record).

(c) Exemptions. 34 CFR 97.104(d) provides exemptions from the Federal Policy for the Protection of Human Subjects for research activities in which the only involvement of human subjects will be in one or more of the categories set forth in 34 CFR 97.104(d). However, if the research subjects are children, the exemption at 34 CFR 97.104(d)(2) (*i.e.,* research involving the use of educational tests, survey procedures, interview procedures or observation of public behavior) is modified by 34 CFR 97.401(b), as explained in paragraph (d) of this provision.

(d) Children as research subjects. 34 CFR 97.402(a) defines children as ''persons who have not attained the legal age for consent to interventions or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.'' 34 CFR 97.401(b) provides that, if the research involves children as subjects—

(1) The exemption in 34 CFR 97.104(d)(2) does not apply to activities involving—

(i) Survey or interview procedures involving children as subjects; or

(ii) Observations of public behavior of children in which the investigator or investigators will not participate in the activities being observed.

(2) The exemption in 34 CFR 97.104(d)(2) continues to apply, unmodified, by 34 CFR 97.401(b), to—

(i) Educational tests; and

(ii) Observations of public behavior in which the investigator or investigators will not participate in the activities being observed.

(e) Proposal Instructions. An offeror proposing to do research that involves human subjects must provide information to the Department on the proposed exempt and nonexempt research activities. The offeror should submit this information as an attachment to its technical proposal. No specific page limitation applies to this requirement, but the offeror should be brief and to the point.

(1) For exempt research activities involving human subjects, the offeror should identify the exemption(s) that applies and provide sufficient information to allow the Department to determine that the designated exemption(s) is appropriate.

(2) For nonexempt research activities involving human subjects, the offeror must cover the following seven points in the information it provides to the Department. This seven-point narrative can usually be provided in two pages or less:

(i) *Human subjects' involvement and characteristics:* Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, institutionalized individuals, or others who are likely to be vulnerable.

(ii) *Sources of materials:* Identify the sources of research material obtained from or about individually identifiable living human subjects in the form of specimens, records, or data.

(iii) *Recruitment and informed consent:* Describe plans for the recruitment of subjects and the consent procedures to be followed.

(iv) *Potential risks:* Describe potential risks (physical, psychological, social, financial, legal, educational, or other) and assess their likelihood and seriousness. Where appropriate, discuss alternative interventions and procedures that might be advantageous to the subjects.

(v) Protection against risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess the likely effectiveness of such procedures. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(vi) Importance of knowledge to be gained: Discuss why the risks to the subjects are reasonable in relation to the importance of the knowledge that may reasonably be expected to result.

(vii) Collaborating sites: If research involving human subjects will take place at collaborating site(s), name the sites and briefly describe their involvement or role in the research.

(3) If a reasonable potential exists that a need to conduct research involving human subjects may be identified after award of the contract and the offeror's proposal contains no definite plans for such research, the offeror should briefly describe the circumstances and nature of the potential research involving human subjects.

(f) Assurances and certifications.

(1) In accordance with the Regulations and the terms of this provision, all Contractors and subcontractors that will be engaged in research activities involving human subjects shall be required to comply with the requirements for Assurances and Institutional Review Board approvals, as set forth in the contract clause at 3452.224–72 (Research activities involving human subjects).

(2) The Contracting Officer reserves the right to require that the offeror have or apply for the assurance and provide documentation of Institutional Review Board (IRB) approval of the proposed research prior to award. Based on 34 CFR 97.114 Cooperative Research, any institution involved in cooperative research projects (*i.e.,* research projects covered by this Regulation that involve more than one institution) shall enter into a joint review arrangement or rely upon the approval of a single IRB (sIRB) and a reliance agreement for any research conducted within the United States.

(g) Additional information:

(1) The Regulations, and related information on the protection of human research subjects, can be found on the Department's protection of human subjects in research website: *https://www2.ed.gov/about/offices/list/ocfo/humansub.html.*

(2) Offerors may also contact the following office to obtain information about the

Regulations, the protection of human subjects, and related policies and guidelines: Protection of Human Subjects Coordinator, U.S. Department of Education, Office of Finance and Operations, Office of Acquisition, Grants, and Risk Management, 400 Maryland Avenue SW, Washington, DC 20202–4331. Email: *HumanSubjectsResearch@ed.gov.*

(End of Provision)

**3452.224–72 Research activities involving human subjects.**

As prescribed in 3424.170, insert the following clause in any contract that includes research activities involving human subjects covered under 34 CFR part 97:

**Research Activities Involving Human Subjects (Oct 2023)**

(a) In accordance with Department of Education (the ''Department'') regulations on the protection of human subjects in research, title 34, Code of Federal Regulations, part 97 (the Regulations), Contractors and subcontractors engaged in covered (nonexempt) research activities shall establish and maintain procedures for the protection of human subjects. The Contractor must include the substance of this clause in all subcontracts. In addition, the Contractor shall notify other entities (known to the Contractor) engaged in the covered research activities of their responsibility to comply with the regulations. The definitions in 34 CFR 97.102 apply to this clause. As used in this clause, ''covered research'' means research involving human subjects that is not exempt under 34 CFR 97.104 and 97.401(b).

(b) If the Department determines that proposed research activities involving human subjects are covered (*i.e.,* not exempt under the regulations), the Contracting Officer (CO) or Contacting Officer's Representative (COR) will require the Contractor to apply for the Federal Wide Assurance from the Office for Human Research Protections, U.S. Department of Health and Human Services, if the Contractor does not already have certification on file. The CO will also require that the Contractor obtain and send to the Department documentation of Institutional Review Board (IRB) review and approval of the proposed research.

(c) Under no condition shall the Contractor conduct, or allow to be conducted, any research activity involving human subjects prior to the Department's receipt of the certification that the proposed research has been reviewed and approved by the IRB (34 CFR 97.103(f)). No research involving human subjects shall be initiated under this contract until the Contractor has provided the CO (or the COR) a properly completed certification form certifying IRB review and approval of the research activity, and the CO or COR has acknowledged the receipt of such certification.

(d) In accordance with 34 CFR 97.109(f)(1), unless IRB or the Department determines otherwise, continuing review of research is not required in the following conditions:

1. Research is eligible for expedited review;

2. Research is reviewed by the IRB in accordance with the limited IRB review as described 34 CFR 97.104(d)(2)(iii); or

3. Research that is part of the IRB-approved study that has progressed to the point that it involves only one or both of the following:

i. data analysis, including analysis of identifiable private information or identifiable biospecimens, or

ii. accessing follow-up clinical data from interventions that subjects would undergo as part of clinical care.

(1) For each activity under this contract that requires continuing review, the Contractor shall submit an annual written representation to the CO or COR stating whether research activities have been reviewed and approved by the IRB within the previous 12 months. The Contractor may use the form titled ''U.S. Department of Health and Human Services (HHS) Subpart C Certification Form'' for this representation. For multi-institutional projects, the Contractor shall provide this representation on its behalf and on behalf of any subcontractor engaged in research activities for which continuing IRB reviews are required.

(2) If the IRB disapproves, suspends, terminates, or requires modification of any research activities under this contract, the Contractor shall immediately notify the CO in writing of the IRB's action.

(e) The Contractor shall bear full responsibility for performing, as safely as is feasible, all activities under this contract involving the use of human subjects and for complying with all applicable regulations and requirements concerning human subjects. Neither the Contractor, subcontractor, agents of the Contractor, or employees of the Contractor, nor any person, organization, institution, or group of any kind involved in the performance of such activities under this contract, shall be deemed to constitute an agent or employee of the Department or of the Federal government with respect to such activities. The Contractor agrees to discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the Contractor, subcontractor, or their employees.

(f) Upon discovery of any noncompliance with any of the requirements or standards as stated in this clause, the Contractor shall correct such noncompliance as soon as practicable, typically no later than 1 business day. If the CO determines, in consultation with the Protection of Human Subjects Coordinator, Office of Acquisition, Grants, and Risk Management, Office of Finance and Operations, or the sponsoring office, that the Contractor is not in compliance with the requirements or standards stated in this clause, the CO may suspend work under this contract, in whole or in part, until it is determined that the Contractor has corrected such noncompliance and the CO authorizes the continuation of work.

1. Initial notice of suspension. The initial notice of suspension under this clause may be communicated orally or in writing by the CO.

2. Notice of suspension of work. The CO shall provide written notice of suspension of work under this clause. The notice shall contain the following:

a. The effective date of suspension of work.

b. The requirements and/or standards for which the Contractor is out of compliance.

c. Any special instructions for the suspension of work.

3. Authorization to resume work. If the CO determines that the noncompliance has been remedied and it is in the best interest of the Government, the CO may authorize work to resume under the contract. The CO will provide written notice to the Contractor of such authorization.

(g) Non-compliance with the requirements or standards as stated in this clause may result in the Government termination of this contract for default, in full or in part, in accordance with FAR 49.401. Such termination may be in lieu of or in addition to suspension of work under the contract. Nothing herein shall be construed to limit the Government's right to terminate the contract for failure to fully comply with such requirements or standards.

(h) The Regulations, and related information on the protection of human research subjects, can be found on the Department's protection of human subjects in research website: *https://www2.ed.gov/about/offices/list/ocfo/humansub.html.*

Contractors may also contact the following office to obtain information about the regulations for the protection of human subjects and related policies and guidelines: Protection of Human Subjects Coordinator, U.S. Department of Education Office of Finance and Operations, Office of Acquisition, Grants, and Risk Management, 400 Maryland Avenue SW, Washington, DC 20202–4331. Email: *HumanSubjectsResearch@ed.gov.*

(End of Clause)

**3452.224–73 Protection of student privacy in compliance with FERPA.**

As prescribed in 3424.704, insert the following clause in solicitations and contracts:

**Protection of Student Privacy in Compliance With FERPA (Oct 2023)**

(a) Pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, the Department designates the Contractor to serve as an authorized representative of the Secretary of Education, solely for the purpose of carrying out an audit or evaluation of federally supported education programs, the enforcement or compliance with Federal legal requirements that relate to federally supported education programs, or conducting a study for or on behalf of the Department, to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction, as specified in the statement of work, the schedule, and other similar documents to the contract.

(b) The Contractor shall collect or receive access to the following personally identifiable information from student

education records that is protected by FERPA: [specify the PII from student education records to be collected or accessed by the Contractor, as identified by the requiring activity] (collectively, the PII).

(c) The Contractor shall only use the PII to meet the purpose set forth in paragraph (a) of this clause and for the activity, scope, and duration specified in the statement of work, the schedule, and other similar documents to the contract. Prior to collecting or receiving access to the PII, the Contractor shall establish policies and procedures, consistent with FERPA and other Federal confidentiality and privacy provisions, to protect the PII from further disclosure (except back to the Department) and unauthorized use, including limiting use of the PII to only authorized representatives with legitimate interests in the purpose set forth in paragraph (a) of this clause.

(d) To the extent required to ensure the Contractor's compliance with the provisions of FERPA and other Federal provisions, the Contractor shall afford the Department and its authorized agents access to all of the facilities, installations, technical capabilities, operations, documentation, records, databases, policies, procedures, and systems of the Contractor and any subcontractor.

(e) The Contractor shall limit access to the PII to the Contractor's personnel who require the PII to satisfy the Contractor's obligations under the contract.

(f) If the Contractor collects or receives access to the PII to conduct a study for, or on behalf of, an educational agency or institution, then the Contractor shall conduct such study in a manner that does not permit personal identification of parents and students by anyone other than representatives of the Contractor, or subcontractors, with legitimate interests in the study.

(g) Once the purpose for which the PII was collected or accessed is fully satisfied, the Contractor shall notify the Department immediately and seek the Department's instruction and authorization regarding destruction of the PII in accordance with law.

(h) If the Contractor subcontracts any of the contract work requiring collection or access to the PII, then the Contractor shall include this clause (including this paragraph (h)) in any such subcontract and, further, the Contractor shall ensure that subcontractors at any tier comply with all terms, conditions, and obligations imposed on the Contractor herein and under FERPA.

(i) Violation by a subcontractor of any provision set forth in this clause will be attributed to the Contractor.

(End of Clause)

### 3452.227–70 Publication and publicity.

As prescribed in 3427.409, insert the following clause in all solicitations and contracts other than purchase orders:

**Publication and Publicity (Mar 2011)**

(a) Unless otherwise specified in this contract, the contractor is encouraged to publish and otherwise promote the results of its work under this contract. A copy of each article or work submitted by the contractor for publication shall be promptly sent to the contracting officer's representative. The contractor shall also inform the representative when the article or work is published and furnish a copy in the published form.

(b) The contractor shall acknowledge the support of the Department of Education in publicizing the work under this contract in any medium. This acknowledgement shall read substantially as follows:

''This project has been funded at least in part with Federal funds from the U.S. Department of Education under contract number [Insert number]. The content of this publication does not necessarily reflect the views or policies of the U.S. Department of Education nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

(End of Clause)

### 3452.227–71 Advertising of awards.

As prescribed in 3427.409, insert the following clause in all solicitations and contracts other than purchase orders:

**Advertising of Awards (Mar 2011)**

The contractor agrees not to refer to awards issued by, or products or services delivered to, the Department of Education in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed by the Federal government or is considered by the Federal government to be superior to other products or services.

(End of Clause)

### 3452.227–72 Use and non-disclosure agreement.

As prescribed in 3427.409, insert the following clause in all contracts over the simplified acquisition threshold, and in contracts under the simplified acquisition threshold as appropriate:

**Use and Non-Disclosure Agreement (Mar 2011)**

(a) Except as provided in paragraph (b) of this clause, proprietary data, technical data, or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be provided to third parties unless the intended recipient completes and signs the use and non-disclosure agreement in paragraph (c) of this clause prior to release or disclosure of the data.

(1) The specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose proprietary data or technical data subject to limited rights, or computer software subject to restricted rights must be stipulated in an attachment to the use and non-disclosure agreement.

(2) For an intended release, disclosure, or authorized use of proprietary data, technical data, or computer software subject to special license rights, modify paragraph (c)(1)(iv) of this clause to enter the conditions, consistent with the license requirements, governing the recipient's obligations regarding use, modification, reproduction, release, performance, display, or disclosure of the data or software.

(b) The requirement for use and non-disclosure agreements does not apply to Government contractors that require access to a third party's data or software for the performance of a Government contract that contains the clause at 3452.227–73, Limitations on the use or disclosure of Government-furnished information marked with restrictive legends.

(c) The prescribed use and non-disclosure agreement is:

*Use and Non-Disclosure Agreement*

The undersigned, *[Insert Name],* an authorized representative of the *[Insert Company Name],* (which is hereinafter referred to as the ''recipient'') requests the Government to provide the recipient with proprietary data, technical data, or computer software (hereinafter referred to as ''data'') in which the Government's use, modification, reproduction, release, performance, display, or disclosure rights are restricted. Those data are identified in an attachment to this agreement. In consideration for receiving such data, the recipient agrees to use the data strictly in accordance with this agreement.

(1) The recipient shall—

(i) Use, modify, reproduce, release, perform, display, or disclose data marked with Small Business Innovative Research (SBIR) data rights legends only for government purposes and shall not do so for any commercial purpose. The recipient shall not release, perform, display, or disclose these data, without the express written permission of the contractor whose name appears in the restrictive legend (the contractor), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these data to submit offers for, or perform, contracts with the recipient. The recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and non-disclosure agreement prior to disclosing or releasing these data to such persons. Such an agreement must be consistent with the terms of this agreement.

(ii) Use, modify, reproduce, release, perform, display, or disclose proprietary data or technical data marked with limited rights legends only as specified in the attachment to this agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this agreement or expressly permitted in writing by the contractor.

(iii) Use computer software marked with restricted rights legends only in performance of contract number *[insert contract number(s)].* The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share; or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend.

(iv) Use, modify, reproduce, release, perform, display, or disclose data marked

with special license rights legends [To be completed by the contracting officer. See paragraph (a)(2) of this clause. Omit if none of the data requested is marked with special license rights legends].

(2) The recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these data from inadvertent release or disclosure to unauthorized third parties.

(3) The recipient agrees to accept these data ''as is'' without any Government representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding data specified in a contract for the performance of that contract.

(4) The recipient may enter into any agreement directly with the contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these data.

(5) The recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of data received from the Government with restrictive legends by the recipient or any person to whom the recipient has released or disclosed the data.

(6) The recipient is executing this agreement for the benefit of the contractor. The contractor is a third party beneficiary of this agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the recipient or any other person to whom the recipient has released or disclosed the data, to seek damages from any breach of this agreement, or to otherwise enforce this agreement.

(7) The recipient agrees to destroy these data, and all copies of the data in its possession, no later than 30 days after the date shown in paragraph (8) of this agreement, to have all persons to whom it released the data do so by that date, and to notify the contractor that the data have been destroyed.

(8) This agreement shall be effective for the period commencing with the recipient's execution of this agreement and ending upon *[Insert Date].* The obligations imposed by this agreement shall survive the expiration or termination of the agreement.

[*Insert business name.*]
Recipient's Business Name

[*Have representative sign.*]
Authorized Representative

[*Insert date.*]
Date

[*Insert name and title.*]
Representative's Typed Name and Title

(End of Clause)

### 3452.227–73 Limitations on the use or disclosure of Government-furnished information marked with restrictive legends.

As prescribed in 3427.409, insert the following clause in all contracts of third party vendors who require access to Government-furnished information including other contractors' technical data, proprietary information, or software:

**Limitations on the Use or Disclosure of Government–Furnished Information Marked With Restrictive Legends (Mar 2011)**

(a) For contracts under which data are to be produced, furnished, or acquired, the terms *limited rights* and *restricted rights* are defined in the rights in data—general clause (FAR 52.227–14).

(b) Proprietary data, technical data, or computer software provided to the contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *Proprietary data with legends that serve to restrict disclosure or use of data.* The contractor shall use, modify, reproduce, perform, or display proprietary data received from the Government with proprietary or restrictive legends only in the performance of this contract. The contractor shall not, without the express written permission of the party who owns the data, release, or disclose such data or software to any person.

(2) *GFI marked with limited or restricted rights legends.* The contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(3) *GFI marked with specially negotiated license rights legends.* The contractor shall use, modify, reproduce, release, perform, or display proprietary data, technical data, or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the use and non-disclosure agreement. The contractor shall modify paragraph (c)(1)(iii) of the use and non-disclosure agreement (3452.227–72) to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(c) Indemnification and creation of third party beneficiary rights.

(1) The contractor agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of proprietary data, technical data, or computer software received from the Government with restrictive legends by the contractor or any person to whom the contractor has released or disclosed such data or software.

(2) The contractor agrees that the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the contractor, or any person to whom the contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of proprietary data, technical data, or computer software subject to restrictive legends.

(End of Clause)

### 3452.228–70 Required insurance.

As prescribed in 3428.311–2, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

**Required Insurance (Mar 2011)**

(a) The contractor shall procure and maintain such insurance as required by law or regulation, including but not limited to the requirements of FAR subpart 28.3. Prior written approval of the contracting officer shall be required with respect to any insurance policy, the premiums for which the contractor proposes to treat as a direct cost under this contract, and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the contracting officer for approval upon request.

(b) Unless otherwise authorized in writing by the contracting officer, the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of, or damage to, Government property.

(End of Clause)

### 3452.231–71 Invitational travel costs.

As prescribed in 3431.205–71, insert a provision substantially the same as the following:

**Invitational Travel Costs (Oct 2023)**

No invitational travel, which is defined as Official Government travel conducted by a non-Federal employee in order to provide a ''Direct Service'' (*e.g.,* presenting on a topic, serving as a facilitator, serving on a Federal Advisory Committee Act, or advising in an area of expertise to the Government, may be provided under this contract or in association with this contract unless consent is provided below. The cost of invitational travel under this contract not identified in the consent section of this clause is unallowable unless the Contractor receives written consent from the Contracting Officer prior to the incurrence of the cost. If the Contractor wishes to be reimbursed for a cost related to invitational travel, a request must be in writing at least 21 days prior to the day that costs would be incurred. The Contractor must include in its request the following: why the invitational travel cost is integral to fulfill a Government requirement in the contract, and the proposed cost that must be in accordance with Federal Travel Regulations. The lack of a timely response from the Contracting Officer must not constitute constructive acceptance of the allowability of the proposed charge.

Consent is hereby given to the Contractor to _____.

(End of Clause)

**3452.232–70 Limitation of cost or funds.**

The following clause shall be inserted in all contracts that include a Limitation of cost or Limitation of funds clause in accordance with 3432.706–2:

**Limitation of Cost or Funds (Mar 2011)**

(a) Under the circumstances in FAR 32.704(a)(1), the contractor shall submit the following information in writing to the contracting officer:

(1) Name and address of the contractor.

(2) Contract number and expiration date.

(3) Contract items and amounts that will exceed the estimated cost of the contract or the limit of the funds allotted.

(4) The elements of cost that changed from the original estimate (for example: labor, material, travel, overhead), furnished in the following order:

(i) Original estimate.

(ii) Costs incurred to date.

(iii) Estimated cost to completion.

(iv) Revised estimate.

(v) Amount of adjustment.

(5) The factors responsible for the increase.

(6) The latest date by which funds must be available to the contractor to avoid delays in performance, work stoppage, or other impairments.

(b) A fixed fee provided in a contract may not be changed if a cost overrun is funded. Changes in a fixed fee may be made only to reflect changes in the scope of work that justify an increase or decrease in the fee.

(End of Clause)

**3452.232–71 Incremental funding.**

As prescribed in 3432.706–2, insert the following provision in solicitations if a cost-reimbursement contract using incremental funding is contemplated:

**Incremental Funding (Mar 2011)**

Sufficient funds are not presently available to cover the total cost of the complete project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause titled ''Limitation of Funds'' in FAR 52.232–22. Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover an estimated base performance period. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the entire period of performance. This intent notwithstanding, the Government will not be obligated to reimburse the contractor for costs incurred in excess of the periodic allotments, nor will the contractor be obligated to perform in excess of the amount allotted.

(End of Provision)

**3452.232–72 Limitation of Government's Obligation.**

As prescribed in 3432.706–2(c), insert the following clause. The Contracting Officer may vary the 90-day period from 90 to 30 or 60 days and the 85 percent from 85 to 75 percent. ''Task Order,'' ''contract,'' or other appropriate designation may be substituted for ''CLIN(s)'' wherever that word appears in the clause:

**Limitation of Government's Obligation (Oct 2023)**

Sufficient funds are not presently available to cover the total price of the CLIN(s) listed in paragraph (l) below. The CLIN(s) identified in paragraph (l) below are incrementally funded to cover the identified period of performance. Additional funds are intended to be allotted to the applicable CLIN(s) by contract modification up to and including the full price of the entire period of performance. This notwithstanding, the Government will not be obligated to pay the Contractor for amounts payable in excess of the amount actually allotted, nor will the Contractor be obligated to perform in excess of such amount.

(a) The CLIN(s) in paragraph (l) of this clause is/are incrementally funded. Paragraph (l) also lists the allotment amount presently available for payment and allotted to the CLIN(s), inclusive of any termination costs for the Government's convenience, and the allotment schedule that provides the last date of Contractor performance for which it is estimated the allotted amount will cover. The parties contemplate that the Government may allot additional funds incrementally to the applicable CLIN(s) under the contract, up to the full price specified in the contract. The Contractor agrees to perform work under the applicable CLIN(s) up to the point at which the total amount paid and payable by the Government under the contract for the applicable CLIN(s), including estimated costs in the event of termination of those CLIN(s) for the Government's convenience, approximates the total amount currently allotted to such CLIN(s).

(b) Notwithstanding the dates specified in the allotment schedule in paragraph (l) of this clause, the Contractor shall notify the Contracting Officer in writing at least ninety (90) days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for the Government's convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable CLIN(s). The notification will state (1) the estimated date when that point will be reached, and (2) an estimate of additional funding, if any, needed to continue performance of applicable CLIN(s) up to the date in paragraph (l) of this clause, or to a mutually agreed upon substitute date.

(c) If, after notification pursuant to paragraph (b) of this clause, additional funds are not allotted by the date identified in paragraph (l), the date identified in the Contractor's notification, or by an agreed substitute date, upon the Contractor's written request, the Contracting Officer may terminate for the Government's convenience any CLIN(s) for which additional funds have not been allotted. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request to terminate the applicable CLIN(s), and the Contracting Officer may terminate such CLIN(s) on that later date. In no event is the Contractor authorized to continue work on those CLIN(s) beyond the time when the amount payable, to include costs of termination for the Government's convenience, is equal to the funds allotted.

(d) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated in paragraph (l) of this clause, in amounts sufficient for timely performance of the CLIN(s) identified in paragraph (l) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, the Contractor may request an equitable adjustment to the price or prices (including appropriate target, billing, and ceiling prices, where applicable) of the applicable CLIN(s), or in the time of delivery, or both, by written request to the Contacting Officer with sufficient documentation to support such equitable adjustment. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause titled ''Disputes.'' Notwithstanding anything to the contrary herein, in no event will an equitable adjustment under this paragraph (d) be due to the Contractor for costs that arise from or relate to the Contractor's breach of the notification obligations in paragraph (b) of this clause.

(e) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to pay for goods or services, to include reimbursement of costs for termination for the Government's convenience, in excess of the total amount allotted by the Government to the CLIN(s) identified in paragraph (l) of this clause; and

(2) The Contractor is not authorized to continue performance of the CLIN(s) identified in paragraph (l) of this clause in excess of the amount allotted by the Government to the applicable CLIN(s).

(3) As used in this clause, the total amount payable by the Government in the event of termination of applicable CLIN(s) for convenience includes reasonable costs, profit, and termination settlement costs for those item(s).

(f) No communication or representation in any form other than in writing from the Contracting Officer shall affect the amount allotted by the Government to this contract and applicable CLIN(s). The Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to the applicable CLIN(s), whether incurred during the course of the contract or as a result of termination.

(g) The Government may at any time prior to termination allot additional funds for the performance of the CLIN(s) identified in paragraph (l) of this clause.

(h) When additional funds are allotted for continued performance of the CLIN(s) identified in paragraph (l) of this clause, the parties will agree as to the period of contract performance that will be covered by the

funds. The provisions of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(i) The termination provisions of this clause do not limit the rights of the Government to terminate the contract, in whole or in part, for cause in the event of any breach or default by the Contractor. The provisions of this clause are limited to the work and allotment of funds for the CLIN(s) set forth in paragraph (l) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraph (d) of this clause.

(j) Nothing in this clause affects the right of the Government to terminate this contract, in whole or in part, for convenience or cause.

(k) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(l) Incremental funds are allotted to the CLIN(s) under this contract as follows:

| CLIN | Amount allotted | Last date of performance |
|---|---|---|
| | | |

(End of Clause)

### 3452.233–70 Agency level protests.

As prescribed in 3433.103, insert the following clause:

**Agency Level Protests (Oct 2023)**

All protests to the agency must be submitted to the Contracting Officer. In accordance with FAR 33.103(d)(4), interested parties may request an independent review at a level above the Contracting Officer as an alternative to consideration by the Contracting Officer. If a protest is silent on this matter, consideration and decision will be made by the Contracting Officer.

(End of Provision)

### 3452.237–70 Services of consultants.

As prescribed in 3437.270, insert the following clause in all solicitations and resultant cost-reimbursement contracts that do not provide services to FSA:

**Services of Consultants (Mar 2011)**

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of the contract entitled ''Subcontracts'' (FAR 52.244–2), the prior written approval of the contracting officer shall be required—

(a) If any employee of the contractor is to be paid as a ''consultant'' under this contract; and

(b)(1) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, $800, exclusive of travel costs, or if the services of any consultant under this contract will exceed 10 days in any calendar year.

(2) If that contracting officer's approval is required, the contractor shall obtain and furnish to the contracting officer information concerning the need for the consultant services and the reasonableness of the fee to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by the consultant to others for performing consultant services of a similar nature.

(End of Clause)

### 3452.237–71 Observance of administrative closures.

As prescribed in 3437.170, insert the following clause in all solicitations and service contracts:

**Observance of Administrative Closures (Mar 2011)**

(a) The contract schedule identifies all Federal holidays that are observed under this contract. Contractor performance is required under this contract at all other times, and compensated absences are not extended due to administrative closures of Government facilities and operations due to inclement weather, Presidential decree, or other administrative issuances where Government personnel receive early dismissal instructions.

(b) In cases of contract performance at a Government facility when the facility is closed, the vendor may arrange for performance to continue during the closure at the contractor's site, if appropriate.

(End of Clause)

### 3452.239–70 Internet protocol version 6 (IPv6).

As prescribed in 3439.701, insert the following clause in all solicitations and resulting contracts for hardware and software:

**Internet Protocol Version 6 (Oct 2023)**

(a) Any system hardware, software, firmware, or networked component (voice, video, or data) developed, procured, or acquired in support or performance of this contract shall be capable of transmitting, receiving, processing, forwarding, and storing digital information across system boundaries utilizing the next-generation internet Protocol (IP) version 6 (IPv6) as defined in revised USGv6 profile (most recent version of NIST Special Publication 500–267B) and NISTv6 profile (most recent version of NIST Special Publication 500–267A).

(b) Specifically, any new IP product or system developed, acquired, or produced must—

(1) Provide IPv6 technical capabilities as outlined in the most recent version of USGv6 Capabilities Table (UCT);

(2) Maintain interoperability with both IPv6 and any existing IPv4 systems and products; and

(3) Have available Contractor/vendor IPv6 technical support for development and implementation and fielded product management.

(c) Any exceptions to the use of IPv6 require the agency's CIO to give advance, written approval.

(End of Clause)

### 3452.239–71 Department information security and privacy requirements.

As prescribed in 3439.702, include the following clause in all solicitations and contracts.

**Department Information Security and Privacy Requirements (Oct 2023)**

(a) The Contractor shall, at all times, maintain compliance with the most current version of Department security requirements as set forth in ''Department Information Security and Privacy Requirements.'' These requirements are posted at *http://www.ed.gov/fund/contract/about/bsp.html.*

(b) The Contractor shall be notified when the ''Department Information Security and Privacy Requirements'' have been updated.

(c) If any such change causes a material increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contractor may request an equitable adjustment to the contract price or the delivery schedule, as applicable. The Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(d) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of notice of the changed requirement. However, if the Contracting Officer determines that the facts justify it, the Contracting Officer may receive and act upon the Contractor's request for equitable adjustment submitted before final payment of the contract. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) The Contractor shall incorporate the substance of this clause, its terms and requirements, including this paragraph, in all subcontracts, and require written subcontractor acknowledgement of the same. Violation by a subcontractor of any provision set forth in this clause will be attributed to the Contractor.

(f) Failure to comply with this clause, including the embedded Department Information Security and Privacy Requirements, may result in a termination of the contract for default or cause.

(g) Performance of this contract [ ] does include [ ] does not include the following: access to, collection of, or maintenance of information on behalf of the Department; or Department information technology (IT) products, systems, or hardware that are (1) used or operated by the Contractor on behalf of the Department, or (2) used in the performance of services or the furnishing of products. IT products, systems, hardware, and services include agency-hosted, outsourced, and cloud-based solutions, as well as incidental IT equipment that is acquired by the Contractor to support contract performance. When ''does include'' is selected, the categorizations shown below apply:

(1) In accordance with the Federal Information Processing Standard (FIPS 199),

Standards for Security Categorization of Federal Information and Information Systems, the Information Security Categorization applicable to each security objective has been determined to be:

Confidentiality: [ ] Low [ ] Moderate [ ] High
Integrity: [ ] Low [ ] Moderate [ ] High
Availability: [ ] Low [ ] Moderate [ ] High
Overall Risk Level: [ ] Low [ ] Moderate [ ] High

(2) Performance of this contract [ ] does involve [ ] does not involve Personally Identifiable information (PII) as defined in OMB A–130 (2016).

(3) Performance of this contract [ ] does involve [ ] does not involve ''Controlled Unclassified Information'' as defined in 32 CFR 2002.4(h).

(End of Clause)

**3452.242–70 Litigation and claims.**

As prescribed in 3442.7001, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

**Litigation and Claims (Mar 2011)**

(a) The contractor shall give the contracting officer immediate notice in writing of—

(1) Any legal action, filed against the contractor arising out of the performance of this contract, including any proceeding before any administrative agency or court of law, and also including, but not limited to, the performance of any subcontract hereunder; and

(2) Any claim against the contractor for cost that is allowable under the ''allowable cost and payment'' clause.

(b) Except as otherwise directed by the contracting officer, the contractor shall immediately furnish the contracting officer copies of all pertinent papers received under that action or claim.

(c) If required by the contracting officer, the contractor shall—

(1) Effect an assignment and subrogation in favor of the Government of all the contractor's rights and claims (except those against the Government) arising out of the action or claim against the contractor; and

(2) Authorize the Government to settle or defend the action or claim and to represent the contractor in, or to take charge of, the action.

(d) If the settlement or defense of an action or claim is undertaken by the Government, the contractor shall furnish all reasonable required assistance. However, if an action against the contractor is not covered by a policy of insurance, the contractor shall notify the contracting officer and proceed with the defense of the action in good faith.

(e) To the extent not in conflict with any applicable policy of insurance, the contractor may, with the contracting officer's approval, settle any such action or claim.

(f)(1) The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the contractor would have been compensated by insurance that was required by law, regulation, contract clause, or other written direction of the contracting officer, but that the contractor failed to secure through its own fault or negligence.

(2) In any event, unless otherwise expressly provided in this contract, the contractor shall not be reimbursed or indemnified by the Government for any cost or expense of liability that the contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may arise from the performance of this contract.

(End of Clause)

**3452.242–71 Notice to the Government of delays.**

As prescribed in 3442.7002, insert the following clause in all solicitations and contracts other than purchase orders:

**Notice to the Government of Delays (Mar 2011)**

The contractor shall notify the contracting officer of any actual or potential situation, including but not limited to labor disputes, that delays or threatens to delay the timely performance of work under this contract. The contractor shall immediately give written notice thereof, including all relevant information.

(End of Clause)

**3452.242–73 Accessibility of meetings, conferences, and seminars to persons with disabilities.**

As prescribed in 3442.7101(b), insert the following clause in all solicitations and contracts:

**Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities (Mar 2011)**

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of Clause)

**3452.243–70 Key personnel.**

As prescribed in 3443.107, insert a clause substantially the same as the following in all solicitations and resultant contracts in which it will be essential for the contracting officer to be notified that a change of designated key personnel is to take place by the contractor:

**Key Personnel (Oct 2023)**

(a) The personnel designated as key personnel in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, or otherwise substituting any other personnel for specified personnel, the contractor shall notify the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract effort. No diversion or substitution shall be made by the contractor without written consent of the contracting officer; provided, that the contracting officer may ratify a diversion or substitution in writing and that ratification shall constitute the consent of the contracting officer required by this clause. The contract shall be modified to reflect the addition or deletion of key personnel.

(b) The following personnel have been identified as Key Personnel in the performance of this contract:

| Labor Category | Name |
|---|---|
| [Insert category.] | [Insert name.] |

(End of Clause)

**3452.247–70 Foreign travel.**

As prescribed in 3447.701, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

**Foreign Travel (Mar 2011)**

Foreign travel shall not be undertaken without the prior written approval of the contracting officer. As used in this clause, *foreign travel* means travel outside the Continental United States, as defined in the Federal Travel Regulation. Travel to non-foreign areas (including the States of Alaska and Hawaii, the Commonwealths of Puerto Rico, Guam and the Northern Mariana Islands and the territories and possessions of the United States) is considered ''foreign travel'' for the purposes of this clause.

(End of Clause)

[FR Doc. 2023–16918 Filed 8–31–23; 8:45 am]

**BILLING CODE 4000–01–P**

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