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Proclamation 10685 of December 11, 2023

The President

Suspension of Entry as Immigrants and Nonimmigrants of Persons Enabling Corruption

By the President of the United States of America

A Proclamation

On June 3, 2021, through National Security Study Memorandum 1 (NSSM–1), I established the fight against global corruption as a core national security interest, stating that corruption threatens United States national security, economic equity, global anti-poverty and development efforts, and democracy itself. By effectively preventing and countering corruption and demonstrating the advantages of transparent and accountable governance, we can secure a critical advantage for the United States and other democracies.

On December 6, 2021, pursuant to NSSM–1, my Administration issued the first United States Strategy on Countering Corruption (Strategy), which recognizes the strategic impact of corruption and directs the modernization of our efforts to prevent and combat it. The Strategy also seeks to deepen global partnerships and commitment to eliminate safe havens for corrupt actors and their criminal proceeds, including in the United States.

The Strategy reflects the idea that corruption, including kleptocracy, cannot thrive without a supportive network of actors who enable and often benefit from such conduct. Activity by these “enablers”—who are often professional service providers—often occurs through opaque legal structures and financial mechanisms. This activity can take many forms, such as supporting corrupt actors in the performance of, benefitting from, evading responsibility for, or laundering the proceeds of corruption.

Collaboration between corrupt public officials and their enablers is pernicious and facilitates the spread of corruption across borders and across sectors. The United States therefore needs to invoke all available legal, policy, diplomatic, economic, and financial tools to deter those who perpetuate corruption, whether they are public officials or private individuals. These tools include authorities to counter money laundering and terrorist financing, as well as targeted financial sanctions—such as those specified in Executive Order 13818 of December 20, 2017 (Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption)—which can prevent the flow of corrupt proceeds through United States and international financial systems.

Other existing authorities, including Presidential Proclamation 7750 of January 12, 2004 (To Suspend Entry as Immigrants or Nonimmigrants of Persons Engaged in or Benefiting From Corruption), and the provision commonly included at section 7031(c) of the annual Department of State, Foreign Operations, and Related Programs Appropriations Act (e.g., Public Law 117–328), have allowed the United States Government to deny safe haven to certain corrupt actors by restricting their entry into the United States. However, additional authority is needed to fully address the supporting networks of enablers of corruption, including those who may seek entry into the United States.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the

laws of the United States, including sections 212(f) and 215(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(f) and 1185(a), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation, except as provided for in section 4 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. *Suspension and Limitation on Entry.* The entry into the United States, as immigrants or nonimmigrants, of the following persons is hereby suspended:

(a) Persons who have enabled, facilitated, or otherwise been involved in significant corruption, including through the laundering of its proceeds or obstruction of judicial or investigative processes, among other acts; and

(b) The immediate family members of the persons described in subsection (a) of this section.

Sec. 2. *Authority of the Secretary of State to Identify Covered Individuals.* Persons covered by section 1 of this proclamation shall be identified by the Secretary of State, or the Secretary's designee, in the Secretary's sole discretion, pursuant to such procedures as the Secretary may establish.

Sec. 3. *Implementation of Suspension and Limitation on Entry.* The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security, may establish. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of noncitizens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish.

Sec. 4. *Scope of Suspension and Limitation on Entry.* Section 1 of this proclamation shall not apply to:

(a) any lawful permanent resident of the United States;

(b) any individual who has been granted asylum by the United States, any refugee who has already been admitted to the United States, or any individual granted withholding of removal or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and nothing in this proclamation shall be construed to affect any individual's eligibility for asylum, refugee status, withholding of removal, or protection under the Convention Against Torture, consistent with the laws and regulations of the United States; and

(c) any person otherwise covered by section 1 of this proclamation, upon determination by the Secretary of State that the person's entry would not be contrary to the interests of the United States, including when the Secretary of State so determines, based on a recommendation of the Attorney General, that the person's entry would further important United States law enforcement objectives. In exercising this responsibility, the Secretary of State shall consult the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security.

Sec. 5. *Termination.* This proclamation shall remain in effect until terminated by the President. The Secretary of State shall, as circumstances warrant, recommend whether the President should continue, modify, or terminate this proclamation.

Sec. 6. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

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

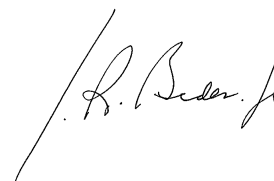
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

(c) Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements, or to suspend entry based solely on a noncitizen's ideology, opinions, or beliefs. Nothing in this proclamation shall be construed to limit the authority of the United States to admit or to suspend the admission or entry of particular individuals into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) or under any other provision of United States law.

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

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

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

Rules and Regulations

Federal Register

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

[FNS–2023–0027]

RIN 0584–AE94

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Implementation of the Access to Baby Formula Act of 2022 and Related Provisions

AGENCY: Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA).

ACTION: Final rule with request for comment.

SUMMARY: This rulemaking serves to amend the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program regulations by incorporating provisions of the Access to Baby Formula Act of 2022 and making related amendments. ABFA establishes waiver authority for the Secretary of Agriculture to address certain emergencies, disasters, and supply chain disruptions impacting WIC, and adds requirements to State agency infant formula cost containment contracts to protect against disruptions to the Program in the event of a recall. The provisions focus on improving State agencies' ability to ensure continuity of Program operations during emergency periods (*i.e.*, emergencies, disasters, and public health emergencies) and supply chain disruptions, while ensuring access to Program benefits among low-income pregnant and postpartum participants, infants, and children up to 5 years of age who are at nutritional risk.

DATES: This rule is effective February 12, 2024. Written comments must be received on or before February 12, 2024 to be assured of consideration. Online comments submitted through the Federal eRulemaking Portal on this rule

must be received on or before February 12, 2024.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this final rule. USDA seeks comment on all aspects of this rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Regular U.S. Mail:* WIC Administration, Benefits, and Certification Branch, Policy Division, Food and Nutrition Service, P.O. Box 2885, Fairfax, Virginia 22031–0885.

- *Overnight, Courier, or Hand Delivery:* Allison Post, WIC Administration, Benefits, and Certification Branch, Policy Division, Food and Nutrition Service, 1320 Braddock Place, 3rd Floor, Alexandria, Virginia 22314.

- All written comments submitted in response to this final rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Allison Post, Chief, WIC Administration, Benefits, and Certification Branch, Policy Division, Supplemental Nutrition and Safety Programs, Food and Nutrition Service, USDA, 1320 Braddock Place, Alexandria, Virginia, (703) 457–7708 or Allison.Post@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

On May 21, 2022, the President signed the Access to Baby Formula Act of 2022 (ABFA, Pub. L. 117–129) into law. ABFA amends Section 17 of the Child Nutrition Act of 1966 (CNA, 42 U.S.C. 1786) to (1) establish permanent waiver authority to the Secretary of Agriculture to address certain emergencies, disasters, and supply chain disruptions impacting WIC; and (2) require WIC State agency infant formula cost containment contracts to include specific remedies to protect against disruptions to the Program in

the event of an infant formula recall. This rule amends 7 CFR part 246 to codify the provisions of ABFA and implement related changes which will strengthen WIC's ability to address emergency periods and supply chain disruptions, particularly those impacting infant formula. For the purpose of this rule:

- emergency periods are defined as a public health emergency declared by the Secretary of Health and Human Services and any renewal of such a public health emergency; a presidentially declared major disaster; or a presidentially declared emergency, in alignment with the definition set forth in ABFA.^{1 2}

- supply chain disruption is defined as a shortage of WIC supplemental foods, including infant formula, that limits WIC participants' ability to reasonably purchase WIC supplemental foods benefits within a State agency's jurisdiction, as determined, and declared by the Secretary, in alignment with the definition set forth in ABFA.³

Specifically, this rulemaking will:

(1) Codify permanent, expanded waiver authority of the Secretary to help ensure continuity of WIC services during emergency periods and supply chain disruptions impacting WIC.

(2) Codify requirements for WIC State agencies to include language in their WIC infant formula cost containment contracts that describes remedies in the event of an infant formula recall, including how an infant formula manufacturer would protect against disruption to supplemental food access by WIC participants.

(3) Add a new provision that WIC State agencies must include as a part of the State Plan a “plan of alternate operating procedures” in the event of an emergency period, supplemental food recall, or other supply chain disruption.

In the development of this rule, the Department prioritized equity, access, and nutrition security for WIC

¹ Public Health Service Act, 42 U.S.C. 247d § 319 (2003). <https://www.govinfo.gov/content/pkg/USCODE-2019-title42/pdf/USCODE-2019-title42-chap6A-subchapII-partB-sec247d.pdf>.

² Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* § 102 (1988). https://www.fema.gov/sites/default/files/documents/fema_stafford_act_2021_vol11.pdf.

³ FEMA, “Disaster Declaration Process,” May 2011. Available online at: https://www.fema.gov/pdf/media/factsheets/dad_disaster_declaration.pdf.

applicants and participants.⁴ The Department also recognizes that the rule may impact WIC State agencies, including Indian Tribal Organizations (ITOs), local agencies, clinics, and WIC-authorized vendors. Additionally, the Department recognizes that the rule may impact infant formula manufacturers. While WIC is not designed to be a disaster assistance program, this rule aims to improve the continuity of services and Program benefits and access to supplemental foods for participants during these unforeseen circumstances. Relatedly, customer service, participation, and retention, as well as program integrity, have also been considered in this rulemaking. To support WIC State agencies in equitable implementation of this rulemaking, FNS plans to provide WIC State agencies with technical assistance, which may include guidance documents, memoranda, webinars, and/or presentations at conferences. In addition, FNS will explore ways to support WIC State agencies in providing alternative languages and formats and effective communication of program changes, including with auxiliary aids and services to participants and vendors.

Given the need for swift implementation of ABFA following recent disruptions to the supply chain and wide-ranging effects of the infant formula recall, this is a final rule with request for comments pursuant to the Administrative Procedure Act's exemption on matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.⁵ It is imperative the provisions are implemented as soon as is feasible so that FNS and WIC State agencies have mechanisms in place to ensure continuity of operations and access to Program benefits for WIC participants. The Department has requested comments on specific topics in this rule that can inform future rulemaking, policy, and/or guidance related to infant formula and will consider comments on all aspects of the rule when developing guidance and policy. Given the prescriptive nature of ABFA and the need for swift implementation ultimately in the interest of WIC participants, the

Department believes this approach best serves the public interest. The Department has collected, and will consider, input from stakeholders to ensure the implementation of this rule supports the WIC population and achieves the intended results. For example, FNS Regional Operations and Support has collected feedback on FNS' response to the infant formula recall and the Coronavirus Disease 2019 (COVID-19) public health emergency from FNS Regional Offices and WIC State agencies. FNS has considered this feedback in development of this rule and will continue to do so when developing guidance and policy to support the successful implementation of the rule. The Department recognizes the value of stakeholder feedback and will continue to seek and collect feedback to inform future technical assistance.

II. Background

A. Overview of WIC

WIC is currently administered by 89 WIC State agencies, including the 50 geographic states, the District of Columbia, 33 Indian Tribal Organizations (ITOs), and five U.S. Territories (the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands). By providing supplemental foods, nutrition education, including breastfeeding promotion and support, and referrals to health and other social services, WIC addresses the nutritional needs and safeguards the health of low-income pregnant and postpartum participants, infants, and children up to 5 years of age who are at nutritional risk.

According to their participant category and nutritional needs, WIC participants receive supplemental foods on a monthly basis from one of seven evidence-based food packages. The amounts and categories of foods provided are intended to supplement participants' diets and provide specific nutrients known to be lacking in the diets of WIC's target population.

WIC participants typically access supplemental foods, including infant formula, through a retail food delivery system. In such systems, a WIC shopper goes to a WIC-authorized vendor (i.e., a retail store authorized by the State agency), selects foods available in their benefit balance, and uses a food instrument, typically an Electronic Benefits Transfer (EBT) card, to purchase the items. Outside of a retail food delivery system, some WIC participants access their supplemental foods through a home food delivery or

direct distribution system operated by the WIC State agency. Additionally, WIC participants with certain medical conditions who require exempt formulas or WIC-eligible nutritionals may receive these as part of, or in addition to, their WIC food package with appropriate documentation. These exempt formulas and WIC-eligible nutritionals are procured outside of the traditional WIC State agency cost-containment contracting process for standard milk and soy-based infant formula and may be purchased at the store like their other WIC items, or through other systems set up by the WIC State agency, depending on availability and need for the product(s).

B. WIC Program Waiver Authority

Historically, WIC has had limited authority to waive Program requirements. However, since the onset of the COVID-19 public health emergency, WIC has experienced a series of disruptions to Program operations necessitating the ability for USDA's Food and Nutrition Service (FNS) to have permanent waiver authority.

On February 17, 2022, a major infant formula manufacturer voluntarily recalled certain powder infant formula, including exempt infant formula. While recalls may be conducted because a mandatory order has been issued by the U.S. Food and Drug Administration (FDA) under statutory authority, they can also be conducted voluntarily by a manufacturer, as in this case. This recall exacerbated existing supply chain issues resulting from the ongoing COVID-19 public health emergency. During its early response to the shortage, FNS used waiver authority granted under Section 301 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, ("Stafford Act," 42 U.S.C. 5121), to approve several waiver types for WIC State agencies to help WIC participants obtain infant formula. This was possible because of existing COVID-19 major disaster declarations covering the geographic areas of all WIC State agencies, including States, ITOs, and Territories.^{6 7}

Section 301 of the Stafford Act provides any Federal agency charged with the administration of a federal

⁴ U.S. Department of Agriculture, Food and Nutrition Service, "Food and Nutrition Security." Available online at: <https://www.usda.gov/nutrition-security#:~:text=Nutrition%20security%20means%20consistent%20access,Tribal%20communities%20and%20Insular%20areas.>

⁵ Administrative Procedure Act, 5 U.S.C. 553 (1966). <https://uscode.house.gov/view.xhtml?req=granuleid:U.S.C.-prelim-title5-section553&num=0&edition=prelim>.

⁶ FEMA, "COVID-19 Disaster Declarations," August 20, 2021. Available online at: <https://www.fema.gov/covid-19>.

⁷ FEMA, "FEMA Assistance for Tribal Governments," March 17, 2021. Available online at: <https://www.fema.gov/fact-sheet/fema-assistance-tribal-governments#:~:text=Tribes%20that%20are%20Recipients%20will%20have%20a%20direct,in%20the%20Tribal%20Declarations%20Pilot%20Guidance.%20More%20items.>

assistance program with the authority to modify or waive administrative conditions for assistance that would otherwise prevent the giving of assistance if the inability to meet such conditions is a result of the major disaster. Activation of Section 301 of the Stafford Act requires a State Governor's request and the President's approval. When approved, these are referred to as Major Disaster Declarations. Section 301 of the Stafford Act cannot be activated by emergency declarations, public health emergencies, or supply chain disruptions. Prior to March 2020, Section 301 of the Stafford Act was the only waiver authority available to grant administrative flexibilities in WIC.

On March 13, 2020, the ongoing COVID-19 crisis was declared a public health emergency of sufficient severity and magnitude to warrant declaration of a nationwide public health emergency through the Secretary of Health and Human Services. Over the next several weeks, in response to the COVID-19 public health emergency, major disaster declarations were put into place covering all WIC State agencies, including States, Indian Tribal Organizations, and U.S. Territories, pursuant to Section 501(b) of the Stafford Act. While the major disaster declarations would eventually enable WIC State agencies to request regulatory waivers under the Stafford Act's authority, immediate and additional flexibilities were necessary to support WIC State agencies.

Therefore, on March 18, 2020, the Families First Coronavirus Response Act (FFCRA, Pub. L. 116-127) was signed into law to assist with the COVID-19 public health emergency. USDA received temporary authority to provide WIC State agencies with flexibilities necessary to continue operations and safely provide Program benefits to participants. Specifically, Section 2203 of FFCRA provided USDA with the statutory waiver authority necessary to waive the physical presence requirement for all applicants and participants seeking certification or recertification in WIC; and defer anthropometric (*i.e.*, height/length and weight) and bloodwork requirements which are used to determine nutritional risk. As a result, FNS waived the statutory requirement for in-person WIC clinic visits, thereby encouraging social distancing, during the COVID-19 public health emergency. Under Section 2204 of FFCRA, WIC State agencies could also request USDA to waive or modify WIC regulations. Such requests could only be granted if the WIC State agency (1) could not meet regular Program requirements due to COVID-19, and (2)

such waiver or modification was necessary to provide assistance to WIC participants. As prescribed in FFCRA, the Department had the authority to provide waivers through September 30, 2020, which was then extended through September 30, 2021, through the Continuing Appropriations Act, 2021 and Other Extensions Act (Pub. L. 116-159). Certain WIC waivers granted prior to September 30, 2021, were then extended through FNS' policy guidance until 90 days after the end of the nationally declared public health emergency under Section 319 of the Public Health Service Act,⁸ which ended on May 11, 2023, per announcement from the U.S. Department of Health and Human Services (HHS). FFCRA provided USDA with the necessary authority to provide WIC State agencies with the flexibility to pivot operations and continue serving Program participants during a public health emergency. However, USDA's authority was temporary and designed to specifically address COVID-19.

While the existing COVID-19 major disaster declarations and resulting Stafford Act authority provided a vehicle through which FNS could grant WIC State agencies waivers, under normal circumstances, such waiver authority would not typically be available for the Department to respond to an infant formula recall, nor could the Department issue nationwide waivers. As a result, in direct response to the infant formula recall, Congress recognized the need to provide USDA with permanent authority to waive or modify certain statutory and regulatory requirements when certain conditions are present.

ABFA amended Section 17 of the CNA (42 U.S.C. 1786) to (1) establish waiver authority for the Secretary of Agriculture to address certain emergencies, disasters, and supply chain disruptions impacting WIC; and (2) require WIC State agency infant formula cost containment contracts to include specific remedies to protect against disruptions to the Program in the event of a recall. Unlike the Stafford Act, ABFA provides USDA with the authority to issue waivers for one or more State agencies, including nationwide, and does not require that each State agency individually request specific waivers. As a result of ABFA, FNS issued an implementing policy

⁸ U.S. Department of Agriculture, Food and Nutrition Service, "WIC Policy Memorandum #2021-10: Updated Expiration Schedule for Existing FNS-Approved WIC COVID-19 Waivers," September 20, 2021. Available online at: <https://www.fns.usda.gov/wic/policy-memorandum-2021-10>.

memorandum describing the infant formula cost containment contract requirements and waiver authority.⁹ In order to provide WIC State agencies with additional notice in anticipation of the expiration of the major disaster declarations in affected areas which formally ended May 11, 2023, FNS transferred waivers originally approved under the Stafford Act and the existing COVID-19 major disaster declaration for the affected area to approval under the waiver authority granted by ABFA and the existing COVID-19 major disaster declaration for the affected area. Accordingly, to aid WIC participants in purchasing infant formula using WIC benefits, FNS extended waivers set to expire under the ABFA authority and established a new expiration date for most waivers granted in response to the infant formula recall through the earlier of either January 31, 2023, or 60 days after the expiration of the COVID-19 major disaster declaration in the affected area.¹⁰ This revised expiration schedule applied to most waiver types, including those related to medical documentation, maximum monthly allowances of infant formula, imported formula authorization and issuance, and vendor substitutions.¹¹ This expiration date was again extended on December 19, 2022, in a letter sent to WIC State agencies and formally implemented through FNS Policy Memorandum #2023-3: *Unwinding Formula Flexibilities in WIC* on February 2, 2023. FNS communicated that revised expiration dates for the formula waivers included rolling extensions for various waivers through June 30, 2023, based on the continued need for flexibility by the WIC State agencies.¹²

⁹ U.S. Department of Agriculture, Food and Nutrition Service, "WIC Policy Memorandum #2022-6: Implementation of the Access to Baby Formula Act of 2022 Public Law 117-129," June 6, 2022. Available online at: <https://www.fns.usda.gov/wic/implementation-access-baby-formula-act-2022>.

¹⁰ U.S. Department of Agriculture, Food and Nutrition Service, "WIC Policy Memorandum #2023-1: Abbott Infant Formula Recall Waiver Expiration Schedules," November 8, 2022. Available online at: <https://www.fns.usda.gov/resource/abbott-infant-formula-recall-waiver-expiration-memo#>.

¹¹ U.S. Department of Agriculture, Food and Nutrition Service, "WIC Policy Memorandum #2022-6: Implementation of the Access to Baby Formula Act of 2022 Public Law 117-129," June 6, 2022. Available online at: <https://www.fns.usda.gov/wic/implementation-access-baby-formula-act-2022>.

¹² U.S. Department of Agriculture, Food and Nutrition Service, "WIC Policy Memorandum #2023-3: Unwinding Infant Formula Flexibilities in WIC," February 1, 2023. Available online at: <https://www.fns.usda.gov/wic/policy-memorandum-2023-3-unwinding-infant-formula-flexibilities>.

C. WIC Disaster Planning

WIC State agencies are required to submit an annual plan for Program operations. Program regulations at 7 CFR 246.4 define State Plan requirements, but plans to address potential emergencies, disasters, or significant disruptions in operations are not currently one of the required elements. Nearly all State agencies already voluntarily maintain a disaster plan; however, these plans are typically part of a broader health department or other State agency disaster plan and do not address WIC-specific Program operations during emergencies nor do they typically address other operational disruptions beyond natural disasters.

FNS provides information to help WIC State agencies plan for meeting the needs of WIC participants and applicants prior to and during a disaster response; plan for continued WIC benefits during public health emergencies; and plan for other situations that disrupt regular WIC operations through the guidance document, *Guide to Coordinating Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Services When Regular Operations Are Disrupted*.¹³ This guidance highlights operational flexibilities in WIC regulations that WIC State agencies may implement quickly. The COVID-19 public health emergency and the infant formula recall highlighted the need for all State agencies to have formal contingency plans in place to ensure the continuity of WIC operations during emergency periods (i.e., emergencies, disasters, and public health emergencies) and supply chain disruptions, while ensuring access to Program benefits among low-income pregnant and postpartum participants.

D. Infant Formula Cost Containment Historical Background

In the 1980s WIC State agencies became increasingly interested in cost containment initiatives due to rising food costs and their potential to limit Program participation due to insufficient funding. Infant formula represented a significant portion of WIC food costs so there was specific interest in infant formula cost containment contracts. Early initiatives by some State agencies were so successful that in 1989, the Agriculture Appropriations

Act of 1989 (Pub. L. 100-460) directed all WIC State agencies to explore the feasibility of cost-containment measures and implement such a measure if found to be viable. Although the provisions of the Agriculture Appropriations Act of 1989 expired on September 30, 1989, the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101-147) extended these provisions and required the Secretary to prescribe regulations to carry out these provisions. The Child Nutrition and WIC Reauthorization Act of 1989 also outlined exceptions to these provisions, notably for ITOs that operate their own WIC Program and serve less than 1,000 participants.

The WIC Infant Formula Procurement Act of 1992 (Pub. L. 102-512) amended the CNA to enhance competition among infant formula manufacturers and reduce the per unit costs of infant formula purchased by WIC. In 1996, FNS issued WIC Policy Memorandum #96-6: *WIC Infant Formula Rebate Reviews*, which provides guidance to avoid rebate billing discrepancies and can serve as a WIC State agency reference during the procurement and contracting process.¹⁴ Congress also amended the CNA through the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108-265) to include additional technical definitions that further clarified how cost containment systems must be structured. FNS established regulations to implement each of these laws and released WIC Policy Memorandum #2004-4: *Implementation of the Infant Formula Cost Containment Provisions of P.L. 108-265* to address Public Law 108-265.¹⁵

During the onset of the nationwide infant formula shortage and prior to the passage of ABFA, there were no federal requirements for infant formula rebate contracts to include remedies in the event of a recall. FNS used its limited waiver authority under the Stafford Act to issue waivers to allow WIC State agencies to exceed the maximum monthly allowance for infant formula

and exempt infant formula and issue non-contract brand formula without medical documentation (except in Food Package III). Each WIC State agency had to come to an agreement with the manufacturer holding their rebate contract on Program flexibilities allowed under these waivers to protect against disruption to Program participants. Additionally, the infant formula manufacturer whose product was the subject of the voluntary recall voluntarily paid rebates on competitive, non-contract brand infant formula in WIC State agencies where they held the contract.

E. Infant Formula Cost Containment Contracts

The Child Nutrition Act of 1966, (CNA, 42 U.S.C. 1786(h)(8)(A)(i)(I)) and WIC Program regulations at 7 CFR 246.16a require most WIC State agencies to continuously operate a cost containment system for infant formula. WIC State agencies have historically met this requirement through a competitive bidding process that requires sealed bids, for single-supplier rebate contracts. WIC State agencies solicit sealed bids and award a contract to the manufacturer offering the lowest price. Contracted manufacturers provide a rebate on each can of their infant formula purchased by Program participants through authorized WIC vendors. The WIC State agency invoices the manufacturer for payment directly to the WIC State agency, which does not impact the payments to retail stores who accept WIC transactions. The resulting rebate payments from manufacturers are used to offset WIC food costs, allowing WIC State agencies to serve more WIC participants. Each WIC State agency or alliance of State agencies that solicits for a rebate contract manages their own procurement and contracting process through execution and implementation. WIC State agencies may implement an alternative cost containment system; however, the system must provide a savings equal to or greater than a single-supplier competitive system through the process described in WIC regulations at 7 CFR 246.16a(d). To date, WIC State agencies have not implemented any alternative cost containment systems.

Once a contract is executed and implemented, the contract brand milk and soy-based formulas are added to the WIC State agency's Approved Product List (APL) and are made available for issuance and redemption throughout the State agency's WIC Program. A competent professional authority (CPA) in the WIC clinic setting is responsible for completing a nutrition assessment for WIC participants, and then

¹³ U.S. Department of Agriculture, Food and Nutrition Service, "Guide to Coordinating Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Services When Regular Operations Are Disrupted," January 18, 2022. Available online at: <https://www.fns.usda.gov/wic/guide-coordinating-wic-service-during-disasters>.

¹⁴ U.S. Department of Agriculture, Food and Nutrition Service, "WIC Policy Memorandum #96-6: WIC Infant Formula Rebate Reviews," March 12, 1996. Available online at: <https://www.fns.usda.gov/wic/infant-formula-rebate-reviews>.

¹⁵ U.S. Department of Agriculture, Food and Nutrition Service, "WIC Policy Memorandum #2004-4: Implementation of the Infant Formula Cost Containment Provisions of P.L. 108-265," July 30, 2004. Available online at: <https://www.fns.usda.gov/wic/implementation-infant-formula-cost-containment-provisions-pl-108-265#:~:text=This%20memorandum%20provides%20guidance%20on%20the%20implementation%20of,2004%2C%20%28Reauthorization%20Act%29%20enacted%20on%20June%2030%2C%202004.>

prescribing and individually tailoring an appropriate food package. The primary contract brand milk- or soy-based infant formula is considered “first choice” and will be issued as the default in the food packages for infants who receive formula from WIC. Based on information from the participant, including cultural or dietary preferences, and/or nutrition assessment findings, an alternate formula, such as a soy-based option or another milk-based option, within the rebate contract (*i.e.*, contract brand infant formula) may be deemed appropriate for issuance. Medical documentation is generally not required for milk- and soy-based contract brand infant formulas offered under the rebate contract.

Infant formula rebate funds offset a significant amount of food costs. In fiscal year 2022, infant formula rebate amounts totaled approximately \$1.5 billion, the cost of providing benefits to an average of 1.32 million participants each month, or 21 percent of WIC participants monthly, as indicated by the WIC Financial Management and Participation Report (FNS–798).

III. Discussion of Regulatory Amendments

A. Add Waiver Authority Granted by the Access to Baby Formula Act

1. Add New Definitions (§ 246.2)

This rule adds definitions of *Emergency period*, *Qualified administrative requirement*, *Recall*, and *Supply chain disruption* consistent with ABFA statutory language.

a. This rule defines an *Emergency period* as a period during which there exists: (1) a presidentially declared major disaster as defined under Section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), (2) a presidentially declared emergency as defined under Section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), (3) a public health emergency declared by the Secretary of Health and Human Services under Section 319 of the Public Health Service Act (42 U.S.C. 247d), or (4) a renewal of such a public health emergency pursuant to Section 319. This aligns with the definition provided by AFBA and does not include State-declared emergencies, disasters, or public health emergencies.

b. This rule defines *Qualified administrative requirement* as (1) a statutory requirement under Section 17 of the CNA (42 U.S.C. 1786), or (2) a regulatory requirement issued pursuant to this section. This aligns with the

definition provided by ABFA and encompasses the scope of Program requirements that may be waived or modified by the Secretary.

c. This rule defines *Recall* as it is defined in the U.S. Food and Drug Administration (FDA) regulations in 21 CFR 7.3(g) or any successor regulation. FDA defines recall as a firm’s removal or correction of a marketed product that the FDA considers to be in violation of the laws it administers and against which the agency would initiate legal action (*e.g.*, seizure). Recall does not include a market withdrawal, which is defined at 21 CFR 7.3(j) as a firm’s removal or correction of a distributed product which involves a minor violation that would not be subject to legal action by the FDA or which involves no violation (*e.g.*, normal stock rotation practices, routine equipment adjustments and repairs, etc.) or a stock recovery, which is defined at 21 CFR 7.3(k) as a firm’s removal or correction of a product that has not been marketed or that has not left the direct control of the firm (*i.e.*, the product is located on premises owned by, or under the control of, the firm and no portion of the lot has been released for sale or use). The Department is committed to continued alignment with FDA’s definition of recall. Recalls may be conducted voluntarily by a manufacturer or may be required by FDA.

d. This rule defines *Supply chain disruption* as a shortage of WIC supplemental foods that limits WIC participants’ ability to reasonably purchase supplemental foods using WIC benefits within a State agency’s jurisdiction, as determined, and declared by the Secretary for the purposes of WIC. This definition reflects ABFA statutory language and clarifies that supply chain disruption declarations as defined in this rulemaking are specifically for the purposes of WIC and do not impact or extend authority to other programs or entities. Supply chain disruptions can occur within any portion of a State agency’s jurisdiction, throughout the State agency’s jurisdiction, or within several State agencies’ jurisdictions, including nationwide. In accordance with ABFA, supply chain disruptions include those caused by recalls of WIC supplemental foods. Other causes of supply chain disruptions under ABFA may include but are not limited to, labor shortages, temporary business disruptions, delays in the availability of products across a wide range of industries, production issues, a mismatch between supply and demand or other shortages impacting WIC supplemental foods. The Department

recognizes that unforeseen circumstances beyond those described may also cause a shortage of WIC supplemental foods that limits participants’ ability to purchase such foods using WIC benefits. However, not every potential cause described here, or potential unforeseen circumstance may impede the transaction and redemption of WIC benefits for supplemental foods. Therefore, the definition of supply chain disruption is not limited to any specific causes so that the Department maintains the flexibility to determine if a supply chain disruption has occurred and is able to respond to any future disruptions.

2. Specify Criteria for Establishing Waivers and Timeframes for Use (§ 246.29)

This rule creates a new provision at § 246.29 that specifies the criteria under which a waiver or modification may be established, information WIC State agencies must provide to FNS when requesting a waiver, and the timeframes during which waivers will remain available for use by WIC State agencies.

a. Requirements for Establishing a Waiver

This rule provides a non-exhaustive list of conditions that must be met for the Secretary to waive a qualified administrative requirement for one or multiple WIC State agencies during an emergency period or supply chain disruption. In accordance with ABFA statutory provisions, a waiver may be established when the following criteria are met (1) the qualified administrative requirement cannot be implemented during any part of the emergency period or supply chain disruption, (2) the waiver is necessary to serve participants, and (3) the waiver does not substantially weaken the nutritional quality of supplemental foods. If the criteria are met, the Secretary may issue either nationwide waivers available for WIC State agencies to opt into, or State agency-specific waivers.

The Department is including additional specifications in this rulemaking that the waiver or modification must:

(1) Not materially impair any statutory or regulatory right of participants or potential participants as set forth at 7 CFR 246.8 and 7 CFR parts 15, 15a and 15b which includes all protected classes for federally assisted programs in USDA;

(2) Not present an unreasonable barrier to participation;

(3) Not create new or additional eligibility requirements for participation;

(4) Comply with 7 CFR 246.13(b) to ensure State agencies maintain effective control over and accountability for all Program grants and funds;

(5) Offer substitution options with similar nutritional quality, that most closely provide the maximum monthly allowance of supplemental foods, and that do not create new supplemental food categories as set forth in 7 CFR 246.10(e)(12) Table 4; and

(6) Meet additional requirements for the request and approval as determined necessary by FNS.

Including these requirements is intended to provide WIC State agencies seeking waivers with basic parameters and to protect participants and applicants. While this rule will allow for more flexibilities in Program operations, the Department is committed to continued equity, access, and nutrition security for WIC applicants and participants and preventing unforeseen barriers to participation. Further, the Department is committed to clear and timely communication with State and local agency staff, WIC participants, and the public when an emergency period or supply chain disruption has been declared.

b. Information Required From WIC State Agencies Requesting a Waiver

ABFA laid out certain requirements that must be met for a waiver to be granted by FNS to a WIC State agency. A WIC State agency may request that a qualified administrative requirement be waived or modified through submission of a waiver request if the Secretary has not already issued an applicable nationwide waiver available for a WIC State agency to opt into. This rule establishes the minimum information a WIC State agency must provide to FNS when requesting a waiver to ensure that these criteria are met. Specifically, when submitting a request to FNS, WIC State agencies must provide:

(i) The qualified administrative requirement the State agency is requesting to waive or modify (including the statutory or regulatory citation) and an explanation for why it cannot be met;

(ii) Justification for why the waiver is necessary to continue WIC services;

(iii) An explanation that the waiver meets the conditions set forth in new section 7 CFR 246.29(a);

(iv) The emergency period or supply chain disruption under which the request is being made; and

(v) The period for which the flexibility is being requested.

The Department has deemed this the minimum information necessary to

confirm the WIC State agency's request meets the conditions required to waive or modify a qualified administrative requirement during an emergency period or supply chain disruption. However, contingent on the specific situation, FNS maintains the right to require additional information from a WIC State agency to support its waiver request. For example, a WIC State agency seeking a waiver or waiver extension may be required to provide justification, including, but not limited to, data to support the request, how the waiver will be implemented, estimated impact on WIC food funds for the time period being requested, or an explanation of how the WIC State agency will track or monitor the continued necessity for the waiver. The Department recognizes that each emergency period and supply chain disruption is unique and therefore State agencies may be asked to provide different types of information relevant to the specific scenario. Additional information regarding the waiver submission and review process will be provided through subsequent policy guidance.

c. Duration of Waiver Availability

This rule codifies the timeframes during which waivers can be available for use by WIC State agencies, as provided by ABFA. Waivers may be established at any time during an emergency period or supply chain disruption.

A waiver established during an emergency period may be available for the duration of the emergency period and up to 60 days after the end of the emergency period. A waiver established during a declared supply chain disruption may be available for:

(i) a period of up to 45 days from a date determined by the Secretary and renewed with at least 15 days' notice provided by the Secretary, and

(ii) no more than 60 days after the supply chain disruption declaration ceases to exist.

In accordance with ABFA, if the Secretary determines that a supply chain disruption exists and issues a waiver, the Secretary will notify each State agency affected by the disruption. Likewise, the Secretary will notify each State agency affected by the disruption and granted a waiver as a result of the disruption at least 15 days prior to the end of the 45-day period if the supply chain disruption declaration has been renewed. FNS will communicate any supply chain disruption renewals as they occur and provide technical assistance on the process as needed.

B. Update Requirements for State Agency Infant Formula Cost Containment Contracts

1. Establish Minimum Required Remedies for Infant Formula Cost Containment Contracts (§ 246.16a)

This rule establishes that a State agency must include remedies in the event of a recall in their infant formula cost containment contract to protect against disruption in infant formula supply to participants. In accordance with applicable Program requirements and the infant formula cost containment contract, the State agency will determine when remedies take effect and remain in effect. At minimum, the State agency's infant formula cost containment contract must:

(1) Allow infant formula to be issued in all unit sizes that may exceed the maximum monthly allowance. The State agency and contracted infant formula manufacturer must prioritize unit sizes that most closely provide the maximum monthly allowance;

(2) Allow the issuance of non-contract brand formula without medical documentation (except in Food Package III);

(3) When any contract brand infant formula of the contracted manufacturer is the subject of a recall, require the contracted manufacturer to:

(i) Provide the State agency with an action plan, within a timeframe established within the contract, which includes supply data, to meet infant formula demand and limit disruption to Program participants in the affected jurisdiction(s) and

(ii) Pay rebates on competitive, non-contract brand infant formula that meets the definition of infant formula at 7 CFR 246.2.

WIC State agencies may work with their legal counsel and procurement offices to include additional remedies beyond these regulatory minimum remedies in their infant formula contracts. WIC State agencies may also negotiate flexibilities that are within regulatory requirements and do not require Program waivers with their contracted infant formula manufacturers.

As previously described, in response to the sustained nationwide infant formula shortage—resulting from the February 17, 2022, voluntary recall of a major source of powder infant formula, including exempt infant formula—which exacerbated existing COVID-19 shortages, FNS used its limited waiver authority under the Stafford Act to issue waivers. This was possible because of existing COVID-19 major disaster declarations covering the geographic

areas of all WIC State agencies, including States, ITOs, and Territories. These waivers allowed WIC State agencies to benefit from three specific remedies to: (1) exceed the maximum monthly allowance for infant formula to allow for the purchase of larger unit sizes; (2) issue non-contract brand formula without medical documentation (except in Food Package III); and (3) receive rebates for non-contract brand infant formula, when their contracted manufacturer's product was the subject of the recall. As a result, State agencies were able to allow for the purchase of available formula when the contract brand or size was unavailable during shortages. Because these three specific remedies assisted State agencies with meeting participants' needs during the sustained nationwide infant formula shortage, such remedies were included as suggestions in WIC Policy Memorandum #2022-6: *Implementation of the Access to Baby Formula Act of 2022-PL 117-129* and are now being codified in this rulemaking.¹⁶ Exceeding the maximum monthly allowance for infant formula to allow for the purchase of larger unit sizes and issuing non-contract brand formula without medical documentation (except in Food Package III) will continue to require an approved waiver before a State agency can operationalize these remedies, and must be operationalized within the active waivers' timeframe in order to remain in compliance with Program requirements.

During the sustained nationwide infant formula shortage, State agencies worked with their infant formula contracted manufacturer to collect supply data in order to respond to participant needs. This data proved valuable to State agencies' ability to respond to the shortages. Thus, the provision of an action plan, which includes supply data, to meet infant formula demand and limit disruption to Program participants in the affected jurisdiction(s) when any contract brand infant formula of the contracted manufacturer is the subject of a recall has been included as a minimum remedy in this rule. The State agency and contracted manufacturer must establish a timeframe by which the manufacturer must provide the State agency with an action plan following the recall of any contract brand infant formula of the contracted manufacturer. The Department recommends that these

action plans be provided to State agencies within 48 hours following the recall of any contract brand infant formula of the contracted manufacturer.

In establishing the remedies, the Department considered requiring manufacturers to maintain a stockpile of infant formula for use in the event of a recall. The Department considered potential logistics involved, such as: types and quantity of formula to stockpile, potential locations, the level of stockpile maintenance necessary to rotate stock, and development of a distribution plan related to stockpiling. Ultimately, the Department determined that the cost and administrative burden necessary to require manufacturers to maintain a stockpile in excess of manufacturers' usual inventory would likely be too extensive for practical implementation and would counteract any potential benefits for the Program.

Currently, the Program provides infant formula in all three physical forms available in the retail marketplace, which are powder, liquid concentrate, and ready-to-feed.¹⁷ While 7 CFR 246.10(e)(1)(iv) offers State agencies the flexibility to issue powder or concentrated liquid, 7 CFR 246.16a(c)(4) requires infant formula manufacturers to bid on all three physical forms. Currently powder is the predominant form in the marketplace and some manufacturers do not produce liquid concentrate. Requiring liquid concentrate in WIC could impact some manufacturers' ability to competitively bid and meet contractual requirements. Therefore, the Department is seeking public comment on the operational and financial impacts to the Program of modifying the requirement for infant formula manufacturers to bid on liquid concentrate. Through this rulemaking, the Department is not making any changes to the current bidding requirements at 7 CFR 246.16a(c)(4) or the physical forms of infant formula that may be issued in accordance with 7 CFR 246.10(e)(1)(iv).

2. Clarify Terminology in Infant Formula Cost Containment Contracts (§ 246.16a(c)(5))

This rule clarifies terminology at 7 CFR 246.16a(c)(5). Specifically, the current terms "responsive and responsible" used in the regulations to describe bidders are consolidated under this rulemaking to "responsive." Responsive is further defined for clarification, consistent with the intent stated in a previous rulemaking

preamble, *Requirements for and Evaluation of WIC Program Bid Solicitations for Infant Formula Rebate Contracts* (65 FR 51213-51229), and WIC Policy Memorandum #99-3: *Evaluation Criteria for Infant Formula Rebate Contracts*.^{18 19}

The inclusion of the terms responsive and responsible were initially intended to help ensure WIC State agencies select formula manufacturers that fully respond to the invitation to bid and meet eligibility requirements in statute and regulation. However, since these terms were not defined, they resulted in ambiguity in their application. This rule removes the responsibility requirement and defines the responsiveness requirement. Under the modified provision, a bidder must submit a bid that conforms to the solicitation and meets requirements at § 246.16a to be considered responsive. The rule adds language to clarify this meaning, which will provide consistent application of the term and ensure that all responsive bids will receive consideration.

C. Add Requirement for State Agency Plans of Alternate Operating Procedures (§ 246.4(a))

This rule adds a new provision requiring WIC State agencies to include a plan of alternate operating procedures, commonly referred to as a disaster plan, as part of their State Plan. This provision will ensure WIC State agencies have plans in place to support continuity of operations in the event of a disruption of WIC services, including but not limited to emergency periods, supplemental food recalls, and other supply chain disruptions.

State Plans are submitted annually by WIC State agencies as a prerequisite to receiving funds. State Plans must be updated as needed to reflect substantive changes to the State agencies' Program design and operation. Therefore, as a part of the State Plan, alternate operating procedures must also be updated as needed to reflect any

¹⁸ U.S. Department of Agriculture, Food and Nutrition Service, "Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Requirements for and Evaluation of WIC Program Bid Solicitations for Infant Formula Rebate Contracts," 65 FR 51213-51229. (August 23, 2000). Available online at: <https://www.federalregister.gov/documents/2000/08/23/00-21423/special-supplemental-nutrition-program-for-women-infants-and-children-wic-requirements-for-and-evaluation-of-wic-program-bid-solicitations-for-infant-formula-rebate-contracts>

¹⁹ U.S. Department of Agriculture, Food and Nutrition Service, "WIC Policy Memorandum #99-3: Evaluation Criteria for Infant Formula Rebate Contracts," October 14, 1998. Available online at: <https://www.fns.usda.gov/wic/evaluation-criteria-infant-formula-rebate-contracts>.

¹⁶ U.S. Department of Agriculture, Food and Nutrition Service, "WIC Policy Memorandum #2022-6: *Implementation of the Access to Baby Formula Act of 2022* Pub. L. 117-129," June 6, 2022. Available online at: <https://www.fns.usda.gov/wic/implementation-access-baby-formula-act-2022>.

¹⁷ Ready-to-feed formulas may be authorized only under certain circumstances, as specified at 7 CFR 246.10(e)(1)(iv).

substantive changes resulting from lessons learned as WIC State agencies respond to emergency periods and supply chain disruptions. Such updates will allow WIC State agencies to prepare and respond to these events more effectively in the future. Additionally, FNS encourages WIC State agencies to review their State Plans and ensure they continue to meet the needs of Program stakeholders. State Plans are a vehicle through which WIC State agencies can outline short- and long-term goals necessary to improve Program design and operation. For example, State agencies may include descriptions of goals and action plans to facilitate continued improvement in the delivery of Program benefits and service during Program disruptions as a part of their alternate operating procedures.

Both the COVID-19 public health emergency and the 2022 infant formula recall and sustained infant formula shortage required nearly all WIC State agencies to quickly develop and implement alternative plans for running their programs. While some WIC State agencies, such as those with experience in dealing with natural disasters, may have established alternative operations plans, these plans are typically part of a broader health department or other State agency disaster plan and do not address WIC-specific Program operations during disruptions nor do they typically address other operational disruptions beyond natural disasters. This resulted in ex post facto development of policies and procedures and ultimately varying levels of Program disruption during the COVID-19 public health emergency and the 2022 infant formula recall and sustained infant formula shortage. These two events highlight the need for all WIC State agencies to be prepared to continue operations when faced with a number of potential disruptions. The FNS-required alternate operating procedures set baseline minimum elements that must be included by all WIC State agencies, and in turn provide greater transparency to FNS on actions each State agency will take in the event of a disruption. The Department believes that proactive State agency development of robust alternate operating procedures will minimize the negative impact of such disruptions to WIC operations and services, position State agencies to be better prepared to adjust to unexpected situations, and ensure the availability of authorized supplemental foods, including infant formula.

The Department recognizes that a variety of situations, including a supplemental food recall, may prompt the Secretary to declare a supply chain

disruption. However, WIC State agencies must be prepared to respond to supplemental food recalls whether or not an official supply chain disruption declaration has been made. As such, WIC State agencies' alternate operating procedures must specifically and directly address supplemental food recalls, with an emphasis on infant formula recalls, including specialty products, as part of the section addressing supply chain disruptions as a whole. The Department is committed to supporting WIC State agencies in prioritizing resources and developing a separate plan for the distribution of specialty formula.

The Department understands the same event may impact WIC State agencies differently dependent upon their geographic location, participant populations, and other factors. As such, the Department encourages each WIC State agency to consider potential events unique to their location and identify how the State agency will meet the needs of their participant populations when developing alternate operating procedures. To assist with anticipation of potential events, the Department expects WIC State agencies to establish relationships with relief agencies responsible for disaster and public health emergency planning applicable to the State agency's jurisdiction and participants and leverage these relationships as needed. Ultimately, the intent of such relationships is for the WIC State agency to make data-informed decisions in order to better meet the needs of their jurisdiction's populations. Nevertheless, WIC State agencies must also consider the unique and sudden nature of events that disrupt regular WIC operations when developing alternate operating procedures.

Alternate operating procedures must describe the process by which the WIC State agency will minimize the negative impact to WIC operations and services and ensure the availability of authorized supplemental foods, especially infant formula, to the extent feasible. At a minimum, alternate operating procedures must include:

- (i) A plan to address operation of specific Program areas including:
 - a. Access to Program records;
 - b. Alternate certification and benefit issuance;
 - c. Verification of Certification (VOC) issuance;
 - d. Food package adjustments;
 - e. Vendor requirements;
 - f. Benefit redemption; and
 - g. Food delivery systems.
- (ii) A plan to ensure continuity of WIC services and address the needs of

participants with documented qualifying conditions receiving Food Package III, rural areas, tribal populations, and other priority populations in the affected area, as applicable;

(iii) A designated emergency contact within the State agency for emergency periods, supply chain disruptions, and supplemental food recalls;

(iv) A designated emergency contact within the State agency to address the needs of participants with documented qualifying conditions receiving Food Package III;

(v) A plan to establish a relationship with relief agencies responsible for disaster and public health emergency planning applicable to the State agency's jurisdiction and participants to support data-informed approaches when responding to emergency periods, supplemental food recalls, and other supply chain disruptions;

(vi) A plan to limit the disruption of infant formula benefits in the event of an emergency period, supplemental food recall, and other supply chain disruption;

(vii) A communications plan to keep FNS, State and local agency staff, authorized WIC vendors, WIC participants, and the public informed during an emergency period, supplemental food recall, or other supply chain disruption.

(viii) A plan to report to FNS on alternate operating procedures implemented during an emergency period, supplemental food recall, and other supply chain disruptions, which includes Program data and information on the impact of benefit use and delivery.

(ix) A plan to adjust State agency specific minimum requirements for the variety and quantity of supplemental foods that a vendor applicant must stock to be authorized.

Minimum requirements outlined in this provision reflect current guidance found in the *Guide to Coordinating WIC Service During Disasters*.²⁰ In developing and implementing the alternate procedures, State agencies must take into account existing requirements for technology projects in accordance with FNS Handbook 901.²¹ For example, if a State agency decides

²⁰ U.S. Department of Agriculture, Food and Nutrition Service, "Guide to Coordinating WIC Service During Disasters," January 18, 2022. Available online at: <https://www.fns.usda.gov/wic/guide-coordinating-wic-service-during-disasters>.

²¹ U.S. Department of Agriculture, Food and Nutrition Service, "FNS Handbook 901," January 8, 2020. Available online at: <https://www.fns.usda.gov/sso/fns-handbook-901-v2-advance-planning-documents>.

to take steps to integrate changes to their management information system (MIS) to facilitate better service to participants during Program disruptions, State agencies should consult FNS Handbook 901 to secure approval and the requested funding, if applicable. Subsequent to this rulemaking, FNS will issue updated guidance to WIC State agencies outlining required components of the plan and continue to ensure the existing guidance found in the *Guide to Coordinating WIC Service During Disasters* is up to date and available for reference.²² This Guide will also provide additional detail regarding provisions for WIC State agency consideration in development of their disaster plans. For example, additional alternate operating procedures may include:

- designating alternate means and locations for certification and benefit issuance for circumstances in which the conventional means and locations are not possible or optimal;
- establishing a plan to support individuals seeking WIC services receiving a full nutrition assessment and appropriate referrals;
- establishing a plan with health care centers or other providers of exempt infant formula and WIC-eligible nutritionals for the distribution of these products to participants with documented qualifying conditions receiving Food Package III
- developing a WIC formula (infant formula, exempt infant formula, or WIC-eligible nutritional) distribution plan; and
- if a WIC State agency already has a direct distribution or home delivery system in place, updating policy to specifically include provisions reasonable to institute during recalls and/or supplemental food shortages.

Ultimately, this provision is intended to minimize adverse impacts to WIC operations and the continuation of WIC benefits during an emergency period, supplemental food recall, and other supply chain disruptions impacting WIC's normal operations. Further, participants living in rural areas, on Tribal lands, following cultural or religious food practices, and/or having qualifying conditions and receiving Food Package III are potentially most impacted during an emergency period, supplemental food recall, and other supply chain disruptions. The Department expects this rule to ensure more consistent and safe access to the

foods these most vulnerable participants need by anticipating and preparing how to meet those needs before any potential Program disruptions. This rule will allow for more flexibilities in Program operations and will require WIC State agencies to develop plans to address the needs of unique and vulnerable populations overall.

Finally, the Department recognizes WIC is not designed to be a disaster assistance program and is not considered a first response option for disaster survivors. As such, the Department continues to encourage WIC State agencies to work with State and local emergency services offices, as well as the Federal Emergency Management Agency (FEMA), to the maximum extent practicable, to provide participants with a coordinated disaster response during an emergency period.

IV. Implementation

Because the majority of the revisions described in this rulemaking are introducing opportunities for increased flexibility for WIC State agencies, this final rule will take effect 60 days after publication, except for § 246.4(a), which is the provision requiring WIC State agencies to include, as a part of the State Plan, a plan of alternate operating procedures, commonly referred to as a disaster plan, in accordance with FNS guidance.

For § 246.4(a), these changes are required to be implemented with State agency FY 2025 State Plan submissions, due to FNS no later than August 15, 2024. This timeline recognizes WIC State agencies will need the time to develop and refine their alternate operating procedures to meet the requirements of this provision.

Per WIC Policy Memorandum #2022–6: *Implementation of the Access to Baby Formula Act of 2022—PL 117–129*, all contracts entered into or renewed on or after May 21, 2022, the date of enactment of ABFA, are expressly required by law to include language in their WIC infant formula rebate contracts that describes remedies in the event of an infant formula recall, including how an infant formula manufacturer would protect against disruption to Program participants in the State (*i.e.*, ensure that WIC participants can purchase formula using WIC benefits). Section 246.16a as amended codifies these requirements and the provisions as described herein must be strictly applied to all infant formula contracts entered into or renewed once the final rule takes effect. FNS considers a new contract to be entered into upon award after a competitively bid process.

The Department seeks comments from WIC State agencies on the type and scope of administrative burden that may be associated with implementing the provisions in this rule in this manner.

Procedural Matters

Executive Order 12866, 13563 and 14094

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 entitled “Modernizing Regulatory Review” (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866, 13563 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Executive Order 14094 entitled “Modernizing Regulatory Review” (hereinafter, the Modernizing E.O.) amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) having an annual effect on the economy of \$200 million or more in any 1 year (adjusted every 3 years by the Administrator of 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) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

²² U.S. Department of Agriculture, Food and Nutrition Service, “Guide to Coordinating WIC Service During Disasters,” January 18, 2022. Available online at: <https://www.fns.usda.gov/wic/guide-coordinating-wic-service-during-disasters>.

A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action/s and/or with significant effects as per section 3(f)(1) (\$200 million or more in any 1 year). Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined that this rulemaking is "significant" and not "major" under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act).²³ Therefore, OMB has reviewed this final regulation, and the Department has provided the following assessment of their impact.

Regulatory Impact Analysis

As required for all rules designated as Significant by the Office of Management and Budget, an economic summary was developed for this final rule. The following summarizes the conclusions of the regulatory impact analysis:

Need for Action: As described in the preamble, this rulemaking serves to amend the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program regulations by incorporating provisions of the Access to Baby Formula Act of 2022 (ABFA) and making related amendments. ABFA establishes waiver authority for the Secretary of Agriculture to address certain emergencies, disasters, and supply chain disruptions impacting the WIC Program, and adds requirements to State agency infant formula cost containment contracts to protect against disruptions to the Program in the event of a recall. The amendments made via this rule are expected to improve State agencies' ability to ensure continuity of Program operations during emergencies, disasters, and supply chain disruptions, while ensuring access to Program benefits among low-income infants, children, and pregnant, postpartum, and breastfeeding individuals.

Affected Parties: WIC participants and those involved in the provision of infant formula to WIC participants, including the USDA Food and Nutrition Service (FNS), State and local agencies, including Indian Tribal Organizations (ITOs), clinics, infant formula manufacturers, and retail vendors.

I. Statement of Need

On May 21, 2022, the Access to Baby Formula Act of 2022 (Pub. L. 117–129) was signed into law. ABFA amends Section 17 of the Child Nutrition Act of 1966 (CNA, 42 U.S.C. 1786) to (1) establish waiver authority to the Secretary of Agriculture to address certain emergencies, disasters, and supply chain disruptions impacting the

WIC Program; and (2) require State agency infant formula cost containment contracts to include specific remedies to protect against disruptions to the Program in the event of a recall. This rule amends 7 CFR part 246 to codify the provisions of ABFA, which strengthens WIC's ability to address emergencies, disasters, and supply chain disruptions, particularly those impacting infant formula.

II. Background

Established in 1974, the mission of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is to safeguard the health of low-income pregnant, postpartum, and breastfeeding individuals, infants, and children ages 1 through 4 years who are at nutritional risk by providing nutritious foods to supplement diets, nutrition education (to include breastfeeding promotion and support), and referrals to health and other social services. Participation in WIC is associated with improved pregnancy outcomes and lower infant mortality. WIC participation is also associated with improved diet quality.²³ In Federal fiscal year (FY) 2022, WIC served an average of 6.24 million infants, children, and pregnant, breastfeeding, and postpartum individuals per month.²⁴

On March 13, 2020, the President declared the ongoing COVID–19 a public health emergency of sufficient severity and magnitude to warrant declaration of a nationwide emergency. The President later approved major disaster declarations for State agencies, including Indian Tribal Organizations and U.S. Territories pursuant to section 501(b) of the Stafford Act.

On March 18, 2020, the Families First Coronavirus Response Act (FFCRA, Pub. L. 116–127) was signed into law to assist with the COVID–19 public health emergency, which provided additional funding for WIC and offered additional flexibilities by providing USDA with authority to grant certain programmatic waivers to State agencies to enable WIC to continue serving WIC participants in

the midst of a public health crisis (e.g., the physical presence requirement was waived to encourage social distancing and reduce in-person visits to WIC clinics).

On February 17, 2022, a major infant formula manufacturer voluntarily recalled certain powder infant formula, including exempt infant formula. This recall exacerbated existing supply chain issues resulting from the ongoing COVID–19 public health emergency. In response to this recall, USDA used its limited waiver authority granted under Section 301 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, "Stafford Act" (42 U.S.C. 5121) to help WIC participants obtain infant formula. This was possible because of existing COVID–19 major disaster declarations in all WIC State agencies, including States, Indian Tribal Organizations, and U.S. Territories.

While the existing COVID–19 major disaster declaration and resulting Stafford Act authority provided a vehicle through which USDA could grant WIC State agencies waivers, under normal circumstances such waiver authority would not typically be available for the Department to respond to an infant formula recall, nor could the Department issue nationwide waivers. As a result, Congress recognized the need to provide long-term waiver flexibilities, and the President signed ABFA into law on May 21, 2022, in direct response to the infant formula recall. ABFA amended Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) to (1) establish waiver authority to the Secretary of Agriculture to address certain emergencies, disasters, and supply chain disruptions impacting the WIC Program; and (2) require WIC State agency infant formula cost containment contracts to include specific remedies to protect against disruptions to the Program in the event of a recall.

This rule amends 7 CFR part 246 to codify the provisions of ABFA.

III. List of Rule Provisions and Impacts

Most of the provisions in this rule are required by ABFA; the provisions added by the Secretary that go beyond ABFA's requirements are noted below and include consolidating language in the regulations to describe bidders to "responsive" and requiring State agencies to create plans of alternate operating procedures. A list of the rule's provisions and a discussion of their likely impacts to the WIC Program, on Program cost, and on affected parties follows.

²³ Caulfield, L., Bennett, W., Gross, S., Hurley, K., Ogunwole, S., Venkataramani, M., Lerman, J., Zhang, A., Sharma, R., Bass, E. (2022). Maternal and Child Outcomes Associated with the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Comparative Effectiveness Review No. 253. Prepared by the Johns Hopkins University Evidence-based Practice Center under Contract No. 75Q80120D00003.) AHRQ Publication No. 22–EHC019. Rockville, MD: Agency for Healthcare Research and Quality. DOI: <https://doi.org/10.23970/AHRQEPCCER253>.

²⁴ U.S. Department of Agriculture Food and Nutrition Service. WIC Data Tables, 2021. Available online at: <https://www.fns.usda.gov/pd/wic-program>.

A. Add Waiver Authority Granted by the Access to Baby Formula Act

1. Add New Definitions

i. *Program Impact:* This rule adds definitions of Emergency period, Qualified administrative requirement, Recall, and Supply chain disruption in order to incorporate ABFA statutory language.

ii. *Cost Impact:* USDA estimates no change in cost associated with this provision. This change merely adds definitions required for operational clarity under ABFA.

iii. *Impact on Affected Parties:* USDA estimates no impact on affected parties. Impacts on affected parties that arise due to other provisions of this rule are discussed below.

2. Specify Criteria for Establishing Waivers or Modification and Timeframes for Use

i. *Program Impact:* This rule creates a new provision at § 246.29 that specifies (1) criteria under which a waiver or modification may be established, (2) information State agencies must provide to FNS when requesting a waiver, and (3) the timeframes during which waivers will remain available for use by State agencies. One recent example of a category of waivers is physical presence waivers.²⁵ The Families First Coronavirus Response Act gave USDA authority to grant waivers to State agencies of the requirement that all individuals seeking to enroll or re-enroll in WIC do so in person (*i.e.*, physical presence). This waiver also allowed State agencies to defer certain anthropometric (*i.e.*, height/length and weight) and bloodwork requirements used to determine nutritional risk. The physical presence waiver allowed USDA to encourage social distancing and decrease the spread of COVID-19 while ensuring continuity of operations for State and local WIC agencies and for WIC participants.

A second recent example of a category of waivers are the food package substitution waivers.²⁶ These waivers allowed State agencies to permit approved substitutes for the types and amounts of certain WIC-prescribed

foods if their availability is limited. For example, as appropriate based on local food marketplace circumstances, State agencies were approved, upon request, to allow participants to substitute milk of any available fat content if prescribed varieties are not available; substitute authorized whole grains in package sizes up to 24 oz. when 16 oz. packages are not available; and/or substitute 18-count cartons of eggs when 12-count cartons are unavailable. These waivers enabled WIC participants to continue to receive appropriate supplemental foods during shortages of the specific products and/or package sizes that were previously authorized by the State agencies.

ii. *Cost Impact:* USDA was unable to reliably estimate the change in cost associated with this provision, beyond the very slight change in burden hours (38 hours across all State agencies annually) associated with this provision. Although USDA estimates a negligible increase in burden hours due to this provision, USDA also notes that formalizing the criteria for establishing waivers and timeframes for waiver use makes the waiver process more predictable for both State agencies and the Federal government and greatly decreases the likelihood of repeated waiver revisions and submissions in order to meet waiver requirements. USDA is unable to reliably quantify the costs of future waivers since the types and scope/scale of future waivers will be in response to unknown events. USDA notes that some waivers have the possibility to increase or decrease the cost of the Program, though USDA generally expects these possible cost impacts to be small. For example, it is possible that the physical presence waiver either increased or decreased administrative costs for some local WIC clinics, depending on whether the local clinics increased or decreased staffing or office space in response to moving to phone or online certification/recertification of participants. Ninety-nine percent of State agencies reported that the physical presence waivers were “very” or “extremely important” to ensuring quality services during the COVID-19 pandemic, and some State agencies reported that the physical presence waivers allowed them to serve more participants with fewer staff or in less time, which points to potential cost savings generated by the physical presence waivers.²⁷ Similarly, food package substitution waivers may

increase or decrease food costs slightly, depending on whether the food package substitutions are for items slightly more or less expensive than those typically included in the food package.

Approximately 90 percent of State agencies reported that the food substitution waivers were “very important” or “extremely important” to ensuring quality services during the COVID-19 pandemic, pointing to the waivers’ contribution to ensuring continued operations during the pandemic.²⁸ Neither the physical presence waiver nor the food package substitution waivers issued during the COVID-19 pandemic were found to result in significant increases or decreases in WIC spending at the Federal level.²⁹ In FY2019, FY2020, and FY2021, Federal spending on WIC was \$5.3, \$5.0, and \$5.0 billion, respectively, while participation during the same Fiscal Years was 6.4, 6.2, and 6.2 million individuals. Therefore, the effect of waivers in the aggregate during the COVID-19 emergency does not appear to have had a significant effect on Federal WIC costs, though it is possible that individual waivers may have increased or decreased Federal WIC costs.

The use of waivers in the past has generally focused on ensuring continued operation of the WIC Program as normally as possible under temporary and extraordinary circumstances. Waiver authority as authorized by ABFA must continue to be used primarily for this purpose; therefore, USDA does not predict that the future use of waivers will lead to either substantial costs or savings.

iii. *Impact on Affected Parties:* USDA estimates an increase in burden on State agencies as a result of this provision, but this provision will also clarify and standardize the steps that a State agency must undertake in order to submit a waiver request, which could save some State agencies effort in the long run by preventing State agencies from having to resubmit waiver requests multiple times because their initial requests do not meet the waiver requirements or do not provide enough information for FNS to understand why the waiver is necessary in order to continue Program operations. USDA also notes that waiver authority has generally been granted to FNS programs when it was needed in the past, and this provision does not make

²⁵ Almost all State agencies (88 of 89 State agencies) used a physical presence waiver sometime during the COVID-19 pandemic. For more information on physical presence waivers by State agency, see <https://www.fns.usda.gov/disaster/pandemic/covid-19/wic-physical-presence-waiver>.

²⁶ A large majority of State agencies (70 of 89) issued food package substitution waivers for one or more food types. For more information on food package substitution waivers by State agency, see <https://www.fns.usda.gov/wic/food-package-substitution-waiver>.

²⁷ Unpublished data collected by USDA as a part of State agency reporting on FFCRA waiver use. These data will be released in an upcoming USDA report.

²⁸ Ibid.

²⁹ WIC program data for the periods before and during the COVID-19 pandemic (available online at <https://www.fns.usda.gov/pd/wic-program>) do not show any substantial increase or decrease in WIC spending, in spite of the hundreds of waivers in place during the COVID-19 pandemic.

the process for requesting a waiver more burdensome than it already was when FNS implemented waivers during the COVID-19 public health emergency. More generally, waiver authority allows USDA and State and local WIC agencies to continue to operate the WIC Program as intended during extraordinary times, without compromising the quality of WIC services or supplemental nutrition and without increasing the burden on WIC participants. Clear requirements and a simplified waiver process will allow State agencies and USDA to put waivers in place more quickly, enabling State agencies and USDA to rapidly respond to emergency situations and meet waiver applicant and participant needs.

B. Update Requirements for State Agency Infant Formula Cost Containment Contracts

1. Establish Minimum Required Remedies for Infant Formula Cost Containment Contracts

i. *Program Impact:* While ABFA generally requires that infant formula cost containment contracts include remedies to protect against disruption to Program participants in the event of an infant formula recall, this rulemaking codifies into regulations specific minimum remedies that assisted State agencies with meeting participants' needs during a major infant formula recall. The minimum remedies must include (1) that infant formula issuance may exceed the maximum monthly allowance to allow for the purchase of all unit sizes; (2) non-contract brand formula can be issued without medical documentation (except in Food Package III); and (3) when the contracted brand infant formula is the subject of the recall, require the contracted infant formula manufacturer to provide the State agency with an action plan, which includes supply data, to meet infant formula demand and limit disruption to Program participants in the affected jurisdiction(s) within 10 calendar days of the recall, and pay rebates on competitive, non-contract brand infant formula that meets the definition of infant formula at 7 CFR 246.2. WIC State agencies may work with their legal counsel and procurement offices to include additional remedies beyond these regulatory minimum remedies in their infant formula contracts. WIC State agencies may also negotiate flexibilities that are within regulatory requirements and do not require Program waivers

with their contracted infant formula manufacturers.

ii. *Cost Impact:* USDA was unable to reliably estimate the change in costs associated with this provision, beyond the small change in burden hours (148 hours across all State agencies annually) associated with this provision. Although USDA acknowledges that there will be cost impacts associated with this provision in the event of future recalls, at this time, USDA is unable to reliably quantify the costs of future remedies, since the types and scope/scale of future remedies will be in response to unknown events, and therefore, USDA does not include a formal estimate of the 5-year cost of this provision. Instead, the following section provides a historic look at the frequency, scale, and cost of previous infant formula recalls for illustrative purposes as well as an estimate of the cost impact that could result from even modest changes to infant formula contract rebate rates.

The first two parts of the provision grant administrative flexibilities to ensure continued formula supply to WIC participants (1) by enabling State agencies to issue all unit sizes and, in some cases, exceed the maximum monthly allowance for formula during issuance if some package sizes are not available in the local marketplace (2) by enabling State agencies to issue non-contract brand formula without medical documentation (except in Food Package III) in the event that the contract brand formula is unavailable.

The third part of the provision—that the contracted infant formula manufacturer will pay rebates on competitive non-contract brand infant formula when the contracted infant formula manufacturer's product is the subject of the recall—has the potential to impose costs on infant formula manufacturers. As described above, during the most recent major infant formula recall, the infant formula manufacturer whose product was the subject of the voluntary recall temporarily continued paying rebates on competitive non-contract brand infant formula in the WIC State agencies where they held the contract. Adding this remedy to future infant formula cost containment contracts requires all infant formula manufacturers to pay these rebates in the future when their product is the subject of a recall, which in turn could pose an added cost to the manufacturer subject to the recall while their product is off the market.

In the event that a supply chain disruption necessitates issuing a waiver

to a State agency allowing the issuance of non-contract infant formula without medical documentation, but where the contracted infant formula manufacturer in that State agency is not the subject of a recall and thus not obligated to pay rebates on non-contract products as described above, then USDA expects to see a decrease in rebate income relative to the amount of non-contract brand formula issued in that State agency. Any decrease in rebate income relative to the amount of non-contract brand formula issued would increase WIC food expenditures on infant formula for USDA, as was the case in State agencies without contracts with a specific major infant formula manufacturer during the 2022 major infant formula recall. While the Department is not able to estimate the scale of future recalls, a look back at typical infant formula rebate amounts, prior to the 2022 voluntary recall by a major infant formula manufacturer of certain powder infant formula, provides a helpful estimate of possible costs. USDA received approximately \$1.6 billion in WIC infant formula rebates in FY 2021, while the monthly average number of fully formula-fed infant participants was approximately 962,000, and the monthly average number of partially breastfed infant participants was approximately 329,000, resulting in an average monthly rebate of \$103.38 per infant receiving a WIC food package with infant formula. As an example of scale, it would therefore cost USDA around \$10.3 million to cover the lost rebate amounts for 100,000 average infants receiving formula per month, based on FY 2021 costs.³⁰

Our analysis suggests that most infant formula recall events in the past 20 years have been recalls of small amounts of products—usually single batches or lot numbers, and almost all covering fewer than around 100,000 cans of infant formula per recall—and would not require the kind of large-scale intervention that the major infant formula recall in 2022 required. One available list of infant formula recalls from 1982–2005 showed no large nationwide recalls (except for one in 2001 that was a result of mislabeling, not product contamination).³¹ Similarly, a search of FDA's Enforcement Database

³⁰ Analysis of FNS administrative data, available at <https://www.fns.usda.gov/pd/wic-program>.

³¹ See <http://fda.info/HTMLobj-154/Recalls.pdf>. Accessed December 7, 2022.

showed only small recalls of infant formula (fewer than 100,000 cans per recall that likely did not disrupt the supply chain) from June 2012 through 2022, until the large major infant formula recall.³²

Finally, USDA notes that these provisions may impact rebate amounts offered on infant formula contracts moving forward. If this rule changes the incentive for infant formula manufacturers to increase or decrease rebate bids on infant formula contracts through the competitive bidding process, it could increase or decrease the rebate amounts offered by infant formula manufacturers to State Agencies. This would consequently decrease or increase Federal WIC food costs. However, when examining the limited number of infant formula contracts awarded either (1) since the start of the major infant formula recall, or (2) since the passage of ABFA, which included contracts that require the three remedies outlined in this rule, USDA was not able to discern a pattern of either increased or decreased formula rebate bids; some offered rebate amounts increased slightly and others decreased slightly, similar to how formula contracts have changed over time in the past. Therefore, USDA is not able to estimate that these provisions will have an impact on the rebates offered in future infant formula contracts. However, to provide a sense of scale, USDA notes that WIC received \$1.6 billion in rebates from infant formula and food manufacturers in FY2021; a nationwide 5 percent increase or decrease in average infant formula rebate amounts offered to State agencies would decrease or increase Federal WIC food spending by \$80 million per year.

iii. *Impact on Affected Parties:* The extent to which other impacts of these provisions will be realized largely depends on how often and at what scale they are needed in responding to future recalls. In the event that an infant formula manufacturer is never subject to a recall, then the impact of these remedies on infant formula manufacturers will be minimal. In the event of a recall, these provisions grant substantial benefits to WIC State and local agencies, WIC vendors, and WIC participants. The minimum remedies described above benefit WIC State

agencies by providing a substantially streamlined administrative process to approve and issue new infant formula benefits in the event of a recall. WIC vendors benefit from the certainty that WIC participants will continue to be issued and be able to purchase infant formula. Finally, these remedies are intended to protect WIC participants from disruptions in access to infant formula during product recalls. For infant formula manufacturers, if their product is subject to a recall these provisions will require them to pay rebates on non-contract infant formula in their contracted State agencies. However, these provisions also provide certainty as to how all stakeholders in the WIC infant formula supply chain—the Federal Government, State and local WIC agencies, WIC vendors, WIC clinics, and infant formula manufacturers—will respond and what responsibilities they bear in the event of a formula recall.

2. Clarify Terminology in Infant Formula Cost Containment Contracts

i. *Program Impact:* This rule will clarify terminology at 7 CFR 246.16a(c)(5). Specifically, the current terms “responsive and responsible” used in the regulations to describe bidders are consolidated to “responsive.” Responsive is further defined for clarification; to be responsive, a bidder must submit a bid that conforms to the solicitation and must meet requirements at 246.16a. The rule adds language to clarify this meaning, which will enhance consistent application of the term and ensure that all responsive bids will receive consideration. This provision is not required by ABFA.

ii. *Cost Impact:* USDA is not able to estimate a change in cost associated with this provision. Improved clarity may slightly lower administrative costs to State agencies or infant formula manufacturers.

iii. *Impact on Affected Parties:* This change improves the clarity of the bidding process for infant formula contracts between State agencies and infant formula manufacturers.

C. Add Requirement for State Agency Plans of Alternate Operating Procedures

i. *Program Impact:* This rule will add a new provision that State agencies must include as a part of the State Plan a plan of alternate operating procedures, commonly referred to as disaster plans, in the event of a disruption of WIC

services. Requiring States to have these plans in place prior to a disaster will help mitigate potential impacts as States would have uniform baseline measures in place to address potential barriers to Program operations and allow State agencies to respond more quickly during these unforeseen events. This provision is not required by ABFA.

ii. *Cost Impact:* USDA was unable to estimate the change in cost associated with this provision, beyond the change in burden hours (1,869 hours across all State agencies annually) associated with this provision. Some State agencies may already include components of a plan of alternate operating procedures in their State Plan; for these State agencies, this provision poses a minimal additional burden to update their procedures in accordance with regulations. Although there may be a small increase in burden as State agencies write alternative operating procedures to include in future State Plans, USDA anticipates that having these plans in place may decrease burden on State agencies and improve State agencies’ responsiveness during a disaster, although USDA is not able to quantify these potential benefits.

iii. *Impact on Affected Parties:* USDA anticipates a small increase in burden on some State agencies. However, USDA expects that having these plans in place will leave State agencies more prepared in the event of a disaster and will help mitigate the disruptions WIC participants might face in the event of a disaster.

IV. Summary of Impacts

A. Cost Impact

The costs of the rule that were able to be estimated are the result of an increase in reporting and recordkeeping burden associated with the provisions of the rule (an increase of 2,055 reporting and recordkeeping hours annually across all State agencies), most of which are due to the provision requiring alternative operating procedures in State Plans. USDA estimates these costs to be \$0.6 million to the State agencies over the five years from FY 2024 to FY 2028.³³

³³ Costs associated with State agency burden hours are calculated using the hourly total compensation for all State and Local workers from the Bureau of Labor and Statistics (BLS) for FY 2021 and inflated according to the CPI-W increase in OMB’s economic assumptions for the FY2023 President’s Budget for years FY2024–FY2028 (<https://data.bls.gov/timeseries/CMU301000000000D>).

³² Search available at <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/enforcement-reports>. Accessed December 7, 2022.

TABLE 1—ESTIMATED STATE AGENCY COSTS DUE TO CHANGE IN ADMINISTRATIVE ³⁴ BURDEN, FY 2024–2028

	Fiscal year (millions)					
	2024	2025	2026	2027	2028	Total
Increase in State Agency Reporting and Recordkeeping Burden	\$ 0.1	\$ 0.1	\$ 0.1	\$ 0.1	\$ 0.1	\$ 0.6

B. Benefit Impact

As discussed in detail above, the provisions of this rule strengthen USDA and WIC State agencies’ ability to address emergencies, disasters and supply chain disruptions, particularly those impacting infant formula by (1) codifying permanent, expanded waiver authority of the Secretary to help ensure continuity of WIC services during certain emergencies, disasters, and supply chain disruptions impacting the WIC Program; (2) codifying requirements for State agencies to include language in their WIC infant formula cost containment contracts that describes remedies in the event of an infant formula recall, including how an infant formula manufacturer would protect against disruption to benefit access by WIC participants, and (3) requiring that State agencies include as a part of their State Plans a “plan of alternate operating procedures” in the event of an emergency period, supply chain disruption, or supplemental food recall.

Although USDA is not able to quantify the benefits generated by this rule, USDA expects for the provisions of this rule to improve the Federal Government’s and State agencies’ readiness to respond to emergencies, disasters, or supply chain disruptions. Improved readiness should decrease uncertainty to State and local WIC agencies, WIC clinics, infant formula manufacturers, WIC-authorized vendors, and WIC participants and should improve the continued provision of WIC services and benefits to WIC participants in the event of a emergencies, disasters, or supply chain disruption.

C. Participation and Distributional Impacts

As noted in the above analysis, the Department does not project a participation impact attributable to this rule; the changes made by this rule are largely administrative in nature and strive to ensure continued, smooth operation of WIC during extraordinary events. The changes are unlikely to be visible to WIC-eligible individuals and

WIC participants in a way that affects their decision to participate or continue to participate in the WIC Program.

Previous analyses have studied the effects that WIC has on individuals who do not participate in WIC.³⁵ The Department is unable to reliably estimate an effect of this rule on non-WIC participants, as the provisions of this rule that are non-administrative and not costed (*i.e.*, the non-administrative consequences of the waiver provisions and the infant formula contract provisions) do not come into force except in response to future, unpredictable events. Furthermore, the limited datapoints the Department does have do not indicate that this rule is likely to affect infant formula rebates in a meaningful way and, therefore, is unlikely to affect the wider infant formula market. To the extent that the provisions of this rule helps ensure continued infant formula supply in the event of a supply chain disruption, this rule could have positive spillover effects on non-WIC participants, as the infant formula available for purchase to WIC participants will also be available for purchase by non-WIC participants.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified this rule would not have a significant impact on a substantial number of small entities.

This final rule would not have a significant economic impact on a substantial number of small entities. This final rule would not have an adverse impact of small entities in the WIC; the impact is not significant as it allows for greater options and flexibilities to support the continuation of WIC services during emergency periods and supply chain disruptions. State agencies are already required to

continuously operate a cost containment system for infant formula, with some exceptions. Notably, ITOs with 1,000 or fewer participants are exempt from this provision. Further, the Department has encouraged WIC State agencies to develop disaster plans in the event of disruptions to Program operations. Of the 89 WIC State agencies, 82 State agencies have disaster plans in place.

Factual Basis

The provisions of this final rule apply to small local agencies operating the Special Supplemental Nutrition Program for Women, Infants and Children, and to State agency staff who must monitor local agencies in remote locations. These entities meet the definitions of “small governmental jurisdiction” and “small entity” in the Regulatory Flexibility Act. These entities will not be negatively impacted by the changes and options in this rule.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ‘major rule’ as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments, and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of \$177 million or more in 2023 (when adjusted for inflation; GDP deflator source: Table 1.1.9 at <http://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

³⁴ Amounts may not sum to the total shown due to rounding.

³⁵ See, for example, Oliveira, V. and Frazão, E. (2015), “Painting a More Complete Picture of WIC: How WIC Impacts Nonparticipants,” available online at <https://www.ers.usda.gov/amber-waves/2015/april/painting-a-more-complete-picture-of-wic-how-wic-impacts-nonparticipants/>.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments, or the private sector of \$146146177146146 million or more in any one year. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants, and children (WIC) is listed in the Catalog of Federal Domestic Assistance under Number 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section 6(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the final rule, in accordance with the Department Regulation 4300-004 "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the proposed rule might have on participants on the basis of race, sex, national origin, disability, and age. The

requirements outlined in the final rule aim to remove barriers to WIC food access. The changes would impact WIC State agencies, including ITOs, WIC local agencies and clinics, participants and WIC vendors in ways that are expected to increase equity and access for WIC participants during times of disaster.

To mitigate potential impacts on Program access for LEP populations and persons with disabilities, FNS will provide WIC State agencies with technical assistance aimed at ensuring that communications about program changes are available in appropriate languages and in alternative formats for persons with disabilities. After reviewing the potential impacts, FNS does not believe the rule would result in civil rights impacts on protected groups of WIC participants and applicants. However, the FNS CRD will propose further outreach and mitigation strategies to alleviate any unforeseen impacts, if deemed necessary.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Tribal consultation regarding this rule was conducted on November 8, 2022. FNS provided an opportunity for consultation on the rule and Tribal leaders were generally supportive. If a Tribe requests consultation on this rulemaking in the future, FNS will work with USDA's Office of Tribal Relations to ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

This final rule impacts existing information collection requirements that are contained in OMB Control Number 0584-0043 Special Supplemental Nutrition Program for Women, Infants,

and Children (WIC) Program Regulations—Reporting and Recordkeeping (expiration date December 31, 2023) which are subject to review and approval by OMB in accordance with the Paperwork Reduction Act of 1995. Additionally, the waiver elements of this rule are already in effect but codified in this rule and have been previously approved by OMB under OMB #0584-0687. Any further public comment on the waiver information collection solicited in response to this rule will be used to inform the next revision of the information collection. Therefore, FNS is submitting for public comment in this rule the changes in the information collection burdens in OMB Control Numbers 0584-0043 that would result from adoption of this rule. The information collection and recordkeeping requirements included in this final rule have been submitted by the Agency to OMB for approval which is currently pending. FNS will not collect any information associated with this rule until the information collections are approved by OMB.

Comments on the information collection for this final rule must be received by February 12, 2024.

Comments may be sent to: Allison Post, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 3rd Floor, Alexandria, VA 22314. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the online instructions for submitting comments electronically.

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

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

a. Revisions to OMB Control Number 0584–0043

Title: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Regulations—Reporting and Recordkeeping Burden.

OMB Number: 0584–0043.

Expiration Date: 12/31/2023.

Type of Request: Revision of a currently approved collection.

Abstract: This is a revision of existing information collection requirements in the information collection under OMB Control Number 0584–0043 that are affected by this rulemaking. Under this rule, the Department amends 7 CFR part 246 to codify the provisions of ABFA and implement related changes which will strengthen WIC's ability to address emergency periods and supply chain disruptions, particularly those impacting infant formula. This final rule impacts the burden associated with reporting and recordkeeping requirements for State agencies. This final rule may also result in additional financial costs to State agencies.

(i) Burden Revisions Related to State Plan Requirements

This rule requires WIC State agencies to include, as a part of the State Plan, a plan of alternate operating procedures, commonly referred to as a disaster plan in accordance with FNS guidance. Although current WIC regulations do not require WIC State agencies to develop and implement disaster plans, the Department has always encouraged WIC State agencies to develop them. While many WIC State agencies have a disaster plan, they are typically part of a broader health department or other State agency disaster plan and do not address WIC-specific Program operations during emergency periods and supply chain disruptions.

FNS estimates that 82 WIC State agencies have a disaster plan, and that it will take these State agencies an additional 16 hours to update their existing disaster plans to conform with the added specific requirements for these plans included in this rulemaking. Of the remaining 7 WIC State agencies who do not have existing disaster plans, FNS estimates that it will take these State agencies 80 hours to develop disaster plans in accordance with this rulemaking. Therefore, FNS estimates that this rule would result in an increase of 21 burden hours to each State agency's reporting burden ((82 State

agencies $\times$ 16 hours) + (7 State agencies $\times$ 80 hours)/89 State agencies = 21 burden hours). This would increase the burden hours to submit an annual State Plan from 134.62 to 155.62 which would increase the associated reporting burden by 1,869 burden hours.

(ii) Burden Revision Related to Infant Formula Cost Containment Contracts Remedies

This rule requires State agencies to include minimum required remedies in infant formula cost containment contracts to ensure that, in the event of an infant formula recall, any State agency for whom the Secretary has issued a waiver(s) under the conditions described in § 246.29 will be able to enact remedies to protect against disruption to Program participants. All State agencies must continuously operate a cost containment system for infant formula, with some exceptions. Notably, ITOs with 1,000 or fewer participants are exempt from this provision. As such, 79 State agencies out of 89 WIC State agencies have infant formula cost containment contracts. Contracts that State agencies entered into after ABFA was enacted on May 21, 2022 may already include some of the requirements specified in this rule, as WIC Policy Memorandum #2022–6 suggested remedies that are being codified in this rule. However, regardless of whether State agencies have included some of the remedies into their contracts, this rule includes greater specificity on the requirements outlined in WIC Policy Memorandum #2022–6 and an additional requirement. Therefore, incorporating the rule's minimum required remedies in infant formula cost containment contracts would require an estimated one-time two-hour burden per State agency. Therefore, FNS estimates that this rule would result in a one-time increase in 148 burden hours to State agencies' reporting burden (79 State agencies $\times$ 2 burden hours = 148 burden hours).

Additionally, this rule requires infant formula manufacturers to provide State agencies with an action plan to meet formula demand and limit disruption to Program participants in the affected jurisdiction(s) in the event of an infant formula recall. This plan must include current supply data to assist the State agency in their recall response. Based on the rarity of large-scale infant formula recalls, FNS estimates that one

State agency and one infant formula manufacturer will be impacted by an infant formula recall each year, and that it will take the infant formula manufacturer 4 hours to provide the State agency with an action plan with current supply data. Therefore, FNS estimates that this rule would result in an additional 4 burden hours to businesses' reporting burden (1 infant formula manufacturer $\times$ 4 burden hours = 4 burden hours).

(iii) Burden Revisions Related to Emergency Period and Supply Chain Disruption Recordkeeping

This rule requires State agencies establish a plan to report to FNS on alternate operating procedures implemented during an emergency period, supplemental food recall, and other supply chain disruptions, which includes Program data and information on the impact of benefit use and delivery. Additionally, this rule requires infant formula manufacturers to provide State agencies with an action plan to meet formula demand and limit disruption to program participants in the affected jurisdiction(s) in the event of an infant formula recall. This plan must include current supply data to assist the State agency in their recall response. FNS estimates that 15 State agencies will implement alternate operating procedures in the event of an emergency period or supply chain disruption, including an infant formula recall, each year. FNS estimates that it will take State agencies 2 hours to record data related to alternate operating procedures implemented during an emergency period or supply chain disruption, and supply data from infant formula manufacturers in the event of an infant formula recall. Therefore, FNS estimates that this rule would result in an additional 30 burden hours to State agencies' recordkeeping burden (15 State agencies $\times$ 2 burden hours = 30 burden hours).

Respondents: State agencies, including Indian Tribal Organizations and U.S. Territories (note that burden estimates for local agencies are not affected by this rule).

Estimated Number of Respondents: 90.

Estimated Number of Responses per Respondent: 1.99.

Estimated Total Annual Burden on Respondents: 14,032.

APPENDIX I—WIC BURDEN TABLE

Regulatory section	Information collected	Estimated number of respondents	Annual responses per respondent	Total annual responses	Number of burden hours per request	Estimated total burden hours	Previous submission total hours per person	Difference due to program changes
REPORTING BURDEN ESTIMATES								
Affected Public: State and Local Agencies (including Indian Tribal Organizations and U.S. Territories)								
246.4	State Plan	89	1	89	155.62	13,850.18	11,981.18	1,869.00
246.16a(j)	Infant formula cost containment contracts remedies.	74	1	74	2	148	0	* 148
Subtotal Reporting: State and Local Agencies.	.....	89	2	163	85.88	13,998	11,981	2,017.00
Affected Public: Business: Retail Vendors (WIC-Authorized Food Stores)								
246.16a(j)	Infant formula contractor action plan.	1	1	1	4	4	0	4
Subtotal Reporting: Retail Vendors*.	1	1.00	1	4.00	4	0	4	
Grand Subtotal: Reporting.	90	1.82	164	85.38	14,002	11,981	2,021	
RECORDKEEPING BURDEN ESTIMATES								
Affected Public: State and Local Agencies (including Indian Tribal Organizations and U.S. Territories)								
246.4(a)(30); 246.16a(j)	Emergency Period and Supply Chain Disruption Recordkeeping.	15	1	15	2	30	0	30
Subtotal: Recordkeeping ..	.....	15	1.00	15	2.00	30	0	30
Grand Total: Reporting and Recordkeeping.	.....	90	1.99	179	78.39	14,032	11,981	2,051

* There is a one-time information collection burden associated with this provision.

Summary of Requested Burden Revisions:

TABLE 4—SUMMARY OF REQUESTED BURDEN REVISIONS TO #0584–0043

	Responses	Respondents	Time burden
Current Inventory: * Total Burden	48,798,800	6,913,189	4,547,099
Current Inventory: * Reporting	21,254,756	6,913,189	4,017,132
Current Inventory: * Recordkeeping	27,544,044	11,897	529,967
Total Burden Revision Requested	48,798,890	6,913,190	4,549,150
Burden Revision Requested: Reporting	21,254,831	6,913,190	4,019,153
Burden Revision Requested: Recordkeeping	11,897	27,544,059	529,997
Difference in Total Burden from Rulemaking	90	1	2,051

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Penalties, Reporting and recordkeeping requirements, Women.

Accordingly, the Department amends 7 CFR part 246 as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

- 1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

- 2. Amend § 246.2 by adding the definitions for “Emergency period,” “Qualified administration requirement,” “Recall” and, “Supply Chain

Disruption” in alphabetical order to read as follows:

§ 246.2 Definitions.

* * * *

Emergency period means a period during which there exists:

(1) A presidentially declared major disaster as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

(2) A presidentially declared emergency as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

(3) A public health emergency declared by the Secretary of HHS under section 319 of the Public Health Service Act (42 U.S.C. 247d).

(4) A renewal of such a public health emergency pursuant to section 319.

* * * *

Qualified administrative requirement means a statutory requirement under Section 17 of the Child Nutrition Act of 1966 (CNA; 42 U.S.C. 1786) or a regulatory requirement issued pursuant to this section.

* * * *

Recall means recall as defined in 21 CFR 7.3(g) or any successor regulation. Recalls may be conducted voluntarily by a manufacturer or may be required by FDA.

* * * *

Supply chain disruption means a shortage of WIC supplemental foods that limits WIC participants’ ability reasonably to purchase supplemental foods using WIC benefits within a State agency’s jurisdiction, as determined, and declared by the Secretary for the purposes of WIC.

* * * *

■ 3. Amend § 246.4 by adding paragraph (a)(30) to read as follows:

§ 246.4 State plan.

(a) * * *

(30) Plans of alternate operating procedures, commonly referred to as disaster plans, to support the continuation of WIC services during an emergency period as defined at § 246.2, supply chain disruption as defined at § 246.2, and supplemental food recall. State agencies must consider the unique and sudden nature of an emergency period, supplemental food recall, and other supply chain disruptions when developing alternate operating procedures. Alternate procedures must describe the process by which the State agency will minimize the negative impact to WIC operations and services and ensure the availability of authorized

supplemental foods, especially infant formula, to the extent feasible. At a minimum, alternate operating procedures must include-

(i) A plan to address operation of specific Program areas including-

(A) Access to Program records;

(B) Alternate certification and benefit issuance

(C) Verification of Certification (VOC) issuance

(D) Food package adjustments;

(E) Vendor requirements;

(F) Benefit redemption; and

(G) Food delivery systems.

(ii) A plan to ensure continuity of WIC services and address the needs of participants with documented qualifying conditions receiving Food Package III, rural areas, Indian tribal organizations, and other priority populations in the affected area as applicable;

(iii) A designated emergency contact within the State agency for emergency periods, supplemental food recalls, and other supply chain disruptions;

(iv) A designated emergency contact within the State agency to address the needs of participants with documented qualifying conditions receiving Food Package III;

(v) A plan to establish relationships with relief agencies responsible for disaster and public health emergency planning applicable to the State agency’s jurisdiction and participants to support data-informed approaches when responding to emergency periods, supplemental food recalls, and other supply chain disruptions;

(vi) A plan to limit the disruption of infant formula benefits in the event of an emergency period, supplemental food recall, and other supply chain disruptions;

(vii) A communications plan to keep FNS, State and local agency staff, authorized WIC vendors, WIC participants, and the public informed during an emergency period supplemental food recall, and other supply chain disruptions;

(viii) A plan to report to FNS on alternate operating procedures implemented during an emergency period, supplemental food recall, and other supply chain disruptions which includes Program data and information on the impact of benefit use and delivery; and

(ix) A plan to adjust State agency specific minimum requirements for the variety and quantity of supplemental foods that a vendor applicant must stock to be authorized.

* * * *

■ 4. In § 246.16a:

■ a. Revise paragraph (c)(5); and

■ b. Add a new paragraph (n).

The revision and addition read as follows:

§ 246.16a Infant formula and authorized foods cost containment.

* * * *

(c) * * *

(5) A State agency must award the contract(s) to the responsive bidder(s) offering the lowest total monthly net price for infant formula or the highest monthly rebate (subject to paragraph(c)(4)(ii) of this section) for a standardized number of units of infant formula. To be responsive, a bidder must submit a bid by the deadline set by the State agency that conforms to the solicitation and must meet requirements at 246.16a and set forth in the bid solicitation. The State agency must calculate the lowest net price using the lowest national wholesale cost per unit for a full truckload of the infant formula on the date of the bid opening.

* * * *

(n) *What minimum recall-related provisions must be included in infant formula cost containment contracts?* A State agency must include remedies in the event of a recall in their infant formula cost containment contract to protect against disruption in infant formula supply to participants. The State agency will determine when remedies take effect and remain in effect, in accordance with applicable Program requirements and the infant formula cost containment contract. At minimum, recall remedies in the State agency’s infant formula cost containment contract must:

(1) Allow infant formula to be issued in all unit sizes that may exceed the maximum monthly allowance. The State agency and contracted infant formula manufacturer must prioritize unit sizes that most closely provide the maximum monthly allowance;

(2) Allow the issuance of non-contract brand infant formulas without medical documentation, with the exception of participants receiving Food Package III as defined in section 246.10(e)(3) of this Part; and

(3) When any contract brand infant formula of the contracted manufacturer is the subject of a recall, require the contracted infant formula manufacturer to:

(i) Provide the State agency with an action plan, within a timeline established within the contract, which includes supply data, to meet infant formula demand and limit disruption to Program participants in the affected jurisdiction(s); and

(ii) Pay rebates on competitive, non-contract brand infant formula that meets the definition of infant formula at 7 CFR 246.2.

■ 5. Add § 246.29 to read as follows:

§ 246.29 Waivers of program requirements.

(a) *Required conditions.* The Secretary may waive or modify any qualified administrative requirement for one or more State agencies during an emergency period or supply chain disruption. Waivers or modifications may be issued following a State agency request or at the discretion of the Secretary. To be considered, a waiver or modification issued under this Section must meet the following requirements:

(1) The qualified administrative requirement cannot be implemented during any part of the emergency period or supply chain disruption.

(2) The waiver or modification is necessary to serve participants and does not substantially weaken the nutritional quality of supplemental foods.

(3) The waiver or modification would not result in material impairment of any statutory or regulatory rights of participants or potential participants as set forth at 7 CFR 246.8 or 7 CFR parts 15, 15a and 15b.

(4) The waiver or modification would not create a barrier to participation.

(5) The waiver or modification would not create additional eligibility requirements for participation.

(6) The waiver or modification would comply with 7 CFR 246.13(b).

(7) The waiver or modification must offer substitution options with similar nutritional quality, that most closely provide the maximum monthly allowance of supplemental foods, and that do not create new supplemental food categories as set forth in 7 CFR 246.10(e)(12) Table 4.

(8) A State agency that requests a waiver or modification meets additional requirements for the request and approval as determined necessary by FNS.

(b) *Timeframes for waiver request and use.* (1) Waiver starts. A waiver or modification may be granted any time during an emergency period or supply chain disruption.

(2) Waiver duration.

(i) A waiver or modification established during an emergency period may be available for the emergency period and up to 60 days after the end of the emergency period.

(ii) A waiver or modification established during a supply chain disruption may be available for:

(A) a period of up to 45 days from the date of waiver issuance and renewed

with at least 15 days' notice provided by the Secretary; and

(B) no more than 60 days after the supply chain disruption declaration ceases to exist.

(c) *State agency waiver requests.* State agencies shall submit requests for a modification or waiver for USDA approval. Requests shall include but not necessarily be limited to:

(1) The qualified administrative requirement the State agency is requesting to modify or waive (including the statutory or regulatory citation) and an explanation for why it cannot be met;

(2) Justification for why the waiver is necessary to continue WIC services;

(3) An explanation that the waiver meets the conditions set forth in 7 CFR 246.29(a);

(4) The emergency period or supply chain disruption under which the request is being made;

(5) The period for which the flexibility is being requested.

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2023–26641 Filed 12–13–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

[FNS–2022–0005]

RIN 0584–AE86

Supplemental Nutrition Assistance Program: Revision of Civil Rights Data Collection Methods

AGENCY: Food and Nutrition Service (FNS), Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule finalizes provisions of a proposed rule published on June 27, 2022. With this final rule, the Food and Nutrition Service (FNS) is revising Supplemental Nutrition Assistance Program (SNAP) regulations that cover collecting and reporting race and ethnicity data by State agencies on persons receiving benefits from SNAP. This rule removes regulatory language that provides an example that State agencies might collect race and ethnicity data by observation (also referred to as “visual observation”) when participants do not voluntarily provide the information on the application form. In addition, based on feedback from the commenters, this rule prohibits using visual observation as a data collection method for race and

ethnicity. Through this rulemaking, FNS intends to improve the quality of data collected for purposes of Federal civil rights law and policy including title VI of the Civil Rights Act of 1964. USDA's Food and Nutrition Service is committed to promoting equity and inclusion through its Federal nutrition assistance programs. This regulatory change is consistent with this Administration's priorities and furthers FNS' commitment to building equitable and inclusive systems for nutrition access.

DATES: This rule is effective February 12, 2024.

FOR FURTHER INFORMATION CONTACT:

Maribelle Balbes, Chief, State Administration Branch, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, USDA, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314, by phone at (703) 605–4272 or via email at: SM.FN.SNAPSAB@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Current Policy

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs receiving Federal financial assistance. Additionally, Department of Justice (DOJ) regulations at title 28 of the Code of Federal Regulations (CFR), § 42.406(a),¹ require all Federal agencies to provide guidelines for the collection of race and ethnicity data from applicants and beneficiaries of Federal assistance programs sufficient to permit effective enforcement of title VI. Accordingly, SNAP regulations at 7 CFR 272.6(g) and (h) require State agencies to collect race and ethnicity data on participating households and report the data to FNS to help ensure program benefits are distributed without regard to race, color, or national origin. FNS uses this data to determine how effectively FNS programs are reaching potential eligible persons and beneficiaries, identify areas where additional outreach is needed, assist in the selection of locations for compliance reviews, and complete reports, as required. State agencies report aggregate race and ethnicity data to FNS annually via the form FNS–101, “Participation in Food Programs by Race” (Office of Management and Budget (OMB) Control Number 0584–0594, expiration 7/31/2023). FNS uses this aggregate data to conduct compliance reviews and

¹ <https://www.ecfr.gov/current/title-28/chapter-I/part-42/subpart-F/section-42.406>.

investigations, identify trends or disparities that affect participation goals and opportunities to address them, and identify any potential adverse or disproportionate impacts when developing program policy.

Per 7 CFR 272.6(g), State agencies that administer SNAP are required to collect data on participants' race and ethnicity in the manner specified by FNS. The regulations provide that the application form must clearly indicate that the information is voluntary and that it will not affect the eligibility or the level of benefits. SNAP regulations at 7 CFR 272.6(g) also require State agencies to develop alternative means of collecting race and ethnicity data on households, such as by observation during the interview, when the information is not provided voluntarily by the household on the application form.

Proposed Action

In the proposed rule, Supplemental Nutrition Assistance Program: Revision of Civil Rights Data (87 FR 38010), FNS proposed to update SNAP regulations at 7 CFR 272.6(g) to remove the example of visual observation during the interview as an alternative means of collecting race and ethnicity data when not voluntarily provided by a household on the application form. FNS had several reasons for making this change. FNS cited the need to comply with OMB Directive 15, Standards for the Classification of Federal Data on Race and Ethnicity;² which provides that self-identification is the preferred means for gaining information about an individual's race and ethnicity, when practicable, and notes that when these data points are collected through observation, they are likely to be very different than from the information obtained when respondents report about themselves, especially in populations with multiple racial heritages. In addition, there was a desire to be in line with updated FNS Civil Rights Division and Child Nutrition Programs guidance,³ which was supported by a recent Centers for Medicare and Medicaid Services (CMS) study that assessed the quality of race and ethnicity information in observational health databases.⁴ These documents indicate that a third party's observation of an individual's appearance is not a

reliable means to capture how a participant self-identifies their own race or ethnicity identity.

II. General Summary of Comments and Explanation of Revision

During the 60-day public comment period on the proposed rule, which ended on August 26, 2022, FNS received 14 comments. Five commenters were members of the public, one was a State agency that administers SNAP, six were research and advocacy organizations, and two were associations representing health and human service agency leaders and nutrition education administrators. All the commenters supported the proposal to remove visual observation as an alternative data collection method for race and ethnicity, and one commenter recommended that FNS explicitly prohibit using visual observation as a data collection method in the final rule. Several commenters questioned why other alternative data collection methods remain in the rule after visual observation is being removed. Two commenters recommended that FNS remove the ability for States to use alternative data collection methods noting that if an individual chooses not to provide the information, States should not try to collect it. One commenter encouraged FNS to gather best practices for alternative data collection methods, and one commenter expressed concerns about using aggregate data as an alternative data collection method.

FNS agrees that it is important to clearly state that the final rule removes the option to use visual observation and amends the regulatory language at 7 CFR 272.6(g) to expressly prohibit using that option. FNS has updated language in the final rule but will continue to allow other alternative methods of data collection. FNS cannot eliminate the option to use alternative data collection methods in this final rule. The use of alternate data collection methods is required by OMB Directive 15. To ensure compliance with title VI of the Civil Rights Act of 1964 and associated regulations, FNS will retain requirements at regulation 7 CFR 272.6(g) for State agencies to develop alternative means of collecting race and ethnicity data when participants do not self-identify. However, FNS recognizes that there are challenges associated with the use of alternative methods of data collection for race and ethnicity, such as choosing and obtaining appropriate data sources, and keeping up with emerging technology and tools. Therefore, FNS will gather and disseminate to State agencies information on best practices

for developing alternative means of collecting race and ethnicity data when participants do not self-identify, including considerations when using aggregate data.

One commenter suggested that FNS should ensure that when State agencies use other data sources to collect race and ethnicity data, the State should clearly identify the data sources and verify that visual observation was not utilized. FNS recognizes the need to support compliance with requirements at 7 CFR 272.6(g) and agrees with the commentor. FNS will incorporate review of State alternative methods for collection of race and ethnicity data into its ongoing oversight and management evaluation processes (e.g., Civil Rights and/or Program Access reviews) and will require corrective actions, as needed.

One commenter suggested increasing the number of race and ethnicity options available for SNAP applicants to self-identify. SNAP regulations at 7 CFR 272.6(g) and (h) do not specify the race and ethnicity options that State agencies must provide to SNAP applicants for self-identification. However, FNS requires State agencies to annually submit the "Participation in Food Programs—By Race" (FNS-101) form, which includes selected race and ethnicity options. OMB currently has an ongoing effort to gather public comments to improve the quality and usefulness of Federal race and ethnicity data, including through improved race and ethnicity options. FNS will consider information obtained through OMB's effort when considering future changes to the FNS-101 race and ethnicity options. Additionally, FNS 113-1 Civil Rights Compliance and Enforcement Instruction states that "A State agency may have categories for race in addition to the ones required by FNS; however, the additional categories must be mapped and extracted to the FNS-required categories."

Procedural Matters

Executive Order 12866, 13563 and 14094

Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and

² 62 FR 58782 (October 30, 1997) (<https://www.govinfo.gov/content/pkg/FR-1997-10-30/pdf/97-28653.pdf>).

³ <https://www.fns.usda.gov/cn/Race-and-Ethnicity-Data-Policy-Rescission>.

⁴ Polubriaginof FCG, Ryan P, Salmasian H, et al. Challenges with quality of race and ethnicity data in observational databases. *J Am Med Informatics Assoc.* 2019. doi:10.1093/jamia/ocz113.

promoting flexibility. The Office of Management and Budget has determined this rule to be not significant under Executive Order 12866.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget. Therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Secretary certifies that this rule would not have a significant impact on a substantial number of small entities. This rule will not have an impact on small entities because the changes required by the regulations are directed toward State agencies operating SNAP.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for rules with “Federal mandates” that may result in expenditures by State, local, or Tribal governments, in the aggregate, or the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the **Federal Register** notice published June 24, 1983 (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency’s considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

The Department has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive order, a federalism summary impact statement is not required.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the rule, in accordance with Department Regulation 4300–004, Civil Rights Impact Analysis, to identify and address any major civil rights impacts the rule might have on minorities, women, individuals with disabilities and individuals with limited English proficiency (LEP). The changes to SNAP regulations in this rule are to remove the option for visual observation for race and ethnicity data collection from SNAP regulations. After careful review of the rule’s intent and provisions and available data sets, FNS anticipates that the promulgation of this rule will increase the accuracy of data collected on the race and ethnicity of SNAP households by reducing errors in data collection caused by inaccurate

visual observation. While this rule does provide for the collection of race and ethnicity data of SNAP households, as required by Federal law, it does not change any eligibility criteria.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FNS determined that this rule does not require Tribal consultation. We are unaware of any current Tribal laws that could be in conflict with this rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires OMB approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number under the Paperwork Reduction Act of 1995.

Information collection activities associated with this rule are approved under existing OMB Control Numbers. OMB Control Number 0584–0064 (expiration 02/29/2024) includes burden estimates associated with the collection of race and ethnicity data on SNAP applications. OMB Control Number 0584–0594 (expiration 07/31/2023) includes burden estimates associated with race and ethnicity data reporting on the form FNS–101, “Participation in Food Programs—by Race”. The requirements in this rule do not introduce any new or changed information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 272

Civil rights, Claims, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

Accordingly, 7 CFR part 272 is amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 1. The authority citation for part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 272.6, amend paragraph (g) by revising the third sentence and adding a fourth sentence to read as follows:

§ 272.6 Nondiscrimination compliance.

* * * * *

(g) * * * The State agency must develop alternative means of collecting the ethnic and racial data on households when the information is not provided voluntarily by the household on the application form. These alternative means of data collection shall not include observation (also known as visual observation).

* * * * *

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2023–27351 Filed 12–13–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE**Rural Business-Cooperative Service****7 CFR Part 4279**

[Docket No. RBS–20–BUSINESS–0016]

RIN 0570–AB07

Guaranteed Loanmaking and Servicing Regulations

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule; correction and stay of effectiveness.

SUMMARY: The Rural Business-Cooperative Service (RB–CS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is publishing a stay of effective date for the final rule published in the **Federal Register** on November 24, 2023. The stay of the effective date for 60-days as provided in this notification will bring the final rule into compliance with the Congressional Review Act. This notification also corrects the reference to Executive Order 12866, Regulatory Planning and Review, which

the final rule was determined to be significant.

DATES: The correction is effective December 14, 2023. Effective December 14, 2023, 7 CFR 4279.190(a), (c)(1) through (3) and (5), (d)(1) through (3), (h), (k)(1) through (3), (m) introductory text, and (m)(4) are stayed until February 12, 2024.

FOR FURTHER INFORMATION CONTACT:

Mark Brodziski, Deputy Administrator, Rural Business and Cooperative Service, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop Washington, DC 20250–3221; email: mark.brodziski@usda.gov; telephone (202) 205–0903.

SUPPLEMENTARY INFORMATION: On November 24, 2023, RBCS issued a final rule which published in the **Federal Register** [88 FR 82225] entitled “Guaranteed Loanmaking and Servicing Regulations.” This final rule updates the B&I CARES Act Program Loans, as implemented in 7 CFR part 4279—Guaranteed Loan Making and 7 CFR part 4287—Servicing and as published in the **Federal Register** on May 22, 2020, as an interim rule. The final rule that published on November 24, 2023 incorrectly stated that the effective date was November 24, 2023. Since this final rule has been reviewed by the Office of Management and Budget and it is determined to be “Significant” under Section 3(f)(1) of Executive Order 12866, the Congressional Review Act (CR) requires a 60-day delay from date of publication in the **Federal Register**. This stay of the final rule for 60-days as provided in this notification will bring the final rule into compliance with the CRA.

This rulemaking also corrects the Executive Order 12866, Regulatory Planning and Review, which the final rule was determined to be significant.

Correction

In FR Doc. 2023–25908 (88 FR 82225) appearing on pages 82225 and 82227 in the **Federal Register** of Friday, November 24, 2023, the following correction is made:

Executive Order 12866, Regulatory Planning and Review [Corrected]

1. On page 82227, in the first column, under Executive Order 12866, Regulatory Planning and Review, is corrected to read: This final rule has been reviewed by the Office of Management and Budget and is determined to be “Significant” under Section 3(f)(1) of Executive Order 12866. A “significant regulatory action” means any regulatory action that is likely to result in a rule that may: “have

an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.”

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2023–26751 Filed 12–13–23; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE**Rural Business-Cooperative Service****Rural Utilities Service****7 CFR Chapter XLII**

[Docket: RBS–23–BUSINESS–0006]

RIN 0570–AB10

Rural Business Development Grant (RBDG) Regulation: Tribes and Tribal Business References To Provide Equitable Access

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Final rule and response to comment.

SUMMARY: The Rural Business Development Grant (RBDG) program is intended for governmental entities and non-profits that foster economic development, job creation and business creation in rural and Tribal communities. Eligible applicants for RBDG assistance include rural towns, communities, State agencies, authorities, nonprofit corporations, institutions of higher education, Federally recognized Tribes (<https://www.bia.gov/service/tribal-leaders-directory>) and cooperatives (if organized as a private nonprofit corporation). United States Department of Agriculture (USDA) intends to improve Tribal Government participation in the program. This final rule seeks to increase Tribal Government participation with programmatic amendments. This final rule responds to all comments received on the proposed rule.

DATES: The final rule is effective January 16, 2024.

ADDRESSES: Additional information about RBDG is available at <https://www.rd.usda.gov/programs-services/>

business-programs/rural-business-development-grants.

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Will Dodson, Branch Chief, Intermediary Programs, Program Management Division, Rural Business-Cooperative Service, 1400 Independence Ave. SW, Stop 3201, Washington, DC 20250; telephone, 202–690–4730; email, will.dodson@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 2015, Rural Business-Cooperative Service (RBCS or the Agency), a Rural Development (RD) agency of the USDA, published an interim final rule with comment, 80 FR 15665, for the RBDG program. The interim final rule with comment ensured the Agency had a regulation in place to meet the Congressional mandate established in the Agricultural Act of 2014 (2014 Farm Bill). The RBDG program is targeted at public governmental entities, including Tribal Governments, and non-profit entities, which in turn empower business and market development. However, following implementation of the interim final rule, the Agency received regular feedback through Tribal consultation that the interim final rule did not adequately define and address how Tribes legally structure their businesses and related enterprises as arms or instrumentalities of Tribes. The RBDG program did not previously identify Tribally-owned businesses separate from Tribal Governments. This nuance effectively prevented full access to participation for Tribes and Tribally-owned businesses.

Tribal Governments do not maintain a tax base; therefore, Tribes often establish corporate or other business entities as government arms or instrumentalities to provide for a public (Tribal) good or to generate revenue for the provision of public (Tribal) goods by the Tribal Government. These Tribal Government entities often significantly contribute to their local economy through employment of Tribal and non-Tribal members (non-Tribal United States citizens), job training and advancement opportunities, and by filling gaps in commerce across Tribal lands that are often food, economic, and credit deserts. The Federal Government maintains a treaty and trust responsibility to provide for economic self-sufficiency among Indian Tribes.

Consistent input from Tribal Governments and Tribal stakeholders indicated that the RBDG program has experienced reduced participation of

Tribal Governments and Tribal entities, since inception of the program. This reduction in participation is due to policies that have not fully considered or included the range of strategies that Tribal nations employ to build Tribal markets and economies through government arms and instrumentalities. Historically, Tribes have not fully utilized the RBDG program due to Agency policy, which does not adequately consider the range of entities that Tribal nations incorporate, that are Tribal Government owned and operated to foster economic development and promote meaningful employment, while also generating revenue for the Tribal Government. The complex legal and political structure and nature of Tribal nations and these Tribal entities necessitates a close relationship between both entities with ownership and control remaining with the Tribal Governments. The amendments update and codify the Agency's policy regarding Tribal nations and their Tribal-owned entities.

II. Discussion of Public Comments

The Agency published a proposed rule on May 24, 2023 (88 FR 33552) to solicit comments on plans to reduce barriers to access for Tribes in the RBDG program by amending Tribal applicant definitions, Tribal applicant references, conflict of interest language, and appearance of conflict of interest and affiliation language as it relates to Tribes in the RBDG regulation 7 CFR part 4280, subpart E. A 60-day comment period was provided for the proposed rule, which closed on July 24, 2023, and no comments were received through the regulatory public comment period.

The Agency conducted a virtual Tribal Consultation and listening session on July 12, 2023, for Tribal leaders and tribal organizations. An additional 30-day comment period was provided to Tribal leaders so they could submit Tribal consultation written comments via email. The Tribal consultation written comment period closed on August 14, 2023. RBCS received comments from three respondents (two were from elected Tribal leaders and the third was from a regional Tribal non-profit). Most comments were supportive of the rule. However, a few concerns were raised regarding how the Agency would process these changes in a consistent manner.

(a) *Virtual Tribal Consultation and Listening Session Comments.* The Agency's virtual Tribal consultation and listening session included a Tribal Caucus portion.

(1) *Tribal Caucus Session.* This session provided Tribal leaders the opportunity to discuss relevant consultation issues and was facilitated by a representative from a recognized Tribal organization, without Federal policymakers online.

(2) *Tribal Consultation and Listening Session and associated briefing materials (framing paper and Dear Tribal Leader Letter).* This session provided Tribal leaders an opportunity to review the Agency's summary of proposed changes to the RBDG regulation. Specifically, this included the clarification and expansion of eligibility for federally recognized Tribes to support wholly owned Tribal-government entities as program beneficiaries. Additional topics included the proposed expansion of the "Small and Emerging Business" definition to include Tribal governments and Tribally owned entities, as well as clarification of the definition of "Conflict of Interest" to explain how the Agency defines the relationship between Tribal Nations and their Tribal-owned entities. These topics were covered by the Agency.

For the listening session the Agency provided four (4) standard questions to the attendees to obtain feedback. The four standard questions are listed below with a summary of the feedback received for each question.

(i) *Do Tribal leaders agree these changes will help increase tribal eligibility within the RBDG program?*

The feedback received during the consultation indicated unanimous support for the proposed changes.

(ii) *Is there anything we should strike or edit in the updated regulatory language?* There was no indication of striking or editing any proposed language by participants.

(iii) *Is there anything we overlooked that we should include in the updated regulatory language?* There was no indication of any omissions in the proposed language by participants.

(iv) *Does your Tribe have any unique organizational structures for your enterprises that we should consider as we finalize these changes?* There were no suggestions made for this question in the listening session.

(b) *Tribal Comment #1.* Tribal leader for Central Council of Tlingit and Haida Indian Tribes of Alaska (Tlingit & Haida) provided recommendations as follows:

(i) The definition for Tribal governments cited to the Tribal List Act of 1994 (Pub. L. 103–454, 108 Stat. 4791) should include as an eligible entity Tribal organization as defined by 25 U.S.C. 5304(l).

(ii) The RBDG program should not require tribal resolutions from each tribal member of the tribal organization to participate in the RBDG program.

Agency Response. The Agency agrees with the first comment and asserts that the rulemaking recognizes both Tribal government arms and instrumentalities and democratically elected Tribal organizations when registered as non-profits as eligible direct RBDG applicants and program beneficiaries. As such, Tribal organizations as defined by 25 U.S.C. 5304(l) are already included as eligible entities and the Agency will work with staff administering the program to ensure that this clarification is made through future training and staff instruction.

The Agency also agrees with the second part of the comment. The Agency requires a resolution of the board or governing body of any RBDG program applicant to ensure that the organization has approved the application. However, due to the unique nature of the Tribal organizations under 25 U.S.C. 5304(l) the member Tribes have already empowered these organizations to apply on their behalf, and therefore requiring separate resolutions of support from the member Tribes is not needed. Tribal organizations under 25 U.S.C. 5304(l) may need to provide documentation that they are empowered to apply on behalf of their member Tribes through existing organizational documents, etc.

(c) *Tribal Comment #2.* Tribal leader for the Oglala Sioux Tribe submitted responses to the four standard questions that were provided during the listening sessions. The responses were in support of the proposed regulatory language revisions, and the Tribal leader did not have any suggested edits.

Agency Response. The Agency appreciates the time and participation of the Oglala Sioux Tribe in the listening session and the communication sent on August 14, 2023.

(d) *Tribal Comment #3.* Tribal leader for United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) provided the following comments:

(i) Expressed concern regarding expansion of the Small and Emerging Business definition. USET SPF would like the language associated with this definition to ensure that Tribal governments are not referred to, or categorized as business entities, but rather they are distinct sovereigns with a legally established, recognized, and upheld nation-to-nation, government-to-government relationship with the U.S. Federal government.

(ii) Recommended that the Agency provide additional training and develop

clear guidance to USDA State Office Staff to better understand Tribal sovereignty, U.S. Tribal Nation relations, and the unique distinctions between Tribal governments and Tribally owned and operated entities and businesses.

Agency Response. The Agency appreciates the comments. In reference to the first comment, the Agency feels the RBDG regulation provides an adequate distinction between Tribal governments and Tribal business entities. One of the goals of the RBDG program is to assist small and emerging businesses and the nature of the proposed revisions are limited to that context. The Agency recognizes that Tribal governments are distinct sovereigns with a legally established, recognized, and upheld nation-to-nation, government-to-government relationship with the U.S. Federal Government. The effort of the proposed language is to simply reflect and codify the Agency's understanding, within the context of RBDG eligibility, of the relationship between Tribal governments and their Tribally owned entities. In reference to the second comment, the Agency agrees and intends to provide training to USDA State Office staff to better understand the regulatory changes, Tribal sovereignty, and the unique relationship that the federal government has with federally recognized Tribes. Training that is developed will include input and participation from RBDG program staff, RD's Tribal Relations Team and USDA's Office of Tribal Relations.

III. Summary of Changes to the Rule

The summary of changes provided below are the same as what was provided in the proposed rule published in the **Federal Register** (88 FR 33552) on May 24, 2023. The final rule provides no new changes.

(a) Administrative Change

The RBDG Program (7 CFR part 4280) is currently listed under chapter XLII, Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture, along with Direct and Insured Loanmaking (7 CFR part 4274), Guaranteed Loanmaking (7 CFR part 4279), Grants (7 CFR part 4284), Cooperative Agreements (7 CFR part 4285), Servicing (7 CFR part 4287), Payment Programs (7 CFR part 4288), and Rural Business Investment Company ("RBIC") Program (7 CFR part 4290). This final rule will update the ownership of chapter XLII to remove Rural Utilities Service as these programs are all under RBCS exclusively.

(b) Section 4280.403 Definitions

The definitions section is being revised to add and revise definitions.

Conflict of Interest. The *Conflict of interest* definition is added to codify the Agency's interpretation of the relationship of Tribal nations and their Tribal owned entities to expand eligibility opportunities for Tribal applicants.

Indian Tribe (Tribal). The current operating definition for *Indian Tribe (Tribal)* is being revised to *Indian Tribe (Tribal), Tribal Government, and/or Federally Recognized Tribes*. Historically, the Program has utilized the list of Federally Recognized Tribes published by the Bureau of Indian Affairs to determine if a Tribe was eligible to directly apply for RBDG assistance. No change to the current policy is being implemented and the statutory cite for this policy will now be included within the regulation. Eligible applicants for RBDG assistance continue to be rural Towns, Communities, State agencies, Authorities, Nonprofit corporations, Institutions of higher education, Federally Recognized Tribes (<https://www.bia.gov/service/tribal-leaders-directory>), and cooperatives (if organized as a private nonprofit corporation).

Small and Emerging Business. The *Small and Emerging Business* definition is being revised to add language to clarify the relationship of Tribal Governments and Tribal owned entities. Specifically, the management and Board of Directors of the Tribal government owned entity or business do not have to be independent of the Tribal Council. Language has also been added to clarify that the asset and employee size limitations to qualify as a small and emerging business are limited to the Tribal entity that is applying for assistance and is not intended to be inclusive of all Tribal assets or all Tribal employees. Consequently, it is anticipated that financial documentation required for Program participation will be limited to the immediate Tribal entity that is applying for the assistance and not required for the Tribe or its other Tribal entities, unless the Tribe itself is the applicant. These amendments were made in accordance with direct Tribal leader input conducted through Tribal consultation and will improve Tribal Government accessibility to both the regular RBDG Program and RBDG funds appropriated specifically to support projects that benefit federally recognized Tribes and their members.

(c) Section 4280.500 OMB Control Number

On March 25, 2015, RBCS published an interim final rule with comment for the RBDG Program, 80 FR 15665, that assigned Office of Management and Budget (OMB) control numbers 0570–0022 and 0570–0024 in accordance with the Paperwork Reduction Act of 1995 (PRA). OMB control numbers 0570–0022 and 0570–0024 have been discontinued as of 2016. A new collection package in accordance with PRA was issued in 2016 and the new OMB control number is 0570–0070.

IV. Executive Orders/Acts

Executive Order 12866—Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this final rule as not a major rule, as defined by 5 U.S.C. 804(2).

Assistance Listing Number (Formally Known as the Catalog of Federal Domestic Assistance)

The Assistance Listing Number assigned to the RBDG Program is 10.351. The Assistance Listings are available on the internet at <https://sam.gov/>.

Executive Order 12372—Intergovernmental Consultation

This program is subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RBCS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C. However, Tribes and Tribal entities as defined in this final rule are exempt of this requirement.

Paperwork Reduction Act

This final rule contains no new reporting or recordkeeping burdens under OMB control number 0570–0070 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that (i) this action meets the

criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action,” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (“APA”) or any other statute. The APA exempts from notice and comment requirements rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this final rule.

Executive Order 12988—Civil Justice Reform

This final rule has been reviewed under Executive Order 12988. In accordance with this final rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandates Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and Tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or Tribal Governments, in the aggregate, or to the private sector, of \$100 million or more in any one-year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal agency to identify and consider a reasonable number of

regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal Governments or for the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132—Federalism

It has been determined, under E.O. 13132, Federalism, that the policies contained in this final rule do not have any substantial direct effect on 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. Nor does this final rule impose substantial direct compliance costs on State and local Governments. Therefore, consultation with the States is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

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

RBCS has determined that the rule does have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian Tribes but reflects a remedy to RBDG Tribal barriers identified in Tribal consultation, including recent Tribal consultations on equity hosted in March 2021 and April 2022. USDA also held an additional follow-up Tribal consultation for input during the 60-day comment period. Additionally, if a Tribe requests Government-to-Government consultation regarding this rule, the Agency will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided. Interested Tribal leaders are

encouraged to contact the Office of Tribal Relations or RD's Tribal Coordinator at AIAN@usda.gov to request such a consultation.

E-Government Act Compliance

RD is committed to the E-Government Act of 2002, Public Law 107-347, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Civil Rights Impact Analysis

RD has reviewed this final rule in accordance with USDA Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the final rule and all available data, issuance of this proposal is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status. No major civil rights impact is likely to result from this final rule.

USDA Non-Discrimination Statement

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language) should contact the responsible Mission

Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf> from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

List of Subjects in 7 CFR Part 4280

Business and industry, Energy, Grant programs—business, Loan programs—business, and Rural areas.

For the reasons discussed in the preamble, 7 CFR chapter XLII is amended as follows:

■ 1. Under the authority of 5 U.S.C. 301 and 7 U.S.C. 1989, the heading for chapter XLII is revised to read as follows:

CHAPTER XLII RURAL BUSINESS-COOPERATIVE SERVICE, DEPARTMENT OF AGRICULTURE

PART 4280—LOANS AND GRANTS

■ 2. The authority citation for part 4280 is revised to read as follows:

Authority: 7 U.S.C. 1989(a), 7 U.S.C. 2008s.

Subpart E—Rural Business Development Grants

■ 3. Amend § 4280.403 by:

■ a. Adding the definition of "Conflict of Interest" in alphabetical order and revising the definitions of "Indian Tribe (Tribal)" and "Small and Emerging Business" to read as follows:

§ 4280.403 Definitions.

* * * * *

Conflict of Interest. When the grantee's employees, Board of Directors, or their immediate families have a legal

or personal financial interest in the recipient(s) receiving the benefits or services of the grant. Tribal Governments, subdivisions of Tribal Governments (chapters, districts, authorities, townships, etc.), and Tribal arms and instrumentalities, entities wholly-owned and chartered by Tribal Governments including but not limited to: Tribal owned corporations (including Section 17 Corporations, Community Development Corporations and Economic Development Corporations), Tribal owned businesses, Tribal owned authorities, Tribal owned utilities, other Tribally owned enterprises and their subsidiaries will not be considered as having a conflict of interest due to their, or their Board's, ties to their associated Tribe or each other.

* * * * *

Indian Tribe (Tribal), Tribal Government and/or Federally Recognized Tribes. Any Indian or Alaska Native tribe, band, nation, pueblo, village or community as defined by the Federally Recognized Indian Tribe List Act (List Act) of 1994 (Pub. L. 103-454).

* * * * *

Small and Emerging Business. Any private and/or nonprofit business which will employ 50 or fewer new employees and has less than \$1 million in gross revenue; for retail operations, gross revenue may be reduced by cost of goods sold and returns or for a service organization, gross revenue may be reduced by the cost of providing service or for a manufacturing operation, gross revenue may be reduced by the cost of raw materials and the cost of production. The \$1 million gross revenue and 50 or fewer new employee thresholds apply only to each individual Tribal owned enterprise applicant or recipient. Due to the unique structuring of Tribal economic development, the revenue or employees of the Tribe and/or parent Tribal enterprise will not apply towards the individual Tribal enterprise applicant or recipient, regardless of shared ownership or Directors. The revenue of Tribes, subdivisions of Tribes and Tribal entity applicants, will not be considered revenue in determining program and project eligibility.

* * * * *

■ 4. Revise § 4280.500 to read as follows:

§ 4280.500 OMB control number.

The reporting and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under

the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0070 in accordance with the Paperwork Reduction Act of 1995. You are not required to respond to this collection of information unless it displays a valid OMB control number.

Karama Neal,

Administrator, Rural Business-Cooperative Service, USDA Rural Development.

Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2023–27504 Filed 12–13–23; 8:45 am]

BILLING CODE 3410–XY–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2022–0188]

RIN 3150–AK89

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewed Amendment No. 17

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of January 16, 2024, for the direct final rule that was published in the **Federal Register** on October 30, 2023. This direct final rule amended its spent fuel storage regulations by revising the Holtec International HI–STORM 100 Cask System listing within the “List of approved spent fuel storage casks” to include Renewed Amendment No. 17 to Certificate of Compliance No. 1014.

DATES: The effective date of January 16, 2024, for the direct final rule published October 30, 2023 (88 FR 74019), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2022–0188 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC–2022–0188. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER**

INFORMATION CONTACT section of this document.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The proposed certificate of compliance, the proposed changes to the technical specifications, and the preliminary safety evaluation report are available in ADAMS under Accession No. ML22175A078. The final certificate of compliance, the final technical specifications, and the final safety evaluation report are available in ADAMS under Accession No. ML23328A004.

- **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, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Kristina Banovac, Office of Nuclear Material Safety and Safeguards, telephone 301–415–7116, email: Kristina.Banovac@nrc.gov; and Irene Wu, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1951, email: Irene.Wu@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On October 30, 2023 (88 FR 74019), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to include Renewed Amendment No. 17 to Certificate of Compliance No. 1014. Renewed Amendment No. 17 updates the HI–STORM 100 Cask System description in the certificate of compliance to indicate that only the portions of the components that contact the pool water need to be made of stainless steel or aluminum. Minor editorial and formatting changes also were made.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on January 16, 2024. The NRC did not receive any comments on the direct final rule.

Therefore, this direct final rule will become effective as scheduled.

Dated: December 11, 2023.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–27505 Filed 12–13–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2241; Project Identifier AD–2023–01214–A; Amendment 39–22629; AD 2023–25–02]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Piper Aircraft, Inc. (Piper) Model PA–46–350P, PA–46–500TP, and PA–46–600TP airplanes. This AD was prompted by a report that a bearing fell out of a control column mount during routine handling prior to installation in an affected airplane and the discovery that a quality escape condition could exist on other airplanes. This AD requires inspecting the left and right control column mounts to determine if a retaining ring is installed. If a retaining ring is not installed, this AD requires inspecting the bearing in the mount block for the presence of retaining compound, and depending on the inspection results, installing a retaining ring and applying retaining compound to the bearing, as applicable. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 19, 2023.

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

The FAA must receive comments on this AD by January 29, 2024.

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

• *Federal eRulemaking Portal*: Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

• *Fax*: (202) 493–2251.

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

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

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–2241; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

• For service information identified in this final rule, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; phone: (772) 291–2141; website: www.piper.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. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–2241.

FOR FURTHER INFORMATION CONTACT:

Tuan Tran, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5522; email: 9-ASO-ATLACO-ADS@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include “FAA–2023–2241 Project Identifier AD–2023–01214–A” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency

will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Tuan Tran, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

On November 15, 2023, the FAA received a report that a bearing fell out of a control column mount during routine handling, prior to installation on a Piper Model PA–46–600TP airplane. To conform to the type design, this bearing is installed in the mount block using a retaining compound into a recess in the control column mount with secondary retention provided by a retaining ring. Piper’s investigation into this incident revealed that the retaining ring was not installed. If the bearing is not secure due to the absence of the retaining ring the quadrant assembly and shaft could migrate aft and separate from the firewall attachment, creating a free end on the affected control column. With a free end on the control column, combined with other factors, the aileron cables could become slack, resulting in loss of aileron control, and it could also bind the free operation of the elevator control system. Slack aileron cables and binding of the elevator controls would affect both the pilot and copilot controls. On November 17, 2023, further investigation by Piper into this situation found a quality escape issue on certain Piper Model PA–46–350P, PA–46–500TP, and PA–46–600TP airplanes where the possibility exists that the retaining ring was not installed during production or retaining compound was not applied to the bearing. A missing retaining ring in a control column

mount, if not addressed, could lead to a major failure in the aileron quadrant assembly and result in loss of pitch and roll control of the airplane during flight with consequent loss of control of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA’s Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Piper Service Bulletin No. 1409A, dated November 21, 2023 (Piper SB 1409A). This service information specifies procedures for inspecting the left and right control column mounts to determine if a retaining ring is installed, inspecting the bearing in the mount block for the presence of retaining compound, installing a retaining ring, and applying retaining compound to the bearing. 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**.

AD Requirements

This AD requires accomplishing the actions identified as “RC” (required for compliance) in Part III. of the Instructions in Piper SB 1409A.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because a missing retaining ring in a control column mount, if not addressed, could lead to a major failure

in the aileron quadrant assembly without warning and result in loss of pitch and roll control of the airplane during flight with consequent loss of control of the airplane. Because this could happen without warning, the left and right control column mounts must be inspected before further flight to determine if the retaining ring is missing. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the

public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when

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

Costs of Compliance

The FAA estimates that this AD affects 57 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of Model PA-46-350P airplanes	3 work-hours × \$85 per hour = \$255	\$0	\$255	\$3,825 (15 airplanes).
Inspection of Model PA-46-500TP and Model PA-46-600TP airplanes.	16 work-hours × \$85 per hour = \$1,360	0	1,360	\$57,120 (42 airplanes).

The FAA estimates the following costs to do any necessary actions that

would be required based on the results of the inspection. The agency has no

way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Installation of retaining ring	0.50 work-hour × \$85 per hour = \$42.50	\$10	\$52.50
Application of retaining compound	0.50 work-hour × \$85 per hour = \$42.50	10	52.50

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023-25-02 Piper Aircraft, Inc.:

Amendment 39-22629; Docket No. FAA-2023-2241; Project Identifier AD-2023-01214-A.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piper Aircraft, Inc. airplanes identified in paragraphs (c)(1) through (3) of this AD, certificated in any category.

(1) Model PA-46-350P airplanes, serial numbers 4636811 through 4636814 inclusive and 4636816 through 4636829 inclusive.

(2) Model PA-46-500TP airplanes, serial numbers 4697692 through 4697700 inclusive.

(3) Model PA-46-600TP airplanes, serial numbers 4698224 through 4698240 inclusive and 4698242 through 4698274 inclusive.

(d) Subject

Joint Aircraft System Component (JASC) Code 2701, Control Column Section.

(e) Unsafe Condition

This AD was prompted by a report that a bearing fell out of a control column mount during routine handling prior to installation

in an affected airplane and the discovery that a quality escape condition could exist on other airplanes. The FAA is issuing this AD to address a missing retaining ring in a control column mount. A missing retaining ring in a control column mount, if not addressed, could lead to a major failure in the aileron quadrant assembly and result in loss of pitch and roll control during flight with consequent loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Before further flight after the effective date of this AD, do all applicable actions identified as "RC" (required for compliance) in, and in accordance with Part III. of the Instructions in Piper Service Bulletin No. 1409A, dated November 21, 2023 (Piper SB 1409A).

(h) Special Flight Permit

For airplanes with greater than 25 flight hours time since new, a one-time flight is allowed to reach the nearest facility that is capable of doing the inspection and repair described in Part III. of the Instructions in Piper SB 1409A, provided the flight is with minimum required crew and after verification of the integrity of the left and right control columns (the control columns do not feel or visually appear to be loose, do not have a substantial increase in control force requirements, or do not have a reduction in control authority).

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, East Certification 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 East Certification Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: 9-ASO-ATLACO-ADs@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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Piper Organization Designation Authorization (ODA) that has been authorized by the Manager, East Certification Branch to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (g) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the following provisions apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) The steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Additional Information

For more information about this AD, contact Tuan Tran, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474-5522; email: 9-ASO-ATLACO-ADs@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) Piper Service Bulletin No. 1409A, dated November 21, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; phone: (772) 291-2141; website: www.piper.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 material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on December 8, 2023.

Victor Wicklund,

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

[FR Doc. 2023-27494 Filed 12-11-23; 4:15 pm]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-1639; Project Identifier MCAI-2023-00109-T; Amendment 39-22604; AD 2023-23-02]

RIN 2120-AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all MHI RJ Aviation ULC Model CL-600-2B19 (Regional Jet Series 100 & 440), CL-600-2C10 (Regional Jet Series 700, 701 & 702), CL-600-2C11 (Regional Jet Series 550), CL-600-2D15 (Regional Jet Series 705), CL-600-2D24 (Regional Jet Series 900), and CL-600-2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by reports of power control unit (PCU) rod end fractures due to pitting corrosion, and a determination that new or more restrictive airworthiness limitations are necessary. This AD requires, for certain airplanes, revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD also requires accomplishing certain aircraft maintenance manual (AMM) tasks and corrective actions following short-term or long-term storage. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 18, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 18, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2023-1639; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833-990-7272 or direct-dial telephone 450-990-7272; fax 514-855-8501; email thd.crj@mhirj.com; website mhirj.com.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov under Docket No. FAA-2023-1639.

FOR FURTHER INFORMATION CONTACT:

Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all MHI RJ Aviation ULC Model CL-600-2B19 (Regional Jet Series 100 & 440), CL-600-2C10 (Regional Jet Series 700, 701 & 702), CL-600-2C11 (Regional Jet Series 550), CL-600-2D15 (Regional Jet Series 705), CL-600-2D24 (Regional Jet Series 900), and CL-600-2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on July 28, 2023 (88 FR 48767). The NPRM was prompted by AD CF-2023-03, dated January 20, 2023, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that in-service reports of PCU rod end fractures due to pitting corrosion led to the issuance of Transport Canada AD CF-2018-29, dated November 2, 2018 (which corresponds to FAA AD 2019-19-08, Amendment 39-19744 (84 FR 60902, November 12, 2019) (AD 2019-19-08). AD 2019-19-08 requires detailed inspections of the elevator PCU rod ends and applicable corrective actions, and prohibits using certain aircraft maintenance manual tasks. Pitting corrosion can cause the PCU end rod spherical bearing to seize, potentially inducing a bending moment on the PCU output rod. The bending moment will eventually fracture the rod end. This condition, if not corrected, could lead to a disconnect between the PCU and the elevator or rudder control surface, resulting in potential loss of the control surface function or inadequate

flutter suppression. Since Transport Canada AD CF-2018-29 was issued, MHI RJ conducted further safety analyses and determined that new or more restrictive airworthiness limitations are necessary for the operational check of each individual rudder PCU and elevator PCU. Additionally, Transport Canada determined that certain return-to-service AMM tasks are needed following short-term or long-term airplane storage.

In the NPRM, the FAA proposed to require, for certain airplanes, revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The NPRM also proposed to require accomplishing certain aircraft maintenance manual (AMM) tasks and corrective actions following short-term or long-term storage. The FAA is issuing this AD to address fractured PCU rod ends. This condition, if not addressed, could lead to a disconnect between the PCU and the elevator or rudder control surface, resulting in potential loss of the control surface function or inadequate flutter suppression.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2023-1639.

Discussion of Final Airworthiness Directive**Comments**

The FAA received a comment from Air Line Pilots Association, International, who supported the NPRM without change.

The FAA received additional comments from two commenters, including Air Wisconsin Airlines and MHI RJ Aviation ULC. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Match MCAI Language

Air Wisconsin Airlines requested that the phrase "or later revisions of these tasks," as found in the Canadian AD, be added to any AMM revisions in the NPRM. Air Wisconsin stated that this phrase could help avoid the need for an AMOC at every AMM revision.

The FAA does not agree to the requested change. Specifying in an AD the use of "later revisions" of required service information, which do not exist at the time a final rule is published, violates the policies of the Office of the Federal Register (OFR) for material that is incorporated by reference. This AD has not been changed regarding this request.

Request To Correct Error in Required Actions

MHI RJ requested that the reference to MRM TR ALI-0759 be deleted from paragraph (i)(1) of the proposed AD, "Required Actions for Model CL-600-2E25 Airplanes," because that TR is not applicable to those airplanes. The commenter noted that this would agree with the MCAI.

The FAA agrees to the requested change. The reference to TR ALI-0759 has been deleted from paragraph (i)(1) of this AD.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed MHI RJ Temporary Revisions ALI-0757 and ALI-0759, both dated September 24, 2021. This service information specifies new or more restrictive airworthiness limitations for the elevator and rudder PCUs.

The FAA also reviewed the following service information. This service information specifies, among other tasks, operational tests of the rudder control and elevator control systems, and detailed inspections of the rudder PCU rod end spherical ball and elevator PCU rod end spherical ball, and corrective actions. Corrective actions include making sure that the applicable parts are moving or rotating correctly. These documents are distinct since they apply to different airplane models in different configurations.

- Task 27-21-00-710-805, Operational Test of the Rudder Control System, Subject 27-21-00, Rudder Control System, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A-001, Revision 66, dated October 10, 2022.

- Task 27-23-01-220-801, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, Subject 27-23-01, Power

Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

- Task 27–31–00–710–803, Operational Test of the Elevator Control System, Subject 27–31–00, Elevator Control System, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

- Task 27–33–01–220–801, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

- Task 27–23–01–220–802, Detailed Inspection of the Rudder PCU Rod End

Spherical Ball, Subject 27–23–01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

- Task 27–23–01–710–801, Operational Test of the Rudder PCU, Subject 27–23–01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

- Task 27–33–01–220–801, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual,

Part 2, CSP B–001, Revision 71, dated December 16, 2022.

- Task 27–33–01–710–802, Operational Test of the Elevator Power-Control Units (PCUs), Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

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 the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1,125 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 8 work-hours × \$85 per hour = \$680	\$0	Up to \$680	Up to \$765,000.

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

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

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

develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will 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 Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–23–02 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–22604; Docket No. FAA–2023–1639; Project Identifier MCAI–2023–00109–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 18, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (Type Certificate previously held by Bombardier, Inc.) airplanes identified in paragraphs (c)(1) through (6) of this AD, certificated in any category.

(1) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.

(2) Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes.

(3) Model CL–600–2C11 (Regional Jet Series 550) airplanes.

(4) Model CL–600–2D15 (Regional Jet Series 705) airplanes.

(5) Model CL–600–2D24 (Regional Jet Series 900) airplanes.

(6) Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports of power control unit (PCU) rod end fractures due to pitting corrosion and a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fractured PCU rod ends. This condition, if not addressed, could lead to a disconnect between the PCU and the elevator or rudder control surface, resulting in potential loss of the control surface function or inadequate flutter suppression.

(f) Compliance

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

(g) Required Actions for Model CL-600-2B19 Airplanes

For Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes: Within 60 days after the effective date of this AD, when returning an airplane from long-term storage (storage lasting more than 28 days), do the actions specified in paragraphs (g)(1) through (4) of this AD. Do all applicable corrective actions before further flight.

(1) Accomplish an operational test and applicable corrective actions, in accordance with Task 27-21-00-710-805, Operational Test of the Rudder Control System, Subject 27-21-00, Rudder Control System, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A-001, Revision 66, dated October 10, 2022.

(2) Accomplish an operational test and applicable corrective actions, in accordance with Task 27-31-00-710-803, Operational Test of the Elevator Control System, Subject 27-31-00, Elevator Control System, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A-001, Revision 66, dated October 10, 2022.

(3) Accomplish a detailed inspection and applicable corrective actions, in accordance with Task 27-23-01-220-801, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, Subject 27-23-01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A-001, Revision 66, dated October 10, 2022.

(4) Accomplish a detailed inspection and applicable corrective actions in accordance with Task 27-33-01-220-801, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, Subject 27-33-01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A-001, Revision 66, dated October 10, 2022.

(h) Required Actions for Model CL-600-2C10, CL-600-2C11, CL-600-2D15 and CL-600-2D24 Airplanes

For Model CL-600-2C10 (Regional Jet Series 700, 701, & 702); CL-600-2C11 (Regional Jet Series 550); CL-600-2D15 (Regional Jet Series 705); and CL-600-2D24 (Regional Jet Series 900) airplanes: Accomplish the actions required by

paragraphs (h)(1) through (3) of this AD, as applicable.

(1) Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in MHI RJ Temporary Revisions ALI-0757 and ALI-0759, both dated September 24, 2021. The initial compliance time for doing the tasks is within 400 flight hours or 6 months, whichever occurs first after the effective date of this AD; or within 60 days after the effective date of this AD; whichever occurs latest.

(2) Within 60 days after the effective date of this AD, when returning an airplane from short-term storage (storage lasting 28 days or less), do the actions specified in paragraphs (h)(2)(i) and (ii) of this AD. Do all applicable corrective actions before further flight.

(i) Accomplish an operational test and applicable corrective actions, in accordance with Task 27-23-01-710-801, Operational Test of the Rudder PCU, Subject 27-23-01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B-001, Revision 71, dated December 16, 2022.

(ii) Accomplish an operational test and applicable corrective actions in accordance with Task 27-33-01-710-802, Operational Test of the Elevator Power-Control Units (PCUs), Subject 27-33-01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B-001, Revision 71, dated December 16, 2022.

(3) Within 60 days after the effective date of this AD, when returning an airplane from long-term storage (storage lasting more than 28 days), do the actions specified in paragraphs (h)(3)(i) through (iv) of this AD. Do all applicable corrective actions before further flight.

(i) Accomplish an operational test and applicable corrective actions, in accordance with Task 27-23-01-710-801, Operational Test of the Rudder PCU, Subject 27-23-01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B-001, Revision 71, dated December 16, 2022.

(ii) Accomplish an operational test and applicable corrective actions in accordance with Task 27-33-01-710-802, Operational Test of the Elevator Power-Control Units (PCUs), Subject 27-33-01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B-001, Revision 71, dated December 16, 2022.

(iii) Accomplish a detailed inspection and applicable corrective actions in accordance with Task 27-23-01-220-802, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, Subject 27-23-01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B-001, Revision 71, dated December 16, 2022.

(iv) Accomplish a detailed inspection and applicable corrective actions, in accordance with Task 27-33-01-220-801, Detailed Inspection of the Elevator PCU Rod End

Spherical Ball, Subject 27-33-01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B-001, Revision 71, dated December 16, 2022.

(i) Required Actions for Model CL-600-2E25 Airplanes

For Model CL-600-2E25 (Regional Jet Series 1000) airplanes: Accomplish the actions specified in paragraphs (i)(1) through (3) of this AD, as applicable.

(1) Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in MHI RJ Temporary Revision ALI-0757, dated September 24, 2021. The initial compliance time for doing the tasks is within 400 flight hours or 6 months, whichever occurs first after the effective date of this AD; or within 60 days after the effective date of this AD; whichever occurs latest.

(2) Within 60 days after the effective date of this AD, when returning an airplane from short-term storage (storage lasting 28 days or less): Accomplish an operational test and applicable corrective actions in accordance with Task 27-33-01-710-802, Operational Test of the Elevator Power-Control Units (PCUs), Subject 27-33-01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B-001, Revision 71, dated December 16, 2022. Do all applicable corrective actions before further flight.

(3) Within 60 days after the effective date of this AD, when returning an airplane from long-term storage (storage lasting more than 28 days), do the actions specified in paragraphs (i)(3)(i) and (ii) of this AD. Do all applicable corrective actions before further flight.

(i) Accomplish an operational test and applicable corrective actions, in accordance with Task 27-33-01-710-802, Operational Test of the Elevator Power - Control Units (PCUs), Subject 27-33-01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B-001, Revision 71, dated December 16, 2022.

(ii) Accomplish a detailed inspection and applicable corrective actions, in accordance with Task 27-33-01-220-801, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, Subject 27-33-01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B-001, Revision 71, dated December 16, 2022.

(j) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraphs (h)(1) and (i)(1) of this AD, no alternative actions (e.g., inspections), or intervals may be used unless the actions, and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager, International Validation Branch, mail it to the address identified in paragraph (k)(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 responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada; or MHI RJ Aviation ULC's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Additional Information

(1) Refer to Transport Canada AD CF–2023–03, dated January 20, 2023, for related information. This Transport Canada AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1639.

(2) For more information about this AD, contact Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

(m) 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 this AD specifies otherwise.

(i) MHI RJ Temporary Revision ALI–0757, dated September 24, 2021.

(ii) MHI RJ Temporary Revision ALI–0759, dated September 24, 2021.

(iii) Task 27–21–00–710–805, Operational Test of the Rudder Control System, Subject 27–21–00, Rudder Control System, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

(iv) Task 27–23–01–220–801, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, Subject 27–23–01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

(v) Task 27–31–00–710–803, Operational Test of the Elevator Control System, Subject 27–31–00, Elevator Control System, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

(vi) Task 27–33–01–220–801, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, Subject 27–33–01, Power

Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

(vii) Task 27–23–01–220–802, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, Subject 27–23–01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(viii) Task 27–23–01–710–801, Operational Test of the Rudder PCU, Subject 27–23–01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(ix) Task 27–33–01–220–801, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(x) Task 27–33–01–710–802, Operational Test of the Elevator Power-Control Units (PCUs), Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(3) For service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourrelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email thd.crj@mhjr.com; website mhjr.com.

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

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations, or email fr.inspection@nara.gov.

Issued on December 5, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–27427 Filed 12–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2256; Airspace Docket No. 23–AEA–21]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Latrobe, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface for Arnold Palmer Regional Airport, Latrobe, Pennsylvania, by making editorial changes to the airspace legal descriptions. This action does not change the airspace boundaries or operating requirements.

DATES: Effective 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11H, Airspace Designations, Reporting Points, and subsequent amendments online at www.faa.gov/air_traffic/publications/. For further information, contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone: (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

scope of that authority, as it updates airspace descriptions. This update is an administrative change and does not change the airspace boundaries or operating requirements.

Incorporation by Reference

Class D and Class E airspace are published in paragraphs 5000, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next FAA Order JO 7400.11 update. FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends the Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface for Arnold Palmer Regional Airport, Latrobe, Pennsylvania, by replacing the terms Notice to Airmen with Notice to Air Missions, and Airport/Facility Directory with Chart Supplement in the appropriate airspace descriptions. Also, this action removes the city name in the second line of the airspace header as per FAA Order 7400.2. Finally, this action updates the airport's geographic coordinates in the appropriate airspace descriptions to coincide with the FAA's database.

This action is an administrative change and does not affect the airspace boundaries or operating requirements; therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

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

when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AEA PA D Latrobe, PA [Amended]

Arnold Palmer Regional Airport, PA
(Lat. 40°16'23" N, long. 79°24'37" W)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 5-mile radius of Arnold Palmer Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Is Designated as an Extension to Class D or E Surface Area.

* * * * *

AEA PA E4 Latrobe, PA [Amended]

Arnold Palmer Regional Airport, PA
(Lat. 40°16'23" N, long. 79°24'37" W)

That airspace extending upward from the surface of Arnold Palmer Regional Airport within the 045° bearing from the airport clockwise to the 210° bearing, extending from the 5-mile radius of the airport to 10 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

AEA PA E5 Latrobe, PA [Amended]

Arnold Palmer Regional Airport, PA
(Lat. 40°16'23" N, long. 79°24'37" W)
Excelsa Health Latrobe Hospital Heliport
(Lat. 40°19'13" N, long. 79°23'37" W)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Arnold Palmer Regional Airport and within a 6-mile radius of Excelsa Health Latrobe Hospital Heliport.

* * * * *

Issued in College Park, Georgia, on
December 8, 2023.

Lisa E. Burrows,

*Manager, Airspace & Procedures Team North,
Eastern Service Center, Air Traffic
Organization.*

[FR Doc. 2023–27446 Filed 12–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1186; Airspace
Docket No. 23–ASO–22]

RIN 2120–AA66

Amendment of Class E Airspace; Cedartown, GA

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule; technical
amendment.

SUMMARY: A final rule was published in the **Federal Register** on July 24, 2023, amending Class E airspace extending upward from 700 feet above the surface for Polk County Airport/Cornelius Moore Field, Cedartown, Georgia. This action corrects the title of the amendment to associate the airspace with Georgia.

DATES: Effective 0901 UTC, March 21, 2024. The Director of the Federal

Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT:

Scott Stuart, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305-5926.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (88 FR 47361, July 24, 2023; corrected September 26, 2023 (FR 88 65797)) for Doc. No. FAA-2023-1186, amending Class E airspace extending upward from 700 feet above the surface for Polk County Airport/Cornelius Moore Field, Cedartown, Georgia, as a new instrument approach procedure has been designed for this airport. After publication, the FAA found the listed title associated with the airspace indicated Florida (FL) instead of Georgia (GA). This action corrects this error.

Correction to the Final Rule

Accordingly, pursuant to the authority delegated to me, the amendment of Class E airspace for Polk County Airport/Cornelius Moore Field, Cedartown, GA, in Docket No. FAA-2023-1186, as published in the **Federal Register** on July 24, 2023 (88 FR 47361; corrected September 26, 2023 (FR 88 65797)), is corrected in the **Federal Register** of July 24, 2023 (88 FR 47361) as follows:

§ 71.1 [Corrected]

■ On page 47362, in the first column, the title of “ASO FL E5 Cedartown, GA [Amended]” is corrected to read:

* * * * *

ASO GA E5 Cedartown, GA [Amended]

* * * * *

Issued in College Park, Georgia, on December 1, 2023.

Andree C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023-26784 Filed 12-13-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 161, 164, 184, and 186

[Docket No. FDA-2019-N-4750]

RIN 0910-AI15

Revocation of Uses of Partially Hydrogenated Oils in Foods; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA or we) is confirming the effective date of December 22, 2023, for the final rule that appeared in the **Federal Register** of August 9, 2023. The direct final rule amends our regulations to no longer provide for the use of partially hydrogenated oils (PHOs) in food given our determination that PHOs are no longer generally recognized as safe (GRAS). The rule also revokes prior sanctions (*i.e.*, pre-1958 authorization of certain uses) for the use of PHOs in margarine, shortening, and bread, rolls, and buns based on our conclusion that these uses of PHOs may be injurious to health. This document confirms the effective date of the direct final rule.

DATES: The effective date of December 22, 2023, for the direct final rule published in the **Federal Register** of August 9, 2023 (88 FR 53764) is confirmed.

FOR FURTHER INFORMATION CONTACT:

Ellen Anderson, Center for Food Safety and Applied Nutrition, Office of Food Additive Safety (HFS-225), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2378 or Keronica Richardson, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS-024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2378.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 2023 (88 FR 53764), FDA issued a direct final rule amending its regulations that provide for the use of PHOs given our determination that PHOs are no longer GRAS and revoking prior sanctions (*i.e.*, pre-1958 authorization of certain uses) for the use of PHOs in margarine, shortening, and bread, rolls, and buns based on our conclusion that these uses of PHOs may be injurious to health. The direct final rule provided a 75-day

comment period ending October 23, 2023. We stated that the effective date of the direct final rule would be on December 22, 2023, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. We did not receive any significant adverse comments.

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 371, 379e. Accordingly, the amendments issued thereby are effective on December 22, 2023.

Dated: December 11, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-27506 Filed 12-13-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2023-0944]

Safety Zone; Annual Fireworks Displays and Other Events in the Eighth Coast Guard District Requiring Safety Zones

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Crescent City Countdown Club/New Year's Celebration fireworks display, from 11:30 p.m. on December 31, 2023, through 12:30 a.m. on January 1, 2024, to provide for the safety of life on the navigable waterways during this event. Our regulation for annual fireworks displays and other events in the Eighth Coast Guard District identifies this safety zone on the Mississippi River mile marker (MM) 93.5-96.5, New Orleans, LA. During the enforcement period, entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative.

DATES: The regulations in 33 CFR part 165.801, Table 5, Line 10 will be enforced from 11:30 p.m. on December 31, 2023, through 12:30 a.m. on January 1, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander William Stewart, Sector New Orleans, U.S. Coast Guard; telephone (504) 365-2246, email William.A.Stewart@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone for the Crescent City Countdown Club/New Year's Celebration fireworks display from 11:30 p.m. on December 31, 2023, through 12:30 a.m. on January 1, 2024, to provide for the safety of life on the navigable waterways during this event. Our regulation for annual fireworks displays and other events in the Eighth Coast Guard District, 33 CFR 165.801 identifies this safety zone on the Lower Mississippi River MM 93.5–96.5, New Orleans, LA. During this enforcement period, as reflected in § 165.801(a) through (d), entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

Dated: December 11, 2023.

K.K. Denning,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2023–27507 Filed 12–13–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0263; FRL–10941–02–R9]

Air Quality State Implementation Plans; Approvals and Promulgations: California; 1997 Annual Fine Particulate Matter Serious and Clean Air Act Section 189(d) Nonattainment Area Requirements; San Joaquin Valley, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or “Agency”) is taking final action to approve portions of state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or “Act”) requirements for the 1997 annual fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or “standards”) in the San Joaquin Valley PM_{2.5} nonattainment area. Specifically, the EPA is approving those portions of the submitted SIP revisions as they pertain to the Serious nonattainment area and CAA section 189(d) requirements for the 1997 annual

PM_{2.5} NAAQS, except for the requirement for contingency measures which will be addressed in a separate rulemaking. In addition, the EPA is approving the 2020 and 2023 motor vehicle emissions budgets and the trading mechanism for use in transportation conformity analyses for the 1997 annual PM_{2.5} NAAQS.

DATES: This rule is effective on January 16, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2023–0263. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ashley Graham, Geographic Strategies and Modeling Section (AIR–2–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. By phone: (415) 972–3877 or by email at graham.ashleyr@epa.gov.

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

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- II. Public Comments and EPA Responses
 - A. Comments From Central California Environmental Justice Network (CCEJN)
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- III. Motor Vehicle Emissions Budgets and Transportation Conformity
- IV. Environmental Justice Considerations
- V. Final Action
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I. Summary of the Proposed Action

On July 14, 2023, in accordance with CAA section 110(k)(3), the EPA proposed to approve portions of SIP revisions submitted by the California Air Resources Board (CARB) to meet CAA requirements for the 1997 annual

PM_{2.5} NAAQS in the San Joaquin Valley PM_{2.5} nonattainment area.¹ The San Joaquin Valley is classified as a Serious nonattainment area for the 1997 annual PM_{2.5} NAAQS and is also subject to CAA section 189(d) requirements because of the failure of the area to attain the 1997 annual PM_{2.5} NAAQS by the area's original Serious area attainment date (*i.e.*, December 31, 2015). The EPA's determination that the area failed to attain by the original December 31, 2015 attainment date triggered the requirement for the State to submit the SIP revisions on which the EPA is taking final action in this document.²

The SIP revisions on which we proposed action are those portions of the “2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards” (“2018 PM_{2.5} Plan”)³ and the “San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan” (“Valley State SIP Strategy”)⁴ that pertain to the 1997 annual PM_{2.5} NAAQS, and the “Attainment Plan Revision for the 1997 Annual PM_{2.5} Standard” (“15 µg/m³ SIP Revision”).⁵ CARB submitted the 2018 PM_{2.5} Plan and Valley State SIP Strategy to the EPA as a revision to the California SIP on May 10, 2019, and submitted the 15 µg/m³ SIP Revision on November 8, 2021. We refer to these three submissions collectively as the “SVJ PM_{2.5} Plan” or “Plan.” The SVJ PM_{2.5} Plan was developed jointly by the San Joaquin Valley Unified Air Pollution Control District (SVJUAPCD or “District”) and CARB and addresses Serious area nonattainment plan and CAA section 189(d) requirements for the 1997 annual PM_{2.5} NAAQS in the San Joaquin Valley, except for the requirement for contingency measures. The Plan includes the State's demonstration that the area will attain the 1997 annual PM_{2.5} NAAQS by December 31, 2023.

Following submittal of the SVJ PM_{2.5} Plan, CARB transmitted to the EPA two technical supplements providing additional information in support of the Plan. The first supplement, submitted on March 30, 2023, included documents titled “Ammonia: Supplemental Information for EPA in Support of 15 µg/m³ Annual PM_{2.5} Standard, March

¹ 88 FR 45276.

² 81 FR 84481 (November 23, 2016).

³ The 2018 PM_{2.5} Plan was adopted by the San Joaquin Valley Unified Air Pollution Control District on November 15, 2018, and by CARB on January 24, 2019.

⁴ The Valley State SIP Strategy was adopted by CARB on October 25, 2018.

⁵ The “15 µg/m³ SIP Revision” was adopted by the San Joaquin Valley Unified Air Pollution Control District on August 19, 2021, and adopted by CARB on September 23, 2021.

2023” (“March 2023 Ammonia Supplement”) and “Building Electrification Technical Supplement for the 1997 Annual PM_{2.5} NAAQS” (“March 2023 Building Heating Supplement”). The second supplement was submitted on June 15, 2023, and included information on the State’s consideration of Title VI of the Civil Rights Act of 1964 (“Title VI”) in the context of SIP development to provide necessary assurances for purposes of CAA section 110(a)(2)(E)(i) (“Title VI Supplement”).⁶

The EPA proposed to approve the best available control measures/best available control technology (BACM/BACT) demonstration,⁷ the five percent annual emissions reduction demonstration, the attainment demonstration (including air quality modeling), the reasonable further progress (RFP) demonstration, and the quantitative milestones demonstration in the SJV PM_{2.5} Plan as meeting the Serious nonattainment area and CAA section 189(d) planning requirements for the 1997 annual PM_{2.5} NAAQS. We also proposed to find that the previously approved⁸ 2013 base year emissions inventories continue to satisfy the requirements of CAA section 172(c)(3) and 40 CFR 51.1008 for purposes of both the Serious area and the CAA section 189(d) attainment plans, and to find that the forecasted inventories for the years 2017, 2018, 2019, 2020, 2023, and 2026 provide an adequate basis for the BACM, RFP, five percent, and modeled attainment demonstration analyses. Finally, we proposed to approve the motor vehicle emissions budgets for 2020 and 2023 and the

trading mechanism provided for use in transportation conformity analyses.⁹ Please see our July 14, 2023 proposed rulemaking for additional background and a detailed explanation of the rationale for our proposed action.

II. Public Comments and EPA Responses

The public comment period for the proposed rulemaking opened on July 14, 2023, the date of its publication in the **Federal Register**, and closed on August 14, 2023. During this period, the EPA received three comment submissions from the following entities: (1) a coalition of six environmental and community organizations (collectively referred to herein as “CCEJN”),¹⁰ (2) a coalition of eight environmental and community organizations (collectively referred to herein as “CVAQ”),¹¹ and (3) a private citizen commenter.¹² We respond to the comments herein.

A. Comments From Central California Environmental Justice Network (CCEJN)

1. Necessary Assurances Required by CAA Section 110(a)(2)(E)

Comment 1.A: CCEJN questioned the EPA’s proposed approval of the SJV PM_{2.5} Plan because of concerns about the adequacy of the necessary assurances that the State provided in the Title VI supplement. The commenter contends that to comply with CAA section 110(a)(2)(E), a state’s necessary assurances must relate to a state’s nonattainment plan SIP submission itself, not merely the public processes carried out while preparing the plan or state laws and policies outside of the plan. The commenter claims that the Title VI Supplement fails to do this because it “has nothing to do with” the

specific contents of the SJV PM_{2.5} Plan. As an example, the commenter points to the State’s lack of a Title VI analysis supporting its decision to not regulate ammonia as part of its PM_{2.5} reduction strategy and contends that this example indicates that the State has failed to provide adequate necessary assurances. Additionally, CCEJN asserts that the EPA’s analysis of the Plan must consider how the Plan itself complies with Title VI and that the EPA did not do so in its proposal.

Response 1.A: The EPA agrees with the commenter that CAA section 110(a)(2)(E)(i) requires that a state provide necessary assurances that implementing the SIP submission at issue would not be prohibited by Title VI. However, the EPA disagrees with the commenter that the necessary assurances provided by CARB, in conjunction with the substantive elements of the Plan itself, are insufficient to show that implementation of the Plan is not prohibited by Title VI, consistent with CAA section 110(a)(2)(E)(i). The EPA explained its rationale regarding its evaluation of the necessary assurances and CAA section 110(a)(2)(E)(i) in detail in our proposal.¹³

As a point of clarification, the commenter includes references to “compliance with Title VI” as the relevant inquiry for purposes of necessary assurances under CAA section 110(a)(2)(E)(i). The EPA does not agree with this characterization of its responsibilities under the CAA.¹⁴ In the proposal action, the EPA clearly noted that “[t]he EPA’s proposed SIP approval does not constitute a formal finding of compliance with Title VI or 40 CFR part 7.”¹⁵ The EPA further noted that “[a]pproval of this SIP submission for purposes of CAA 110(a)(2)(E)(i) does not affect the EPA’s discretion to enforce Title VI and/or the EPA’s civil rights regulations.”¹⁶ Without making a formal finding of compliance with Title VI, the EPA believes the analysis in the EPA’s proposed approval and in this

⁶ Letter dated June 15, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, with enclosures titled “Title VI of the Civil Rights Act of 1964: CARB Supplemental Information for EPA in Support of 15 µg/m³ Annual PM_{2.5} Standard” (“CARB Title VI Supplement”) and “San Joaquin Valley Air Pollution Control District Write-Up on Title VI of the Civil Rights Act of 1964: Supplemental Information for EPA in Support of 15 µg/m³ Annual PM_{2.5} Standard” (“District Title VI Supplement”).

⁷ As discussed in Section III.B of the proposal, a section 189(d) plan must address any outstanding Moderate or Serious area requirements that have not previously been approved. Because we have not previously approved a subpart 4 RACM demonstration for the San Joaquin Valley nonattainment area, we also proposed to approve the BACM/BACT demonstration in the SJV PM_{2.5} Plan as meeting the subpart 4 RACM/RACCT requirement for the area. (88 FR 45276, 45322).

⁸ On November 26, 2021, the EPA finalized a partial approval and partial disapproval of the 2018 PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS, including approval of the 2013 base year emissions inventory in the Plan. 86 FR 67329.

⁹ An adequacy finding for the 2020 and 2023 motor vehicle emissions budgets was effective on February 25, 2022. (87 FR 7834, February 10, 2022).

¹⁰ Comment letter dated and received August 11, 2023, including 36 attachments, addressed to Ashley Graham, EPA Region IX. The six environmental and community organizations, in order of appearance in the letter, are the Central California Environmental Justice Network, the Central Valley Air Quality Coalition, Earthjustice, the Leadership Counsel for Justice and Accountability, the National Parks Conservation Association, and Sierra Club—Kern-Kaweah Chapter.

¹¹ Comment letter dated and received August 14, 2023, addressed to Martha Guzman, Regional Administrator, EPA Region IX. The eight environmental and community organizations, in order of appearance in the letter, are the Central Valley Air Quality Coalition, Earthjustice, Sierra Club—Kern-Kaweah Chapter, the National Parks Conservation Association, the Central California Environmental Justice Network, Little Manila Rising, and Valley Improvement Projects.

¹² Comment letter dated and received August 14, 2023, from Richard Grow, to Docket ID No. EPA–R09–OAR–2023–0263.

¹³ 88 FR 45276, 45319–45321.

¹⁴ See *El Comité para el Bienestar de Earlimart et al. v. EPA*, 786 F.3d 688 (9th Cir. 2015) (“El Comité effectively contends the EPA should have evaluated California’s assurances the same way the EPA would have to deal with a pending Title VI complaint setting forth allegations of a current violation. El Comité’s argument fails because it misconstrues the EPA’s burden regarding the ‘necessary assurances’ requirement. The EPA has a duty to provide a reasoned judgment as to whether the state has provided ‘necessary assurances,’ but what assurances are ‘necessary’ is left to the EPA’s discretion.”).

¹⁵ 88 FR 45276, 45321.

¹⁶ *Id.*

final rulemaking is consistent with CAA section 110(a)(2)(E)(i).¹⁷

With respect to the substance of the State's submission, the EPA disagrees with the commenter that the public processes surrounding the development and implementation of an attainment plan have no bearing on necessary assurances under CAA section 110(a)(2)(E)(i). As stated in the proposal, "[w]hat is appropriate for purposes of necessary assurances can vary depending upon the nature of the issues in a particular situation. Thus, the EPA evaluates a state's compliance with CAA 110(a)(2)(E)(i) on a case-by-case basis."¹⁸ Further, the EPA has discretion to determine what assurances are necessary and may require more or different information as needed in other SIP actions.¹⁹ For example, in other contexts, the EPA has identified public participation as an established approach for recipients of EPA assistance to provide meaningful access to programs and activities.²⁰ Therefore, the EPA does not agree with the contention that methods of providing for public participation are not relevant to the analysis of necessary assurances under CAA section 110(a)(2)(E)(i).

In the Title VI Supplement, the State described the early and enhanced public engagement processes that CARB and the District undertook during the development and approval of the 2016 State SIP Strategy, Valley State SIP Strategy, 2018 PM_{2.5} Plan, and 15 µg/m³ SIP Revision, all of which formed the basis for the SJV PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS. It also described steps the State and District took to solicit and respond to public input following the local adoption of the Plan and to implement the control measures and strategy outlined in the Plan. These approaches are beyond minimum public notice and comment requirements and provide relevant information and important context of the necessary assurances under CAA section 110(a)(2)(E)(i) that the Plan was adopted and will be implemented into the future in a manner that is not prohibited by Title VI.

Similarly, the descriptions of State measures like Assembly Bill 617 ("AB 617") and the development of community air monitoring networks provide relevant context for the regulatory landscape in which the State will implement the Plan, as well as the intent of the regulators. The EPA believes the State initiatives to prevent or diminish potential health-related impacts to communities most impacted by air pollution also, in part, provide assurances that the implementation of the Plan is not prohibited by Title VI in a manner consistent with CAA section 110(a)(2)(E)(i). The State's Civil Rights Policy, too, provides additional support for the conclusion that implementation of the Plan would not be prohibited by Title VI. For example, the policy would allow for members of the public to notify and file a formal complaint with the State that an alleged violation of Title VI is occurring "during the administration of [the State's] programs."²¹ Taken together, these various State processes and initiatives support the conclusion that the State provided necessary assurances that implementation of the plan would not be prohibited by Title VI.

The commenter points to one primary substantive deficiency in the Plan that they believe indicates the State has not demonstrated compliance with CAA section 110(a)(2)(E)(i): The commenter claims that ammonia is a major precursor of PM_{2.5} and that the policy decision "to decline to regulate ammonia implicates disparate treatment and/or disparate impact, yet CARB provides no necessary assurances that this policy decision does not violate Title VI." The EPA's proposed and final actions, based upon the State's SIP submissions, reflect the EPA's agreement that ammonia is not a significant precursor of PM_{2.5} for the purposes of the 1997 annual PM_{2.5} NAAQS in the San Joaquin Valley. As described in more detail in Section II.A.3 of this document, this final determination comes following the EPA's review of the State's submittal and request for additional information to support the State's decision not to regulate ammonia for this NAAQS, as well as the EPA's review of the exhibits and attachments from the commenter. Included in the State's submittal and March 2023 Ammonia Supplement are estimates of the level of emissions reductions possible with a suite of potential ammonia control measures, justifications for why many of these measures are not feasible or are already being implemented in the area, and

ultimately, why the State has chosen to focus on reducing direct PM_{2.5} and NO_x to reduce PM_{2.5} concentrations in the San Joaquin Valley air basin. The EPA believes the technical information provided by the State to support its decision not to regulate ammonia for purposes of the 1997 annual PM_{2.5} NAAQS provides adequate necessary assurances that the implementation of this Plan will not be prohibited by Title VI.

The EPA recognizes that the San Joaquin Valley area has previously struggled to attain the 1997 annual PM_{2.5} NAAQS and that the Demographic Index analysis the EPA completed as a part of the proposed approval indicates the area includes communities of color and low-income populations above the national average. However, as explained in this response and in our proposal, the EPA believes the information in the record contains adequate necessary assurances consistent with CAA section 110(a)(2)(E)(i). This analysis is based in part on technical analyses such as that the modeling in the State's and District's Plan shows attainment for these NAAQS by the applicable attainment date and that the control strategy for PM_{2.5} takes into consideration the unique atmospheric conditions in the San Joaquin Valley air basin in which the PM_{2.5} response to reductions in ammonia emissions would be relatively small. Thus, based on the existing technical record before the EPA, we find that the State has adequately provided necessary assurances that the implementation of the Plan is consistent with CAA section 110(a)(2)(E)(i).

Comment 1.B: Next, CCEJN contends that the policies cited by CARB in its Title VI supplement to support its necessary assurances, e.g., AB 617, community air monitoring networks, and CARB's Civil Rights Policy, are not enforceable parts of the submitted Plan (pursuant to CAA section 110(a)(2)(A)), cannot lead to credited emissions reductions for SIP purposes, and thus cannot be relied upon as necessary assurances.

Response 1.B: The EPA disagrees that necessary assurances must themselves be enforceable parts of a plan. While in some instances a state may submit additional enforceable measures as a component of necessary assurances, the EPA believes that this is not a requirement. The commenter cites the CAA section 110(a)(2)(A) requirement that plans include enforceable emissions limitations and other control measures as a basis for the assertion that necessary assurances must be enforceable and part of the plan. The EPA agrees that nonattainment plans

¹⁷ See *El Comité para el Bienestar de Earlimart et al. v. EPA*, 786 F.3d 688 (9th Cir. 2015) ("Section 110(a)(2)(E) . . . does not require a state to 'demonstrate' it is not prohibited by Federal or State law from implementing its proposed SIP revision. Rather, this section requires a state to provide 'necessary assurances' of this.")

¹⁸ 88 FR 45276, 45320.

¹⁹ See *id.*

²⁰ See, e.g., <https://www.epa.gov/external-civil-rights/external-civil-rights-guidance>. Although information on this website is not specific to CAA section 110(a)(2)(E)(i) necessary assurances, it provides information regarding public participation and information provided to recipients of EPA assistance.

²¹ Title VI Supplement, p. 8.

must contain enforceable emissions limitations and other control measures—but this does not mean that CAA section 110(a)(2)(E)(i) necessary assurances must themselves be emissions limitations or control measures. The EPA interprets section 110(a)(2)(E)(i) as allowing an “assurance” to include an analysis of the plan. In this context, a state providing adequate information to the EPA to provide necessary assurances that the state is not prohibited by Title VI from carrying out the plan in the SIP submission is sufficient. In the proposal action, the EPA explained the rationale for this approach, including citing to relevant case law finding that “what assurances are ‘necessary’ is left to the EPA’s discretion.”²² This is consistent with necessary assurances that the EPA requires when needed for other issues related to section 110(a)(2)(E)(i). For example, states also provide necessary assurances concerning the adequacy of personnel, funding, and state law authority to implement a SIP submission, and the EPA generally relies on facts, analyses, and other forms of assurances from the state for these purposes—not enforceable measures (that is, the EPA generally does not require SIP-approved rules that are incorporated by reference into the Code of Federal Regulations to provide such necessary assurances). There may be circumstances under which the EPA would expect a state to provide a state law provision for inclusion into the SIP in order to provide such necessary assurances for these other requirements, but this is not generally the case.

Where a necessary assurances analysis concludes that additional enforceable measures are needed, a state would also include such new measures in the SIP submission, but necessary assurances need not necessarily themselves constitute such measures, as the commenter suggests. In this case, the EPA has concluded that the information provided by the State concerning its existing policies and programs provides adequate necessary assurances that the State’s implementation of the SIP submissions at issue would not be prohibited by Title VI.

2. Emissions Inventory

Comment 2.A: CCEJN states that the soil NO_x emissions estimate of approximately 10 tons per day (tpd) used in the modeling emissions inventory was dubious when the State submitted the Plan in 2018 and that the

estimate is clearly inaccurate based on more recent studies, which the commenter claims suggest soil NO_x may contribute as much as 100 tpd to total NO_x emissions. The commenter also asserts that studies suggest that soil NO_x emissions are likely driven primarily by agriculture and therefore should be considered anthropogenic. To support these assertions, the commenter references Exhibit A to the letter (“Exhibit A”), which summarizes 10 studies from 2015–2023, from which the author concludes that 9 of the studies indicate that standard soil NO_x parameterizations underestimate agricultural soil NO_x emissions by a factor of 2 to 10.

CCEJN further states that “[t]he state has acknowledged that its existing inventory may be outdated, and it has begun the process of studying NO_x emissions from soil in order to update the inventory for future submissions to EPA,” but that its use of the existing inventory in the interim “. . . is unlawful because it is based exclusively on inertia, and ‘the EPA cannot simply recite ‘scientific uncertainty’ to evade its statutory duty to update regulations’” (citing *A Cmty. Voice v. EPA*, 997 F.3d 983, 994 (9th Cir. 2021)). The commenter suggests that “[i]nstead, the state must make an updated good faith estimate—if not a perfect estimate—of emissions, taking into account that the Clean Air Act is ‘preventative’ and ‘precautionary’ in nature,” and asserts that such estimate would undoubtedly be higher than the estimate in the current inventory and would identify significant anthropogenic soil NO_x emissions.

Based on its analysis, CCEJN concludes that the EPA must disapprove the inventory because it is neither “current” nor “accurate” and that failure to do so is arbitrary and capricious.

Response 2.A: The EPA acknowledges the information provided by CCEJN in its comments and in the studies described in Exhibit A suggesting that soil NO_x emissions may be higher than have typically been estimated in the past. The studies cited by the commenter rely on variants of several emissions estimation approaches, including efforts to achieve better agreement between air quality models and satellite measurements, and to correlate satellite measurements over croplands with the expected soil temperature and moisture dependence of soil NO_x emissions. While most of the studies cited by the commenter were published after the State developed the emissions and conducted the modeling for the 2018 PM_{2.5} Plan upon which the

15 µg/m³ SIP Revision is based, the EPA would not characterize the studies as providing “updated” emissions that would make the estimates in the 2018 PM_{2.5} Plan obsolete, as suggested by the commenter. Rather, as discussed further in the remainder of this response, we find that some recent studies provide evidence that soils are an important NO_x source, and several provide alternative estimates of soil NO_x emissions using various approaches.

The EPA agrees that there is evidence suggesting soil NO_x emissions may be higher than previously estimated but disagrees with the characterization in Exhibit A that 9 out of the 10 studies conclude that California soil NO_x is underestimated by a factor of 2 or more. That was the conclusion of two of the studies, those described in Almaraz et al. (2018)²³ and Sha et al. (2021).²⁴ Luo et al. (2022)²⁵ did not opine on how their estimate compares with prior estimates, though the authors did provide an estimate that the author of Exhibit A notes implies that prior estimates are largely underestimated. The other studies provide evidence consistent with soil NO_x as an important source or suggest a stronger temperature dependence for soil NO_x emissions compared to previous approaches.

While there is evidence suggesting soil NO_x emissions may be higher than previously estimated, there are conflicting conclusions in the literature. Because the inventories in the SJV PM_{2.5} Plan reflect the State’s best estimate based on the information available at the time the Plan was developed, the EPA does not believe a change in the soil NO_x emissions estimation approach relied on in the SJV PM_{2.5} Plan is warranted at this time. There is a need to reconcile the disagreement among studies by examining the differing assumptions, techniques, data sources, locations, and time periods covered. Such further examination may also help resolve the substantial uncertainty and variability of the proportion of soil NO_x emissions that can be attributed to anthropogenic sources such as agricultural fertilizer application.

The EPA further disagrees with CCEJN’s assertion that the State relies

²³ Almaraz et al. (2018), Agriculture is a major source of NO_x pollution in California, *Science Advances*, 4(1), 2018, doi:10.1126/sciadv.aao3477.

²⁴ Sha et al. (2021), Impacts of soil NO_x emission on O₃ air quality in rural California, *Environmental Science & Technology*, 55(10), 7113–7122, doi:10.1021/acs.est.0c06834.

²⁵ Luo et al. (2022), Integrated Modeling of U.S. Agricultural Soil Emissions of Reactive Nitrogen and Associated Impacts on Air Pollution, Health, and Climate, *Environmental Science & Technology*, 56 (13), 9265–9276. doi:10.1021/acs.est.1c08660.

²² 88 FR 45276, 45320. See also, *El Comité para el Bienestar de Earlimart et al. v. EPA*, 786 F.3d 688 (9th Cir. 2015).

on the soil NO_x emissions estimates in its existing inventory due to “inertia.” As noted by the commenter, the State has effectively acknowledged that its methodology for estimating soil NO_x emissions may need to be updated when it shared its plans to convene a subject matter expert review panel to assess the state of the science on soil NO_x emissions and make recommendations for future estimates.²⁶ These efforts indicate that the State is taking the issue seriously and attempting to address it, as acknowledged by the commenter. However, in exploring possible improvements to its soil NO_x estimation approach, the State is not disavowing the approach used in the SJV PM_{2.5} Plan, nor is there a widely accepted soil NO_x emissions inventory approach that the State is willfully refusing to use. Depending on the outcomes of the review panel’s work, the State may find that its current approach provides the best estimate and retain such approach, or the State may determine that an alternative approach would provide a more accurate estimate and use such approach moving forward.

For the SJV PM_{2.5} Plan, the State used the DeNitrification-DeComposition model (DNDC) to estimate the 10 tpd of soil NO_x emissions used in the modeling.²⁷ The approach is supported by research conducted in the same time frame as studies cited by the commenter and therefore the EPA does not consider the State’s approach to be outdated. The emissions inventory in the Plan was among the work that led to the paper by Guo et al. (2020),²⁸ which was cited in Exhibit A as among the recent research on soil NO_x. Guo et al. (2020) did not find that soil NO_x emissions are significantly underestimated in the State’s emissions inventory. Rather, the study examined evidence from satellite

retrievals and ground-based measurements that indicate that the State’s approach provides an accurate emissions inventory for the San Joaquin Valley. The EPA believes that the DNDC-based soil NO_x emissions used in the modeling are a good faith estimate consistent with the State’s current view of the state of the science, and that the State’s estimate is acceptable for use in the modeling emissions inventory in the SJV PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS.

The EPA acknowledges that there is evidence that soil NO_x emissions have historically been underestimated, including evidence from some studies finding that satellite observations of column NO₂ (total amount of NO₂ in a vertical column of the atmosphere) indicate that soil NO_x emissions are higher than predictions by photochemical models using emissions estimates from older soil NO_x parameterizations. The commenter describes some of such evidence in Exhibit A. However, the case for soil NO_x emissions being significantly underestimated in the San Joaquin Valley is not as settled as CCEJN’s comment implies. The studies cited by the commenter differ in the questions they attempt to address, their assumptions and analytical approaches, their data analysis techniques and metrics, and in the differing environmental conditions in the locations and time periods they cover.

In the remainder of this response, we identify statements from the ten research papers listed in Exhibit A to show that their support for a substantially greater soil NO_x emissions for the San Joaquin Valley is not definitive, and that there is not an agreed upon method to estimate a missing increment of emissions if one is in fact needed. Note that these points are not meant to discredit the work of the respective authors but rather to illustrate that there are varying factors that require greater investigation to determine the magnitude of soil NO_x emissions in the San Joaquin Valley. Given these complicating factors and uncertainties, the EPA requests that CARB and the District continue their work to examine their current methodology for estimating soil NO_x emissions, and as appropriate, revise their methodology based on the findings of the expert review panel and the latest available research.

Oikawa et al. (2015)²⁹ measured NO_x emissions from sorghum plots after

applying fertilizer, and explored the effect of higher soil NO_x emissions on the performance of an air quality model by comparing the model results with satellite NO₂ column observations and surface measurements. The study authors concluded that soil NO_x emissions would need to be 10 or more times higher to match observations. However, surface measurements were not consistently underestimated in the model, and increasing emissions in the model to match the satellite retrievals led to overestimates in emissions at the surface derived from measurements of soil NO_x emissions fluxes. The paper also noted that global estimates of soil NO_x emissions from other studies vary by a factor of three (ranging from 9 to 27 Tg per year), indicating a high level of uncertainty. The study conclusions suggest that soil NO_x emissions are largely underestimated but the magnitude of the underestimate is not quantified.

Parrish et al. (2017)³⁰ focuses on understanding trends in ozone design values, noting a difference in the San Joaquin Valley trend in comparison with other California air basins. The authors note that the difference may partially be accounted for by the higher agricultural activity in the Valley, for which controls have not been implemented as extensively as for other anthropogenic sources. While this explanation could also hold for agricultural soil NO_x, that particular issue is not explored.

Exhibit A cites Kleeman et al. (2019)³¹ as providing evidence of a missing source of NO_x emissions that could help correct a “consistent underprediction” in nitrate concentrations. The EPA believes this underprediction was overstated. For the January average of the three model years reported, there was a modest underprediction of nitrate in the model base cases without soil NO_x compared to a somewhat larger overprediction when soil NO_x emissions were added; whereas for the 2010 model year, nitrate was overpredicted in the base case and the overprediction was worsened in the

²⁶ SJVUAPCD, 2023 PM_{2.5} Plan for Attainment of the Federal 2012 Annual PM_{2.5} Standard, Public Workshop, slide 16, http://www.valleyair.org/Workshops/postings/2023/05-11-23_PM25/presentation.pdf. (A recording of the workshop is also cited in the comment letter in fn. 39).

²⁷ Email dated May 26, 2020, from Jeremy Avise, CARB, to Scott Bohning, EPA Region IX. Subject: “Soil NO_x in ARB’s modeling”, with attached poster “Preliminary Assessment of Soil NO_x Emissions from Agricultural Cropland in the San Joaquin Valley”; “Estimating Nitrogen Emissions from California’s Agricultural Lands”, March 5, 2019, presentation by Mike Fitzgibbon, CARB, at 2019 California Climate & Agriculture Summit, <https://calclimateag.org/2019summit/>.

²⁸ Guo et al. (2020), Assessment of Nitrogen Oxide Emissions and San Joaquin Valley PM_{2.5} Impacts From Soils in California, *Journal of Geophysical Research: Atmospheres*, 125(24), doi:10.1029/2020JD033304. Note that a web document with a DOI or Digital Object Identifier, such as 10.1029/2020JD033304, may be found via prefixing doi.org/ to the doi, as in: <https://doi.org/10.1029/2020JD033304>.

²⁹ Oikawa et al. (2015), Unusually high soil nitrogen oxide emissions influence air quality in a

high-temperature agricultural region. *Nat. Commun.*, 6:8753, doi:10.1038/ncomms9753.

³⁰ Parrish et al. (2017), Ozone Design Values in Southern California’s Air Basins: Temporal Evolution and U.S. Background Contribution. *J. Geophys. Res. Atmos.*, 122, 11166–11182, doi:10.1002/2016JD026329.

³¹ Kleeman, M., A. Kumar, and A. Dhiman, “Investigative Modeling of PM_{2.5} Episodes in the San Joaquin Valley Air Basin during Recent Years” (CARB Contract No. 15–301, 2019), available at <https://ww2.arb.ca.gov/sites/default/files/classic/research/apr/past/15-301.pdf>.

soil NO_x case.³² In the conclusion, the authors state that “further research is required to more accurately estimate winter emissions rates of soil NO_x and to account for year-to-year variations driven by changes in meteorological conditions, fertilizer application rates, and irrigation practices,” and that the tests conducted “do not definitely prove that the missing emissions source is indeed fertilized agricultural soils. Future measurements should be made in the rural portions of the SJV to further test the hypothesis that soil NO_x emissions are a significant factor in the air quality cycles within the region.”³³ The EPA interprets such conclusions as an acknowledgement that additional research is needed, with a focus on wintertime conditions when San Joaquin Valley PM_{2.5} concentrations are highest.

The author of Exhibit A summarizes a result from Chen et al. (2020),³⁴ noting acceptable PM_{2.5} model performance despite overly low atmospheric mixing heights. But the author goes on to suggest that overly low mixing heights should have led to PM_{2.5} overpredictions; the good performance therefore may imply that the PM_{2.5} precursor emissions were too low. The study also found that rural site column NO₂ was underpredicted by 25 percent relative to NO₂ columns derived from surface-based measurements, suggesting that soil NO_x emissions are underestimated. Thus, the study authors acknowledge that soil NO_x emissions may need to be further examined. However, they also note good agreement between modeled column NO₂ and the NO₂ columns derived from surface-based measurements at the urban sites of Fresno and Bakersfield, where NO₂ is double that of the rural sites, and state that “it is unlikely that NO_x emissions from croplands are comparable to mobile sources” (the main source of NO_x emissions). That is, the NO_x emissions increase that would be needed to increase the model predictions by 25 percent for the low-NO₂ rural sites is unlikely to be comparable to the NO_x emissions driving the high NO₂ urban sites. This finding supports further exploration of soil NO_x emissions, and a possible underestimate, but does not imply a large underestimate in soil NO_x emissions.

Wang et al. (2021)³⁵ explored the relatively modest downward trend in satellite column NO₂ measurements after 2009, as compared to the steady decrease in anthropogenic NO_x emissions, and the role of soil NO_x emissions in this apparent discrepancy. They found better model agreement with satellite column NO₂ when they increased the temperature responsiveness of their soil NO_x emissions estimates, especially at high temperatures. This change also improved the correlation between modeled column NO₂ and satellite column NO₂ in the central United States. This correlation is an important finding, implying soil NO_x emissions may be underestimated. However, it should be noted that in absolute terms, even without soil NO_x, the model simulation overpredicted the NO₂ concentration relative to the satellite retrieval. The authors acknowledge that there are many reasons why the predictions might not match the observations. The authors cite an uncertainty of 35 percent in the satellite NO₂ columns, and the uncertainty in the satellite retrieval encompasses all of the results, from the zero soil NO_x scenario to the increased soil NO_x scenario.³⁶ The EPA views this as a large enough uncertainty to limit confidence in at least some of the study conclusions.

Wang et al. (2021) states that the downward trend in the satellite column NO₂ is smaller than the downward trend in anthropogenic NO_x emissions, and that the discrepancy is greater for the central U.S. than for the eastern or western U.S. Since the San Joaquin Valley is in the west, the EPA interprets this result as indicating that there is less of a potential need for increases in soil NO_x emissions estimates in the San Joaquin Valley relative to the central U.S. to resolve the discrepancy. The authors also cited another study in which the apparent discrepancy between the trends in modeled versus surface-level ambient measurements (as opposed to the satellite retrieval) was found to be within the bounds of the uncertainty of the ambient measurements. The study provides a strong impetus for exploring soil NO_x emissions and their potential increased rate at higher temperatures but does not provide evidence that soil NO_x emissions are significantly underestimated in the San Joaquin Valley.

To evaluate the human health and climate benefits of reducing reactive nitrogen emissions, Luo et al. (2022)³⁷ used the Fertilizer Emission Scenario Tool for CMAQ (FEST-C) to generate soil NO_x emissions estimates for every U.S. county, including those counties in the San Joaquin Valley. Exhibit A notes that the FEST-C-derived San Joaquin Valley county total emissions of soil NO_x is 100 tpd compared to CARB's emissions inventory for all anthropogenic NO_x which amounts to roughly 200 tpd. The study used a different emissions model than the model used by CARB, underscoring the need to explore why emissions models yield such different results. The study did not validate the model-derived NO₂ predictions using satellite retrievals or ground-based measurements, so it does not provide direct evidence that soil NO_x emissions are underestimated for the San Joaquin Valley.

Wang et al. (2023)³⁸ explored trends in satellite column NO₂ and ground level measurements, and the role of lightning and soil NO_x in explaining spatial and temporal distributions of NO₂. Among other results, they found that temperature and soil moisture, which are important drivers of soil NO_x emissions, were highly correlated with satellite column NO₂ in rural areas of California, including crop lands. This suggests soil NO_x is an important source of NO_x near crop lands. The study examined trends in NO_x over time rather than attempting to quantify soil NO_x emissions and therefore does not provide direct evidence that soil NO_x emissions are underestimated for the San Joaquin Valley.

Finally, three studies cited in Exhibit A, Almaraz et al. (2018), Guo et al. (2020), and Sha et al. (2021), provided estimates of soil NO_x emissions in California. Almaraz et al. (2018)³⁹ estimated soil NO_x emissions using a top-down approach based on aircraft measurements as well as the Integrated Model for the Assessment of the Global Environment (IMAGE) soil model. Guo et al. (2020)⁴⁰ compared satellite measurements of NO₂ with CMAQ air quality model predictions using soil

³⁷ Luo et al. (2022), Integrated Modeling of U.S. Agricultural Soil Emissions of Reactive Nitrogen and Associated Impacts on Air Pollution, Health, and Climate, *Environmental Science & Technology*, 2022, 56 (13), 9265–9276. doi:10.1021/acs.est.1c08660.

³⁸ Wang et al (2023), Satellite NO₂ trends reveal pervasive impacts of wildfire and soil emissions across California landscapes, *Environ. Res. Lett.*, 18, doi:10.1088/1748-9326/accc5f.

³⁹ Almaraz et al. (2018), Agriculture is a major source of NO_x pollution in California, *Science Advances*, 4(1), 2018, doi:10.1126/sciadv.aao3477.

⁴⁰ Guo et al. (2020), op. cit.

³² Id. at 60 and 63.

³³ Id. at 77.

³⁴ Chen et al. (2020), Modeling air quality in the San Joaquin valley of California during the 2013 Discover-AQ field campaign, *Atmospheric Environment: X*, Volume 5, January 2020, 100067, doi:10.1016/j.aeoa.2020.100067.

³⁵ Wang et al (2021), Improved modelling of soil NO_x emissions in a high temperature agricultural region: role of background emissions on NO₂ trend over the US, *Environ. Res. Lett.*, 16, doi:10.1088/1748-9326/ac16a3.

³⁶ Id. at Figure 3.

NO_x emissions from the DNDC soil model. Sha et al. (2021)⁴¹ conducted a similar measurement-model comparison but using the Weather Research and Forecasting model coupled with Chemistry (WRF-Chem) air quality model and the Berkeley Dalhousie Iowa Soil NO Parameterization (BDISNP) soil model. The IMAGE and BDISNP models are empirical or parametric models. They rely on emissions factors that are derived from empirical measurements and that may vary by land use, precipitation, and temperature, but do not incorporate algorithms that reflect the underlying physical principles. The DNDC model used in Guo et al. (2020) and in the State's emissions inventory is a biogeochemical or mechanistic model. It also uses measurements for validation but includes detailed consideration of the individual physical and biological processes in soils that lead to NO_x emissions and their dependence on factors like the soil's various nitrogen- and carbon-containing species, moisture, and temperature.

Comparisons between the results described in Almaraz et al. (2018), Guo et al. (2020), and Sha et al. (2021) show large disagreements.⁴² Almaraz et al. (2018) estimated that soil NO_x emissions from fertilized croplands account for 32 percent of California NO_x emissions, Sha et al. (2021) estimated soil NO_x emissions comprise 40.1 percent of California's total NO_x emissions, while Guo et al. (2020) estimate that soil NO_x emissions are only 1.1 percent of California anthropogenic NO_x emissions. (As noted earlier in this response, the DNDC model emissions estimation work performed for the Guo et al. (2020) study was also the basis for the State's soil NO_x emissions estimate.) The fraction of nitrogen applied as fertilizer released as NO_x to the atmosphere was estimated by Almaraz et al. (2018) to be 15 percent, while 7 other studies reviewed by Guo et al. (2020) estimate it to be 2 percent or less. Furthermore, there is an additional possible discrepancy between the work described in Wang et al. (2021)⁴³ and Wang et al. (2023),⁴⁴ and the results in Guo et al. (2020). The former two found correlations between satellite-derived column NO₂ over agricultural areas and

modeled soil emissions, suggesting soil NO_x as a driver of NO₂ there. However, using correlations and ratios of NO_x to CO among monitoring sites, and satellite column NO₂ retrievals, Guo et al. (2020) found little difference between the diurnal and seasonal temporal variation at rural sites compared to urban sites, consistent with a larger contribution of emissions from urban sources rather than rural soils. Higher soil NO_x emissions would increase summer emissions more in rural areas than in urban areas.

Despite widely differing estimates of the relative portion of California's NO_x emissions inventories attributable to soil NO_x in Almaraz et al. (2018), Sha et al. (2021), and Guo et al. (2020), each study reported high agreement between its modeled and its observed soil NO_x emissions. Reconciling the differences in input data used in the models, such as fertilizer and irrigation amounts and timing; other inputs to the air quality models; and data analysis techniques would be necessary for a process-based understanding of the differences in the contribution and magnitude of soil NO_x emissions estimates between models. There is also a need for additional measurements of soil NO_x emissions fluxes for various locations and conditions to help develop and validate soil models.

The various authors acknowledge considerable uncertainty in their work. While Almaraz et al. (2018) suggest that soil NO_x emissions may be significantly underestimated using current techniques, the study acknowledges the limited number of surface measurements that were available for purposes of validating the model results and that, where observations exist, there is a large range in observed values due to varying soil conditions (e.g., relating to temperature, moisture, and fertilizer application). The "top-down" NO_x emissions estimates derived from aircraft measurements relied upon in the study also reflect a significant degree of uncertainty, reported at 190 tpd plus or minus 130 tpd, i.e., plus or minus 68 percent. The authors acknowledge the limited number of surface measurements that were available for purposes of comparing with the model results, the difficulty in comparing the model results with the observations, and the need for more field measurements. Guo et al. (2020) stated that obtaining an emissions factor correlating NO_x emissions to fertilizer application from the presently available data in various studies (including Almaraz et al. (2018)) would be "difficult or impossible" due to the sparseness of data collected in terms of

sampling length, sampling frequency, and the episodic nature of nitrogen gases from soil.

Most of the discussion herein concerns the varying estimates of overall total soil NO_x emissions. However, how those emissions are distributed in time and space are also of great importance for understanding the effect of NO_x emissions on ambient PM_{2.5} concentrations. PM_{2.5} concentrations in the San Joaquin Valley are highest in the cool, moist winter, whereas soil NO_x emissions are highest in the warm, dry summer. For modeling PM_{2.5} concentrations, it is especially important that the soil NO_x approach that is used performs well under wintertime conditions. Also important is how the approach reflects soil composition, soil management practices, and fertilizer application, each of which vary in time and space. Adopting a different soil NO_x emissions estimation approach is not a matter of simply replacing one estimate of total soil NO_x with another. Rather, it requires ensuring that the approach accurately reflects the spatial and temporal variation of the many factors affecting emissions and of the emissions themselves.

In light of the uncertainties and disagreements among studies, the EPA does not believe that the available research provides sufficient certainty about the magnitude and proportion of soil NO_x emissions to warrant a revision to the State's inventory for purposes of the SJV PM_{2.5} Plan.⁴⁵ The EPA is not convinced that any revised estimate developed by the State at this time would be verifiably more accurate than the inventory in the Plan. A revision to the State's inventory approach may be warranted in the future pending the State's ongoing work in this area and the most up-to-date understanding of soil NO_x emissions, as discussed earlier in this response. The EPA encourages the State to continue its ongoing work to convene a subject matter expert review panel to assess the state of the science on soil NO_x emissions, to keep abreast of the latest research, and to update its estimation methodologies, as appropriate. However, for purposes of the SJV PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS that is the subject of this action, we find that the State relied on a reasonable methodology that is supported by the research literature. Thus, we conclude that the State

⁴¹ Sha et al. (2021), Impacts of soil NO_x emission on O₃ air quality in rural California, *Environmental Science & Technology*, 55(10), 7113–7122, doi:10.1021/acs.est.0c06834.

⁴² The EPA also compared these studies in approving California's 2020 emissions inventory submittal. 87 FR 59015, 59017–59019 (February 9, 2022).

⁴³ Wang et al. (2021), op. cit.

⁴⁴ Wang et al. (2023), op. cit.

⁴⁵ The EPA reached a similar conclusion in approving California's 2020 emissions inventory submittal. 87 FR 59015, 59017–59019 (February 9, 2022).

provided an accurate, up-to-date emissions inventory for NO_x.

Comment 2.B: Regarding the motor vehicle emissions modeling, CCEJN points to a previous statement from the EPA, saying that “it could approve an outdated inventory so long as the inventory was built using the ‘latest EPA-approved’ emission model ‘at the time [the State] developed the submission.’” The commenter asserts that the EPA now “proposes to abandon both the statutory text and the already-lax requirement to use the most recent EPA-approved model,” by allowing the State to rely on a model that is a decade old when two more recent models are available, one of which (EMFAC2017) shows higher attainment-year emissions of both NO_x and PM_{2.5}. CCEJN contends that the State and the EPA speculate that the higher values would not affect the attainment demonstration. However, CCEJN asserts that the effect on the attainment demonstration is unknown and that it is also unknown what the effects would be on the precursor demonstration, which the commenter claims relies on low estimates of NO_x in 2023 to conclude that the State need not regulate ammonia.

Finally, the commenter states that the “EPA’s decision to abandon its recently adopted standard that inventories should be built using the ‘latest EPA-approved’ emission model is arbitrary and capricious,” asserting that the EPA is “simply resistant to the idea that a current inventory must be used” and has lost litigation over this issue (citing *Sierra Club v. EPA*, 671 F.3d 955 (9th Cir. 2012)), and claiming that “. . . the agency is therefore bending over backwards to adopt whatever standard will allow the state to continue to use the outdated inventory.”

Response 2.B: The EPA disagrees with CCEJN’s claims that we are resistant to require, or have changed our position, that inventories must be developed using the latest EPA-approved emissions model available at the time the State developed the SIP submission and that our proposed action to reaffirm the base year inventory is arbitrary and capricious. As discussed in our proposal, the SJV PM_{2.5} Plan relies on much of the same technical information and analyses from the 2018 PM_{2.5} Plan, including the emissions inventories.⁴⁶ The EPA previously found, for purposes of the 1997 annual PM_{2.5} NAAQS as well as other PM_{2.5} standards, that these inventories were based on the most current and accurate information available to the State and District at the time they were developing the 2018

PM_{2.5} Plan and inventories, including the latest version of California’s mobile source emissions model that had been approved by the EPA at the time, EMFAC2014.⁴⁷ Thus, as part of our prior action on the 2018 PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS, we approved the emissions inventories as meeting the Serious area and CAA section 189(d) requirements for the 1997 annual PM_{2.5} NAAQS.⁴⁸

In the EPA’s final action approving the base year inventories in the 2018 PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS, the EPA addressed concerns raised by a commenter about the use of EMFAC2014.⁴⁹ The EPA discussed the timeline for the State’s submittal of the emissions inventories in the 2018 PM_{2.5} Plan relative to the EPA’s approval of EMFAC2014 and EMFAC2017, explaining that EMFAC2014 was the most current mobile source model available for emissions inventory development purposes at the time the State was developing the plan. Nevertheless, at that time, we considered comparisons between EMFAC2014 and EMFAC2017 in the 2013 base year as provided by CARB in its “Staff Report, Proposed SIP Revision for the 15 µg/m³ Annual PM_{2.5} Standard for the San Joaquin Valley” (“CARB Staff Report”).⁵⁰ Based on our review of the State’s analysis, we concluded that the 2013 base year emissions inventories in the 2018 PM_{2.5} Plan were comprehensive, accurate, and current, consistent with the requirements of CAA section 172(c)(3) and 40 CFR 51.1008.

Given that the 15 µg/m³ SIP Revision was submitted to the EPA by the State as an “administrative revision” to the 2018 PM_{2.5} Plan and relies on much of the same technical information that was developed for the 2018 PM_{2.5} Plan, the State continued to rely on the previously approved emissions inventories from the 2018 PM_{2.5} Plan. However, to address the most up-to-date information available, in addition to the EMFAC2017 model results noted earlier in this response, the State provided to

the EPA comparisons between the estimated annual NO_x and PM_{2.5} emissions developed for the 2018 PM_{2.5} Plan using EMFAC2014 with those developed using the most recent EPA-approved version of EMFAC, EMFAC2021.⁵¹ CARB’s analysis included comparisons between all three EMFAC models for both the 2020 RFP year and the 2023 attainment year.⁵² As the commenter correctly notes, model results from EMFAC2017 indicate higher NO_x and PM_{2.5} emissions in the 2023 attainment year than those derived for the same year using EMFAC2014. However, EMFAC2021, which was the most recent EPA-approved model at the time of the EPA’s proposal,⁵³ indicates that NO_x and PM_{2.5} emissions in the 2023 attainment year are lower than those derived for the same year using EMFAC2014.

As discussed in the EPA’s technical support document (TSD) for our proposal,⁵⁴ the differences in emissions estimates for mobile sources between the three EMFAC model versions correspond to differences of approximately two percent or less of the regional emissions inventories for PM_{2.5} and NO_x for the 2023 attainment year.⁵⁵ Using the sensitivity of the PM_{2.5} design value per tpd of emissions modeled by the State, the EPA assessed the effects of the various EMFAC model version results on the attainment demonstration in the Plan.⁵⁶ Based on our technical analysis, we determined that although the NO_x and PM_{2.5} emissions estimates in the 2023 attainment year are higher in EMFAC2017 than in EMFAC2014, the effect on the PM_{2.5} concentrations of 0.07 µg/m³ is sufficiently small that the attainment demonstration remains valid.⁵⁷ Furthermore, more up-to-date emissions data from EMFAC2021 show lower emissions of NO_x and PM_{2.5} in the attainment year, indicating that the attainment modeling results in the Plan derived using EMFAC2014 are conservative. The same is true for the modeling for the precursor demonstration—the lower NO_x estimates derived using EMFAC2021 would produce lower sensitivities of PM_{2.5} to ammonia, since they would increase the abundance of ammonia

⁴⁷ The EPA previously approved the emissions inventories in the 2018 PM_{2.5} Plan as they pertain to the Serious area and 189(d) requirements for the 1997 annual PM_{2.5} NAAQS (86 FR 67329, November 26, 2021), the Serious area and 189(d) requirements for the 1997 24-hour PM_{2.5} NAAQS (87 FR 4503, January 28, 2022), the Serious area requirements for the 2006 24-hour PM_{2.5} NAAQS (85 FR 44192, July 22, 2020), and the Moderate area planning requirements for the 2012 annual PM_{2.5} NAAQS (86 FR 67343, November 26, 2021).

⁴⁸ 86 FR 67329.

⁴⁹ Id. at 67332–67334.

⁵⁰ CARB, “Staff Report, Proposed SIP Revision for the 15 µg/m³ Annual PM_{2.5} Standard for the San Joaquin Valley,” release date August 13, 2021.

⁵¹ 88 FR 45276, 45284–45285.

⁵² Id.

⁵³ The EPA approved the use of EMFAC2021 for use in SIP development on November 15, 2022 (87 FR 68483).

⁵⁴ EPA, “Technical Support Document, San Joaquin Valley PM_{2.5} Plan Revision for the 1997 Annual PM_{2.5} NAAQS,” April 2023.

⁵⁵ Id. at 53.

⁵⁶ Spreadsheet “EMFAC update effect on annual 1997 p.m.2.5 NAAQS attainment demonstration.xlsx,” EPA Region IX, May 1, 2023.

⁵⁷ Id.

⁴⁶ 88 FR 45276, 45279.

relative to NO_x (since particulate ammonium nitrate formation would be less limited by, and so less sensitive to, the amount of ammonia). Therefore, the State's conclusions based on their use of EMFAC2014 are conservative relative to if it had used the most up-to-date EPA-approved model, EMFAC2021. Thus, we disagree with the assertions that the effects of the various EMFAC versions on the attainment demonstration and precursor demonstration are unknown and find that reliance on the previously approved emissions inventories is acceptable.

Finally, we also disagree with the commenter's assertion (citing *Sierra Club*)⁵⁸ that the EPA has lost litigation over the issue that a current inventory must be used. In *Sierra Club*, the Ninth Circuit remanded the EPA's March 2010 approval of an ozone attainment plan for the San Joaquin Valley submitted in 2004, holding that the EPA's failure to consider new emissions data that the State had submitted in 2007 as part of a separate ozone plan rendered the EPA's action arbitrary and capricious under the Administrative Procedure Act.⁵⁹ The decision in that case rested on the unreasonableness of the EPA's failure to address the new emissions data. The court found the EPA's action arbitrary and capricious because of its "reliance on old data without meaningful comment on the significance of more current compiled data" and concluded that "it was unreasonable for EPA summarily to rely on the point of view taken [in longstanding policy] without advancing an explanation for its action based on 'the facts found and the choice made.'"⁶⁰

For purposes of this action, the EPA has reviewed the emissions data derived using more recent versions of the EMFAC model provided by CARB, consistent with the holding in *Sierra Club*. Based on our technical analysis of the latest information available described earlier in this response, we determined that the precursor and attainment demonstrations are valid.

Thus, we continue to find that the 2013 base year inventories in the SJV PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS satisfy the requirements of CAA section 172(c)(3) and 40 CFR 51.1008 for purposes of both the Serious area and the CAA section 189(d) attainment plan requirements, and to find that the forecasted inventories provide an adequate basis for the BACM, RFP, and the modeled attainment demonstration analyses in the Plan.

3. Ammonia Precursor Demonstration

Comment 3: CCEJN states that the EPA must disapprove the ammonia precursor demonstration based on considerations outlined in several specific comments (summarized in Comments 3.A through 3.D that follow), but also in several introductory remarks. In the introductory remarks, the commenter appears to refer to the precursor demonstration's modeled PM_{2.5} responses to ammonia reductions for the 2020 analysis year, some of which are above the 0.2 µg/m³ EPA-recommended contribution threshold for the 2012 annual PM_{2.5} NAAQS in the EPA's "PM_{2.5} Precursor Demonstration Guidance" ("PM_{2.5} Precursor Demonstration Guidance").⁶¹ Based on these model results, the commenter asserts that the State tacitly acknowledges that ammonia assessments in previous PM_{2.5} plans, finding that ammonia does not contribute significantly to PM_{2.5} levels that exceed the 1997 annual PM_{2.5} NAAQS, were incorrect. The commenter concludes that these results indicate that the State should have been regulating ammonia in the recent past, and also that the State should err on the side of caution and regulate ammonia now. Finally, CCEJN contends that not regulating ammonia has led to greater ammonium nitrate PM_{2.5}, thereby implicating disparate treatment and disparate impacts, and that the State has failed to provide necessary assurances that the policy decision not to regulate ammonia complies with Title VI.

Response 3: The EPA disagrees with the commenter's premise that the modeled PM_{2.5} responses for the 2020 analysis year indicate that ammonia contributed significantly to PM_{2.5} levels in the past. Under the EPA's PM_{2.5} Precursor Demonstration Guidance, a response above the recommended

contribution threshold indicates a "contribution," but additional information can be considered in determining whether that response "contributes significantly."⁶² Such information may include, but is not limited to, the amount by which the threshold is exceeded, studies to evaluate specific atmospheric chemistry in the area, trends in ambient speciation data and precursor emissions,⁶³ and the general facts and circumstances of the nonattainment area.⁶⁴ In concluding that ammonia does not contribute significantly, the State considered model responses for the 2024 analysis year in addition to 2020, as well as other additional information, as summarized in the EPA's February 2020 Precursor Technical Support Document.⁶⁵ We do not believe that viewing modeled responses to ammonia for specific years in isolation or out of context is an adequate method for determining whether a precursor contributes significantly to PM_{2.5} levels.

Additionally, the EPA does not agree that prior precursor assessments should be considered erroneous based on the analysis in a newer plan, particularly when the more recent plan uses different criteria for assessing precursor significance. Previous plans for the 1997 annual PM_{2.5} NAAQS in the San Joaquin Valley, like the ones mentioned by the commenter, predated the 2016 "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements" ("PM_{2.5} SIP Requirements Rule")⁶⁶ and the 2019 PM_{2.5} Precursor Demonstration Guidance; therefore, they did not assess a modeled ammonia response relative to a contribution threshold but rather relied on the conclusions from modeling performed at the time and from past studies indicating that ammonium nitrate PM_{2.5} is far more responsive to NO_x reductions than to ammonia reductions. Following promulgation of the PM_{2.5} SIP Requirements Rule, the EPA now requires that each precursor be evaluated individually by comparing modeled responses to the contribution threshold and considering additional information.⁶⁷ The State conducted its precursor analysis for the SJV PM_{2.5}

⁵⁸ *Sierra Club v. EPA*, 671 F.3d 955 (9th Cir. 2012).

⁵⁹ Id. The court also noted that the EPA's action was inconsistent with the court's holding in *Ass'n of Irrigated Residents (AIR) v. EPA*, 632 F.3d 584 (9th Cir. 2011) (amended and superseded by *Ass'n of Irrigated Residents v. U.S. EPA*, 686 F.3d 668, 671 (9th Cir. 2012)), which "supports the proposition that if new information indicates to EPA that an existing SIP or SIP awaiting approval is inaccurate or not current, then, viewing air quality and scope of emissions with public interest in mind, EPA should properly evaluate the new information and may not simply ignore it without reasoned explanation of its choice." Id. at 967.

⁶⁰ Id. at 968 (citing *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

⁶¹ "PM_{2.5} Precursor Demonstration Guidance," EPA-454/R-19-004, May 2019, including memorandum dated May 30, 2019, from Scott Mathias, Acting Director, Air Quality Policy Division and Richard Wayland, Director, Air Quality Assessment Division, Office of Air Quality Planning and Standards (OAQPS), EPA, to Regional Air Division Directors, Regions 1-10, EPA.

⁶² PM_{2.5} Precursor Demonstration Guidance, pp. 17-19.

⁶³ Id.

⁶⁴ Id. at 14; 40 CFR 51.1006(a)(1)(ii).

⁶⁵ "Technical Support Document, EPA Evaluation of PM_{2.5} Precursor Demonstration, San Joaquin Valley PM_{2.5} Plan for the 2006 PM_{2.5} NAAQS," February 2020.

⁶⁶ 81 FR 58010 (August 24, 2016).

⁶⁷ 40 CFR 51.1006; EPA's PM_{2.5} Precursor Demonstration Guidance.

Plan in accordance with these requirements.

Regarding CCEJN's Title VI-related concerns, we address the comments regarding Title VI in Responses 1.A, 1.B, 5, and 7, which rely on supporting information discussed in Responses 3.A, 3.B.1 through 3.B.4, 3.C, and 3.D.

Comment 3.A: CCEJN's first specific stated concern with the precursor demonstration is that the State's conclusion that the San Joaquin Valley is NO_x-limited relies on low NO_x estimates based on soil NO_x emissions that are biased low. The commenter asserts that "...the state's estimates of soil NO_x emissions are on the extreme low-end of those reported in the academic literature, and the state has acknowledged that it is unsure how much NO_x is actually emitted from soil in the Valley." The commenter asserts that the State's only rationale for maintaining the current estimate is that it will take time to develop a new estimate, even though including anthropogenic soil NO_x emissions has been a longstanding request by Valley advocates.

Additionally, CCEJN asserts that "[t]he state's reliance on very low estimates of soil NO_x emissions is contrary to the presumption that precursors should be regulated and to the overall 'preventative' and 'precautionary' tenor of the Act." The commenter asserts that even if there was not sufficient time to fully evaluate the scientific literature, a key question is what assumptions the State should rely on in the interim. The commenter proposes that the State should base its decision of whether to regulate ammonia on a median reasonable estimate of soil NO_x emissions, if not the high-end estimate.

Response 3.A: We do not agree that the information provided by the commenter on soil NO_x emissions undermines the State's conclusion that PM_{2.5} formation in the San Joaquin Valley is NO_x-limited (*i.e.*, much more sensitive to NO_x emissions reductions than to ammonia emissions reductions). Three lines of evidence support the EPA's agreement with the State's conclusion. First, at this time, it is not clear that soil NO_x emissions estimates are largely underestimated as the commenter suggests. Second, ammonia emissions are likely underestimated and so the response to an ammonia reduction is likely overestimated in the modeling. Third, ambient measurements strongly suggest that PM_{2.5} concentrations would respond relatively little to ammonia emissions reductions. We discuss each of these lines of evidence in the paragraphs that follow.

We do not dispute that increasing NO_x emissions in the model would be expected to decrease the modeled amount of ammonia relative to NO_x and increase the modeled sensitivity of PM_{2.5} concentrations to ammonia reductions. However, as discussed in detail in Response 2.A, further investigation is needed and merited regarding whether soil NO_x emissions are underestimated or the magnitude of such underestimation. The magnitude of the difference, if any, could have an important effect on whether the model responses to ammonia reductions would be above the contribution threshold. Additionally, even if it is determined that soil NO_x emissions are underestimated, proper updating of the model emissions inventory to address the relative abundance of ammonia and NO_x could require updates to both the NO_x and ammonia emissions inventories, and there is ample evidence that ammonia emissions are underestimated. Furthermore, independent of any emissions estimates or modeling, evidence from ambient measurements imply that PM_{2.5} concentrations would respond very little to ammonia reductions, and that the model responses in the precursor demonstration may be overestimated, as discussed further in the remainder of this response. Thus, the EPA disagrees with the commenter's assertions that the State's conclusion that the San Joaquin Valley is NO_x-limited (in the sense that it is much more sensitive to NO_x reductions than to ammonia reductions) is based on biased soil NO_x emissions estimates that compel the EPA to disapprove the ammonia precursor demonstration.

A second line of evidence is that multiple studies have suggested that ammonia emissions are underestimated in the San Joaquin Valley. These studies reached this conclusion by comparing ambient measurements and satellite retrievals to model results that incorporate estimates of ammonia emissions, and by comparing monitoring or modeling results to what would be expected based on the size(s) of the ammonia and NO_x emissions inventories. For example, in a summary report for the CalNex air quality study, the authors concluded based on direct measurements of ammonia emissions flux that "[p]reliminary results indicate that within the San Joaquin Valley, [ammonia] emissions could be underestimated in inventories by about a factor of three."⁶⁸ This finding was

confirmed in later modeling using monitored data from the DISCOVER-AQ field study.⁶⁹ Other studies identified in a literature search also suggest that ammonia emissions are underestimated, as discussed in the remainder of this response. If higher ammonia emissions were used in the modeling to correct the underestimation, then modeled ammonia would be more abundant relative to nitrate, and particulate nitrate formation would be more NO_x-limited. Thus, the modeled response to ammonia reductions would be lower than reported in the precursor demonstration in the SJV PM_{2.5} Plan, and below the contribution threshold.

A literature search conducted by the EPA found ample evidence that ammonia emissions may be underestimated in the San Joaquin Valley.⁷⁰ Most studies compared air quality model results with satellite retrievals; a few compared model results to measurements from aircraft. All of the studies reviewed concluded that ammonia emissions are underestimated by a factor of two to five. A factor of two is greater than the 20–51 percent increase in total NO_x emissions estimated by Almaraz et al. (2018) and would more than offset the effect of an increase in soil NO_x on the sensitivity of PM_{2.5} concentrations to ammonia reductions. These studies collectively suggest that ammonia emissions are underestimated in the San Joaquin Valley. In turn, that implies that model estimates of the sensitivity in the precursor demonstration may be overestimated.

Note that such an underestimate does not imply that the emissions inventories in the SJV PM_{2.5} Plan do not meet the requirements of CAA section 172(c)(3); rather it reflects that more work is needed to continue to improve ammonia emissions estimates. Studies may deduce that there is underestimation using a "top down" approach relying on ambient measurements or satellite observations; the measurements reflect the atmospheric sum of the contribution of many sources, possibly over an extended area. On the other hand, an emissions inventory developed for regulatory purposes is typically a "bottom-up" estimate, derived from

Resources Board, 2014, p. 63; available at <https://csl.noaa.gov/projects/calnex/synthesisreport.pdf>.

⁶⁹ Kelly, J.T. et al. (2018), Modeling NH₄NO₃ over the San Joaquin Valley during the 2013 DISCOVER-AQ campaign, *Journal of Geophysical Research: Atmospheres*, 123, 4727–4745, doi:10.1029/2018JD028290.

⁷⁰ Memorandum dated October 12, 2023, from Scott Bohning, EPA Region IX, to Docket EPA–R09–OAR–2023–0263, Subject: "Literature search finds evidence that ammonia emissions are underestimated."

⁶⁸ Parrish, D. (2014), Synthesis of Policy Relevant Findings from the CalNex 2010 Field Study, Final Report to the Research Division of the California Air

compiling an inventory of stationary, area, mobile, and biogenic sources, with their associated emissions factors and activity rates. The emissions inventory is based on detailed knowledge and measurements of specific source types under particular conditions. It is impractical to measure every source under all environmental conditions or under all possible variations, and to know the exact mix of source types and of management practices in place. Thus, the emissions inventory depends on the basic assumption that information compiled for the subset of sources that it is practical to measure can be generalized to the full population of sources in an area. Characterizing ammonia emissions from the bottom up requires spatially and temporally resolved data, such as detailed farming practices including irrigation and fertilizer application, and how they affect emissions, which may vary depending on multiple factors. Such detailed data may not be available except at an enormous, impractical cost. A bottom-up emissions inventory may use the best available data and techniques, yet not match estimates made via top-down approaches. The discrepancy between the estimates from top-down and bottom-up approaches indicates the need for further research to better characterize the specific source types that contribute to the total.

In 2021, CARB reported comparisons between its own model predictions of ammonia to ambient data.⁷¹ The SJV PM_{2.5} Plan did not include an evaluation of model performance for ammonia per se (just for particulate ammonium), but in a supplemental transmittal, CARB described the results of two analyses confirming the likely underestimation of ammonia. CARB compared CMAQ model predictions of ammonia with the 2013 DISCOVER-AQ⁷² aircraft measurements and found that near-ground ammonia was underpredicted by 50 percent at Fresno and 200 percent at Porterville. CARB also compared 2017 satellite observations of ammonia from the Infrared Atmospheric Sounding Interferometer to CMAQ model predictions and found that modeled ammonia concentrations were half of the magnitude of the satellite retrievals at some locations, and that the modeled average in the San Joaquin Valley was

about 25 percent less than observed. CARB also noted that underprediction of ammonia would result in the modeled PM_{2.5} response to ammonia reductions being overpredicted.

Finally, a third line of evidence supports the conclusion that PM_{2.5} in the San Joaquin Valley is relatively insensitive to ammonia reductions. Evidence from ambient data is especially strong since it is independent of uncertainties in the emissions estimates and the modeling exercises. Appendix G (“Precursor Demonstration”) of the 2018 PM_{2.5} Plan and Appendix C (“Weight of Evidence Analysis”) of the CARB Staff Report on the 2018 PM_{2.5} Plan⁷³ describe previous research in support of the claim that ammonium nitrate PM_{2.5} formation is NO_x-limited rather than ammonia-limited. That is, PM_{2.5} concentrations in the San Joaquin Valley are expected to be sensitive to reductions in NO_x emissions but much less sensitive to reductions in ammonia. Essentially, due to the abundance of ammonia, even with ammonia emissions reductions there would still be enough available ammonia to combine with NO_x (in the form of nitric acid) to form about the same amount of particulate ammonium nitrate. This was the conclusion of Lurmann et al. (2006)⁷⁴ based on ambient measurements during the California Regional Particulate Air Quality Study (CRPAQS), an intensive field study during winter 2000–2001. Ammonia was almost always abundant relative to the amount of nitric acid⁷⁵ (derived from NO_x and the immediate precursor to particulate nitrate), so the authors concluded that ammonium nitrate formation in the San Joaquin Valley was NO_x-limited. This conclusion was based on ambient data collected before the additional 60 percent reduction in NO_x emissions that has occurred in the interim, which would be expected to have increased the degree of NO_x-limitation (*i.e.*, particulate ammonium nitrate formation would be more limited by, and so more sensitive to, the amount of NO_x).

⁷³ CARB’s “Staff Report, Review of the San Joaquin Valley 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards,” release date December 21, 2018.

⁷⁴ Lurmann et al. (2006) Processes Influencing Secondary Aerosol Formation in the San Joaquin Valley during Winter, *Journal of the Air & Waste Management Association*, 56(12):1679–1693, doi:10.1080/10473289.2006.10464573.

⁷⁵ Nitric acid (HNO₃) is formed from NO_x emissions; it combines with ammonium to form particulate ammonium nitrate. The relative amounts of nitric acid and ammonium indicate which is the limiting factor in ammonium nitrate formation.

Consistent with CRPAQS, aircraft-borne measurements during the more recent 2013 DISCOVER-AQ⁷⁶ study led CARB to a similar conclusion, based on the large amount of “excess ammonia”. This is defined as the amount of measured ammonia left over if all the nitrate and sulfate present combined with available ammonia to form particulate. The CARB December 2018 Staff Report describes this in more detail,⁷⁷ and also lists results from multiple other recent studies with similar conclusions. Two studies with chemical modeling,^{78 79} at temperature and humidity levels typical for the San Joaquin Valley and with ammonia and nitrate concentrations observed during DISCOVER-AQ, showed that over 90 percent of the nitrate is present as particulate rather than gas, consistent with abundance of ammonia and with low sensitivity to ammonia changes. Two other studies, one using data from DISCOVER-AQ⁸⁰ and one using data from the 2010 CalNex field campaign,⁸¹ found measured ammonia to be 50–100 times as abundant as nitric acid, implying low sensitivity to ammonia emissions changes.⁸² In summary, the

⁷⁶ DISCOVER-AQ: “Deriving Information on Surface conditions from Column and VERTically Resolved Observations Relevant to Air Quality,” <https://science.nasa.gov/mission/discover-aq>.

⁷⁷ CARB, “Staff Report: Review of the San Joaquin Valley 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards,” December 21, 2018, Appendix C, 12ff.; available at <https://ww2.arb.ca.gov/resources/documents/2018-san-joaquin-valley-pm25-plan>.

⁷⁸ Id. at 12 (presenting CARB analysis of ammonia impacts in the San Joaquin Valley).

⁷⁹ Prabhakar et al. (2017) Observational assessment of the role of nocturnal residual-layer chemistry in determining daytime surface particulate nitrate concentrations, *Atmospheric Chemistry Physics*, 17, 14747–14770. doi:10.5194/acp-17-14747-2017.

⁸⁰ Parworth et al. (2017) Wintertime water-soluble aerosol composition and particle water content in Fresno, California, *Journal of Geophysical Research, Atmosphere*, 122, 3155–3170. doi: 10.1002/2016JD026173, p. 3165. (noting that “The average mixing ratio of NH₃ was 49 times greater than HNO₃ These results highlight that NH₃ was in excess, and NH₄NO₃ [ammonium nitrate] formation is likely limited by HNO₃ availability in Fresno,” *i.e.*, about a factor of 50).

⁸¹ CalNex, or California Research at the Nexus of Air Quality and Climate Change, was a NOAA-sponsored field study during summer 2010; <https://www.esrl.noaa.gov/csd/projects/calnex/>. Markovic et al., (2014), Measurements and modeling of the inorganic chemical composition of fine particulate matter and associated precursor gases in California’s San Joaquin Valley during CalNex 2010, *Journal of Geophysical Research—Atmospheres*, 119, 6853–6866, doi:10.1002/2013JD021408, p. 6863 (noting that “. . . the observed NH₃ (g) mixing ratios were elevated . . . the observed HNO₃ (g) mixing ratios were 2 orders of magnitude lower,” *i.e.*, about a factor of 100).

⁸² The CARB December 2018 Staff Report explains (in Appendix C, p. 14) that NO_x is the limiting pollutant as shown by this relative abundance of ammonia, but that the expected low

Continued

⁷¹ Email dated April 26, 2021, from Laura Carr, CARB, to Scott Bohning, EPA Region IX, Subject: “RE: Ammonia update,” with attachment “Ammonia in San Joaquin Valley”.

⁷² DISCOVER-AQ: “Deriving Information on Surface conditions from Column and VERTically Resolved Observations Relevant to Air Quality,” <https://science.nasa.gov/mission/discover-aq>.

ambient field study data that the EPA is aware of is consistent with a conclusion that PM_{2.5} concentrations in the Valley are much more sensitive to NO_x emissions reductions than to ammonia emissions reductions. This evidence is independent of the State's soil NO_x emissions estimate and is an important basis for the EPA's determination that the responses to ammonia reductions for the 1997 annual PM_{2.5} NAAQS that are slightly above the recommended contribution threshold are likely overestimated. Thus, the ambient evidence supports the EPA's determination that ammonia does not contribute significantly to PM_{2.5} levels above the 1997 annual PM_{2.5} NAAQS.

Comment 3.B.1: CCEJN's second concern with the precursor demonstration relates to the State's conclusions regarding the level of ammonia reductions that could be achieved through potential control measures. The commenter asserts that "... the state repeatedly uses a lack of certainty about emission reduction potential to justify no regulation at all." As an example, they argue that the State acknowledges that research shows that ammonia emissions from manure-based fertilizer can be reduced by 50–90 percent through quick mixing or injection but that it declines to consider the measure feasible for synthetic fertilizers merely because the State does not know how effective it will be.

Response 3.B.1: We disagree with CCEJN's claim that the State relies primarily on a lack of certainty about potential emissions reductions to justify not regulating ammonia in the San Joaquin Valley. Rather, the State based its decision not to regulate ammonia for purposes of meeting the 1997 annual PM_{2.5} NAAQS on the technical analyses it performed indicating that ammonia does not contribute significantly to PM_{2.5} concentrations that exceed the 1997 annual PM_{2.5} NAAQS.

Where the State identifies uncertainties about potential ammonia emissions reductions, it does so in the context of its controls analysis to support the ammonia precursor demonstration, which it conducted at the request of the EPA and in accordance with EPA guidance. As acknowledged by the commenter, under the PM_{2.5} SIP Requirements Rule, a state may submit an optional precursor demonstration showing that a particular PM_{2.5} precursor chemical species does

not contribute significantly to PM_{2.5} levels above the standard in the area.⁸³ If the EPA approves a precursor demonstration for a particular chemical species, the state is not required to control emissions of that precursor from existing sources in the relevant attainment plan.⁸⁴

The EPA's July 2023 proposal includes a detailed summary of the precursor demonstration in the SJV PM_{2.5} Plan and supporting March 2023 Ammonia Supplement, and of the EPA's evaluation. We will not reiterate all of the State's conclusions herein except to highlight the key finding that modeled sensitivities for the 1997 annual PM_{2.5} NAAQS of PM_{2.5} concentrations to a 30 percent ammonia reduction are approximately at or below the contribution threshold used to determine significance. The PM_{2.5} Precursor Guidance explains that in cases where the PM_{2.5} response to a 30 percent reduction in precursor emissions is close to the contribution threshold, the EPA may require air agencies to identify and evaluate potential emissions controls in support of a precursor demonstration that relies on a sensitivity analysis. The response of ambient PM_{2.5} to an actual assessment of the benefit from potential controls can be used to determine whether controlling ammonia would significantly affect PM_{2.5} levels. In accordance with 40 CFR 51.1010(a)(2)(ii), the EPA required the State to provide an analysis of potential controls to aid the EPA in its evaluation of the precursor demonstration. The State provided such controls analysis in the March 2023 Ammonia Supplement, which built upon information previously provided in the 2018 PM_{2.5} Plan.

As discussed in our proposal, the State's controls analysis included a review of ammonia emissions reductions achieved nationwide from 2011 to 2017, an evaluation of the main ammonia source categories in the San Joaquin Valley, a summary of existing control measures in the San Joaquin Valley that affect ammonia from these sources, a review of existing control measures implemented by other air districts, and an evaluation of additional mitigation options for ammonia sources in the Valley.⁸⁵ Based on the State's and District's analyses, they determined that significant ammonia emissions reductions are already being achieved

by measures targeting VOC emissions and that the ammonia reductions achievable from additional controls are well below 30 percent.

In this action, we are finalizing our determination that the State has provided adequate support for its conclusion that available additional ammonia controls would yield less than a 30 percent reduction in ammonia emissions. We are finding that the District made a convincing case that significant ammonia reductions have already been achieved through District Rule 4570 and that few additional mitigation measures could provide only modest further reductions from confined animal facilities (CAFs), which account for 58 percent of the total ammonia inventory. Similarly, the State has provided support for its assertion that additional reductions are not feasible from the fertilizer, composting, and other smaller source categories through its analysis of potential fertilizer controls and information regarding controls that are already in place for these source categories. As discussed in our proposal, we acknowledge the uncertainty in the reductions that are currently being achieved from the fertilizer source category but are finalizing our determination that even if ammonia reductions could be reduced by a very high percentage, such reductions added to the potential reductions from CAFs would amount to less than a 30 percent reduction in total ammonia emissions.

Given that the State's modeled sensitivities of PM_{2.5} concentrations to a 30 percent ammonia reduction are approximately at or below the threshold used for identifying an impact that is significant for the 1997 annual PM_{2.5} NAAQS, and that the potential additional reductions would be well below 30 percent, the response of PM_{2.5} to an ammonia reduction of a percentage smaller than 30 percent would be below the contribution threshold, indicating that ammonia does not contribute significantly to ambient PM_{2.5} concentrations for purposes of the SJV PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS. Based on these results, the State excluded ammonia controls from the SIP submission. Because the EPA is finalizing approval of the State's precursor demonstration as proposed, the State is not required to regulate ammonia for purposes of meeting the CAA requirements for the 1997 annual PM_{2.5} NAAQS.

Regarding the example cited by the commenter of quickly mixing or injecting fertilizer into the soil, we do not disagree that research literature indicates that quick mixing or injection

sensitivity to ammonia reductions does not mean zero response; the reduction necessarily shifts nitrate from particulate to gas to maintain chemical equilibrium. Thus, NO_x being the limited pollutant does not contradict the modeled responses to 30–70 percent reductions.

⁸³ 81 FR 58010, 58021 (August 24, 2016); 40 CFR 51.1006 ("Optional PM_{2.5} precursor demonstrations").

⁸⁴ 40 CFR 51.1006(a)(1)(iii) and 51.1010(a)(2)(ii).

⁸⁵ 88 FR 45276, 45288–45290.

can reduce ammonia emissions from manure-based fertilizer. The State acknowledges in the March 2023 Technical Supplement that applying manure to the soil surface without incorporation can lead to significant ammonia emissions and includes an extensive discussion of the various methods of incorporation as well as the related requirements for injection and incorporation of manure-based fertilizer in District Rule 4570. We disagree, however, with the commenter's assertions that because the measure is effective at reducing ammonia from manure-based fertilizers, the State should infer a similar magnitude of effectiveness for synthetic fertilizers. The studies cited by the commenter acknowledge uncertainties and highlight the importance of additional research to adapt a potential measure to local conditions.⁸⁶ For example, Ti et al. (2019), in a global meta-analysis of measures to reduce ammonia emissions from livestock and cropping systems, found that the effects of fertilizer application processes are highly dependent on crop type.⁸⁷ The paper further concludes that mitigation needs to be carefully planned and adapted to local conditions because ammonia emissions are dependent on environmental factors such as weather and soil conditions, that the applicability of measures depends strongly on farm structures, and that studies examining economic feasibility and the effects of combinations of measures are needed.⁸⁸ The State's March 2023 Ammonia Supplement draws similar conclusions about the need for additional research to assess the potential for ammonia emissions reductions, specifically as they relate to quick mixing and injection, under conditions representative of those in the San Joaquin Valley.⁸⁹ Given these uncertainties, we agree with the State's conclusion that additional research is needed and find that the State's decision not to assign ammonia

reductions to such measure at this time to be reasonable.

In addition to helping to resolve the uncertainties related to the effectiveness of mitigation measures, additional research would also be beneficial for improving understanding of any potential disbenefits that may be specific to the area. The commenter appears to acknowledge the potential for disbenefits in a footnote to their comment, which notes that CCEJN does not endorse any specific approach for reducing ammonia emissions, including quick mixing or injection, and that "regulation of ammonia emissions cannot be permitted to exacerbate degradation of groundwater quality." These expressed concerns about the potential for adverse effects on water quality seem to align with the State's position that more research is needed. Such research may also inform other important considerations, such as the effects on greenhouse gas emissions.

Comment 3.B.2: CCEJN asserts that the State's evaluation of emissions from fertilizers is limited in that it is seemingly based on just two studies, and does not consider additional mitigation options identified in the literature such as using non-urea based fertilizers; using controlled release fertilizers; using fertilizers with nitrification inhibitors; irrigating immediately after fertilizer placement; or adding amendments to fertilizers, such as zeolite, pyrite, or organic acids. The commenter also points to a study on the field of precision agriculture as a resource on mechanisms to minimize fertilizer use,⁹⁰ as well as two studies examining how modeling can be used to predict ammonia volatilization, claiming that such studies undermine the State's position that emissions reductions cannot be calculated.⁹¹

Response 3.B.2: We disagree with CCEJN's characterization of the State's analysis of emissions from fertilizer as "extremely narrow." We infer that the commenter is referring to the State's analyses for synthetic fertilizer specifically, based on the numerous studies cited in the State's discussion of

manure application-related measures,⁹² and the commenter's assertion that the State's evaluation of fertilizers is seemingly based on the findings from just two studies and that Table 13 of the March 2023 Ammonia Supplement lists references for Guthrie et al. (2018)⁹³ and Eory et al. (2016) only.⁹⁴ However, we note that both Guthrie et al. (2018) and Eory et al. (2016) are compilation studies covering a range of mitigation options for organic and synthetic fertilizer application and that the State's March 2023 Ammonia Supplement cites numerous studies in addition to these two compilation studies. Furthermore, the State turned to the research literature only after reviewing how other California State agencies are engaged in fertilizer use and attempting to identify any existing rules or regulations in the nation controlling ammonia emissions from this source category.

Regarding the additional mitigation options identified by CCEJN, we appreciate that the commenter raises these potential strategies. We acknowledge the studies cited by the commenter finding that implementation of some of these strategies may help minimize ammonia emissions from agricultural systems around the globe. We encourage CARB and the District to keep abreast of research examining mitigation options for minimizing ammonia emissions from fertilizer application in support of future policy and management decisions, particularly as they may relate to reducing PM_{2.5} exposure in the San Joaquin Valley. However, as discussed in the following paragraphs, in light of the absence of any SIP-approved requirements elsewhere in the nation, the regulations adopted by other California State agencies to control fertilizer application, and the uncertainties discussed in the studies cited by CARB and the commenters, the EPA continues to agree with the State's overall conclusions that more research is needed on potential mitigation measures to reduce ammonia emissions from fertilizer application in the San Joaquin Valley. We also agree that based on the information currently available, the additional reductions achievable are sufficiently low that the PM_{2.5} response to such reduction would

⁸⁶ Pan, B. et al. (2016). Ammonia volatilization from synthetic fertilizers and its mitigation strategies: A global synthesis. *Agriculture, Ecosystems & Environment*, Vol. 232, 283–289, doi:10.1016/j.agee.2016.08.019; Ti, C. et al. (2019). Potential for mitigating global agricultural ammonia emission: A meta-analysis. *Environmental Pollution*, Vol. 245, 141–148, doi:10.1016/j.envpol.2018.10.124.

⁸⁷ Ti et al. (2019) op cit., p. 146. For example, the paper notes that the effects of fertilizer application practices on reducing ammonia emissions from vegetable production are lower than in wheat and fruit production due in part to the smaller reduction in ammonia emissions from vegetable fields associated with more intensive irrigation.

⁸⁸ Id. at 147.

⁸⁹ March 2023 Ammonia Supplement, p. 94.

⁹⁰ Association of Equipment Manufacturers, The Environmental Benefits of Precision Agriculture in the United States, <https://newsroom.aem.org/download/977839/environmentalbenefitsofprecisionagriculture-2.pdf>.

⁹¹ Gurung, R.B. et al. (2021) Modeling ammonia volatilization from urea application to agricultural soils in the DayCent model. *Nutr Cycl Agroecosyst*, 119, 259–273. doi:10.1007/s10705-021-10122-z; Yang, Y. et al. (2022) Comprehensive quantification of global cropland ammonia emissions and potential abatement. *Science of The Total Environment*, 812, 151450, doi:10.1016/j.scitotenv.2021.151450.

⁹² E.g., see March 2023 Ammonia Supplement pp. 74–75.

⁹³ Guthrie, S. et al. (2018). Impact of ammonia emissions from agriculture on biodiversity: An evidence synthesis. Rand Europe, The Royal Society. https://www.rand.org/pubs/research_reports/RR2695.html.

⁹⁴ Eory, V. et al. (2016) ClimateXChange, On-farm technologies for the reduction of greenhouse gas emissions in Scotland. https://www.climateexchange.org.uk/media/1927/on-farm-technology_report.pdf.

be below the contribution threshold, indicating that ammonia does not contribute significantly to ambient PM_{2.5} concentrations for purposes of the SJV PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS. As we emphasized in our proposal, this finding is specific to the facts and circumstances of this particular plan and does not pre-determine the outcome of significance determinations of precursors in the future.

In the March 2023 Ammonia Supplement, the State describes its efforts to identify any SIP-approved requirements limiting ammonia emissions from fertilizers that are being implemented in any other areas of the United States and explains that it has not identified any rules or regulations being implemented elsewhere. Thus, it describes regulations in place adopted by other California State agencies to control fertilizer application and its review of research studies examining techniques for reducing ammonia emissions from synthetic fertilizer application.

The State describes in Appendix C (“Stationary Source Control Measure Analyses”) of the 2018 PM_{2.5} Plan and in the March 2023 Ammonia Supplement the various State agencies responsible for ensuring environmentally safe use of fertilizer material. It describes requirements for commercial irrigated lands in the San Joaquin Valley to prepare a farm management plan (including an irrigation nitrogen management plan) that complies with waste discharge requirements in accordance with the Central Valley Irrigated Lands Regulatory Program established by the California State Water Resources Control Board. The nitrogen management plan is designed to ensure that the amount of nitrogen applied to agricultural lands is in reasonable balance with the needs of crops that are being grown. The State explains that the “4 R’s” of nitrogen management (“Right source” of nitrogen at the “right rate,” “right time,” and “right place”)⁹⁵ serve as guiding nitrogen efficiencies principles that growers are recommended to follow when developing their management plans, and that growers are required to employ enhanced strategies if it is determined that they are not optimizing fertilizer use, as determined by the fraction of nitrogen applied to nitrogen used.

Next, CARB discusses measures identified in the literature for reducing ammonia emissions from fertilizer application, which include optimizing

fertilizer use, adding a urease inhibitor, mixing and injecting fertilizer into the soil quickly, and applying fertilizer during optimal weather conditions. Based on its review, the State finds that several of the strategies align with the 4 R’s of nitrogen management but that more research is needed to determine the feasibility and effectiveness of such strategies in California due to the unique climate conditions and farming practices in the San Joaquin Valley, and to explore any potential adverse consequences. CARB cites studies linking weather conditions with ammonia emissions,⁹⁶ and states that it is unclear which environmental factors are the most important for different fertilizer types.

As discussed in Response 3.B.1, the studies cited by CCEJN similarly highlight the need for additional research to examine how the potential for ammonia emissions reductions varies with local conditions. These studies largely focused on the United Kingdom or were global in scale and none of them appear to address mitigation potentials in the western United States or San Joaquin Valley specifically. Thus, none of the studies reflect climate conditions or farming practices in the San Joaquin Valley, and likely also do not reflect efficiencies already achieved through local regulations in the Valley. Furthermore, several of the studies suggest that some of the measures have already been adopted in many areas, adding to the uncertainty about whether and where there are opportunities for significant reductions in ammonia. For example, Pan et al. (2016), notes that “[e]nhanced efficiency fertilizers have been widely adopted to minimize N[itrogen] loss, including NH₃ volatilization from agricultural systems.”⁹⁷ Similarly, Gu et al. (2023), in a study examining the potential to mitigate nitrogen pollution from global cropland, concluded that the largest reduction of reactive nitrogen input and losses available were in East and South Asia and Southeast Asia, which they attribute to an overuse of fertilizer in those areas.⁹⁸ They calculated a much lower reduction potential in the European Union,

⁹⁶ Venterea, R.T. et al. (2012) Challenges and opportunities for mitigating nitrous oxide emissions from fertilized cropping systems. *Frontiers in Ecology and the Environment*, 10:10, 562–570. doi:10.1890/120062; Grahmann, K., et al. (2013) Nitrogen use efficiency and optimization of nitrogen fertilization in conservation agriculture. *Cabi Reviews*, 8:053. doi:10.1079/PAVSNNR20138053.

⁹⁷ Pan et al. (2016) op. cit., p. 288.

⁹⁸ Gu, B. et al. (2023) Cost-effective mitigation of nitrogen pollution from global croplands. *Nature*, Vol. 613, pp. 77–84.

Australia, and North America, where they concluded that nitrogen use in croplands is “closer to the estimated optimal level.”

In addition to the uncertainty in emissions reduction potentials, we note that studies suggest that one of the five mitigation options identified by CCEJN, using fertilizers with nitrification inhibitors, may lead to an increase in ammonia emissions. For example, Pan et al. (2016) noted that “[a]lthough nitrification inhibitors are designed to target N₂O emissions, the use of these inhibitors may prolong the retention of NH₄ in the soil resulting in [ammonia] volatilization (Kim et al., 2012; Lam et al., 2016; Ni et al., 2014).”⁹⁹ Pan et al. (2016) concluded that nitrification inhibitors increase ammonia volatilization by 38.0 percent.¹⁰⁰ Similarly, Ti et al. (2019) found that nitrification inhibitors increased ammonia emissions by 42.6 percent,¹⁰¹ whereas Newell Price et al. (2011) found that “[ammonia] emissions to air and ammonium/nitrite losses to water may be increased by a small amount.”¹⁰² While studies specific the San Joaquin Valley may show different results, based on the studies cited by the commenter, the research currently available does not indicate that use of fertilizers with nitrification inhibitors would reduce ammonia emissions in the San Joaquin Valley.

The studies that CCEJN points to on precision agriculture also note wide adoption of such practices while acknowledging some potential for additional environmental benefits. For example, in a 2021 report on the benefits of precision agriculture in the United States, the Association of Equipment Manufacturers discusses environmental improvements that have already been achieved through adoption of precision agriculture technologies.¹⁰³ Whitmore (2019) notes that larger farms have been quicker to adopt precision agriculture techniques due to greater resources,¹⁰⁴ and Lowenberg-Deboer

⁹⁹ Pan et al. (2016) op. cit., p. 284.

¹⁰⁰ Id. at p. 286.

¹⁰¹ Ti et al. (2019) op. cit., p. 143.

¹⁰² J. Newell Price, et al., (2011) An inventory of mitigation methods and guide to their effects on diffuse water pollution, greenhouse gas emissions and ammonia emissions from agriculture (Defra Project WQ0106). <http://randd.defra.gov.uk/Document.aspx?Document=MitigationMethodsUserGuideDecember2011FINAL.pdf>, p. 52.

¹⁰³ Association of Equipment Manufacturers, The Environmental Benefits of Precision Agriculture in the United States, <https://newsroom.aem.org/download/977839/environmentalbenefitsofprecisionagriculture-2.pdf>.

¹⁰⁴ Whitmore J. (2019) Precision Farming Comes into Its Own, Mich. St. Univ., <https://www.canr.msu.edu/news/precision-farming-comes-into-its-own>.

⁹⁵ March 2023 Ammonia Supplement, p. 92.

and Erickson (2019) note that “[t]he biggest gap in [precision agriculture] adoption is for medium and small farms in the developing world that do not use motorized mechanization,” which they attribute to cost-effectiveness challenges.¹⁰⁵ Lowenberg-DeBoer and Erickson (2019) also highlight the perception that adoption of precision agriculture has been slow, but state that “[s]ome aspects of [precision agriculture] were adopted as quickly and as widely as any technology in history, while others have lagged behind for technical and economic reasons.”¹⁰⁶

Taken together, the EPA finds that the studies cited by CCEJN highlight the uncertainties in the feasibility of the measures identified in its comment letter and suggest that more research is needed to estimate the additional reductions achievable in the San Joaquin Valley. Furthermore, while several studies suggest that there may be the potential for additional ammonia reductions from synthetic fertilizer application, they also indicate that such potential is not quantifiable with the information available at this time and may be lower in the San Joaquin Valley than in other locations around the globe.

Finally, regarding CCEJN’s comment about the availability of modeling to predict ammonia volatilization, we acknowledge these additional studies¹⁰⁷ identified by the commenter describing models for estimating ammonia emissions. However, we disagree with the commenter that the output from these models compel certain policy decisions in the San Joaquin Valley at this time. Here again the commenter cites large-scale studies that do not reflect model performance under conditions representative of those in the Valley. Both studies cited by the commenter note uncertainties due to crop type, meteorological conditions, and other factors, suggesting that research specific to the climate and farming practices in the Valley is needed. Furthermore, it is not clear that the models discussed in the studies are ripe for application in a regulatory context. For example, Gurung et al. (2021) concludes that additional research is needed before the models could be used to evaluate policy decisions for mitigating ammonia emissions from soils:

In future research, DayCent can also be used to test “what if” scenarios for

identifying best management practices (BMPs) given variation in the soil and climatic conditions. These scenarios could focus on adopting the 4R nutrient stewardship principles and identifying regional level BMPs associated with the addition of urea fertilization. Further model improvement would also allow for a broader set of options to be evaluated in support of policy and management decisions associated with mitigating of NH₃ volatilization from agricultural soils.

Thus, based on our review, we find the State’s conclusions that further research is needed to explore ammonia reduction potentials in the San Joaquin Valley to be reasonable. We encourage the State and District to perform and keep abreast of research on quantifying the effects of mitigation measures on ammonia emissions and their implications for policy and management decisions.

Comment 3.B.3: CCEJN asserts that the State dismisses controls for fertilizers on the basis that there is no published literature on control effectiveness in the San Joaquin Valley specifically. The commenter contends that such justification is “sometimes absurd” and that it cannot be true that studies specific to the Valley are necessary to determine that minimizing the use of fertilizer will decrease ammonia emissions. The commenter asserts that “this bar for effectiveness makes meaningful regulation impossible, particularly when the state disincentivizes research in the Central Valley by insisting that ammonia need not be regulated.” The commenter further notes that it is unfortunate that the State never mentions conducting any studies in the San Joaquin Valley.

Response 3.B.3: We disagree with CCEJN that the State claims that studies specific to the Valley are needed to discern that reducing fertilizer use will reduce ammonia emissions. In the 2018 PM_{2.5} Plan, the State discusses the link between fertilizer application and both ammonia emissions and nitrate contamination in groundwater, and describes current State regulations aimed at optimizing fertilizer use to minimize emissions of ammonia to the atmosphere.¹⁰⁸ Additionally, in its discussion of optimizing or minimizing fertilizer use in the 2023 Ammonia Supplement, the State discusses the “4 R’s” of nitrogen management (*i.e.*, “applying the ‘Right source’ of nitrogen at the ‘Right rate,’ ‘Right time,’ and ‘Right place’”) and that minimizing fertilizer use is consistent with the right rate principle. CARB also notes that Guthrie et al. (2018) describes that

minimizing the application of fertilizer to a level commensurate with optimal crop production can reduce ammonia emissions.¹⁰⁹ Thus, the State does acknowledge the potential benefits of minimizing fertilizer use on ammonia emissions. Where the State concludes that additional research is needed is in the context of how optimal fertilizer use can be achieved, which it notes is “not well described by both Guthrie et al. (2018) and the publications they referenced, nor were any specific regulations identified.” Given that some level of reduction is already being achieved through existing regulations and current practices, and the importance of careful consideration of environmental factors for optimizing fertilizer use, we find the State’s conclusion that additional research specific to the warm, dry climate conditions of the San Joaquin Valley is needed to determine whether additional strategies could further optimize fertilizer use and reduce ammonia emissions to be reasonable.

Regarding CCEJN’s statement that the State dismisses controls for fertilizers based on a lack of information on control effectiveness in the Valley, as discussed in Responses 3.B.1 and 3.B.2, studies reviewed by the State, as well as studies cited by the commenter, emphasize that strategies to reduce ammonia emissions are highly dependent on local environmental factors and farm structures, and that more research is needed to examine these factors, as well as the effects of combinations of measures. The State concludes that specific mitigation strategies identified in the literature, such as optimizing fertilizer use, are already being implemented in the San Joaquin Valley because of regulations adopted by other California State agencies and co-benefits such as reduced cost to farmers. Based on the literature study findings regarding the importance of local information and the need to examine combinations of measures, the absence of existing rules or regulations in other areas controlling ammonia emissions directly, and the State’s evaluation of the mitigation strategies already implemented through regulation by other State agencies, we maintain that it is reasonable that the State concludes that more research specific to the Valley is needed to assess the feasibility and effectiveness of additional measures for synthetic fertilizers.

We also disagree with CCEJN’s assertions that needing additional studies specific to the conditions in the

¹⁰⁵ Lowenberg-DeBoer, J. and Erickson, B. (2019) Setting the Record Straight on Precision Agriculture Adoption, *Agronomy J.*, p. 1565.

¹⁰⁶ *Id.* at 1552.

¹⁰⁷ Gurung et al. (2021) *op. cit.*; Yang et al. (2022) *op. cit.*

¹⁰⁸ 2018 PM_{2.5} Plan, Appendix C, pp. C-339 to C-341.

¹⁰⁹ March 2023 Ammonia Supplement, p. 92.

Valley makes meaningful regulation impossible and that the State disincentivizes research by concluding ammonia does not need to be regulated. Contrary to the commenter's claim that the State does not discuss any studies that it is conducting to assess the effectiveness of ammonia controls in the Valley, the State does include a discussion of recent and ongoing and research in Section 4 of the March 2023 Ammonia Supplement. CARB's work includes the development of a mobile measurement platform equipped with an ammonia monitor and other instrumentation to examine ammonia sources. The State notes that in fall 2018, CARB collaborated with researchers from the University of California, Davis to measure ammonia and other air pollutants near dairies in the San Joaquin Valley to evaluate the effectiveness of alternative manure management practices.¹¹⁰ The State also mentions additional research to evaluate emissions from dairies, to use satellite and remote sensing data to evaluate ammonia emissions sources across the Valley, and to identify opportunities to reduce ammonia and other pollutant emissions from dairy manure lagoons specifically. These efforts may inform future decision-making regarding the regulation of ammonia in the San Joaquin Valley.

Moreover, the EPA's action herein to approve the precursor demonstration in the SJV PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS does not preclude the State from adopting controls for ammonia in the future. As discussed in our proposal, a consequence of this final action to approve the State's ammonia precursor demonstration is that the State is not required to implement BACM/BACT level controls for sources of ammonia for purposes of the SJV PM_{2.5} Plan for 1997 annual PM_{2.5} NAAQS. Under 40 CFR 51.1006(b), such precursor demonstration approval applies only to the SJV PM_{2.5} Plan that is the subject of this final action. For any new PM_{2.5} attainment plan that the State is required to submit in accordance with 40 CFR 51.1003 for purposes of any PM_{2.5} NAAQS, the EPA may determine that ammonia contributes significantly to PM_{2.5} levels that exceed the NAAQS and that the State is required to implement controls for sources of ammonia for purposes of such attainment plan.

Comment 3.B.4: Regarding the District's current rules, CCEJN asserts that the State assumes that farmers are

already adopting the most efficient practices (e.g., feeding the most efficient amount of protein, incorporating manure quickly) but "provides little support for these assumptions, even though it is well established that farmers do not always adopt the most efficient practices." The commenter proposes that the precursor analysis should err on maintaining the presumption that precursors should be regulated and thereby err on the side of high estimates of potential effectiveness and that because the State does not do so, its analysis is arbitrary and capricious. The commenter asserts that the State relies on "biased assumptions," assuming low potential effectiveness from measures not being implemented, high reductions from Rule 4570, and that making optional measures mandatory would have no impact. The commenter further contends that if Rule 4570 is effective, the State should make its most effective requirements mandatory where feasible and possibly increase the stringency, and that the EPA should require the State to conduct further analysis of the rule.

Response 3.B.4: We disagree with CCEJN's assertions that the State provides little support for its estimates of ammonia reductions that have been achieved by existing regulations and that the assumptions it makes to arrive at those estimates are biased. As discussed in our proposal, the District discusses in detail in Appendix C of the 2018 PM_{2.5} Plan how Rule 4570 is structured, the control menu requirements for each of the CAF operations/sources, and research papers that support its estimates of ammonia emissions reductions from the measures.¹¹¹ As the District explains, some of the measures in Rule 4570 are required to be implemented but the rule also requires that additional measures be selected from a menu of options. The menu-based approach was developed to allow facilities flexibility to select measures that are the most practical and effective for their design and operation.¹¹²

For those measures that are required to be selected from a menu of options, the District presents its rationale in Appendix C of the 2018 PM_{2.5} Plan and Appendix F of the staff report for Rule 4570 for its assumptions about which measure a farmer will select and the resulting effects on ammonia

emissions.¹¹³ The District references research studies to support many of its assumptions, and where there is greater uncertainty about which measures may be selected or the corresponding ammonia reductions that can be achieved, the District explains how its assumptions are conservative. CCEJN has not provided any evidence to refute the District's analysis or conclusions. Therefore, based on the information presented, the EPA believes that the District relied on its expertise and the best information available and applied that information reasonably.

Regarding CCEJN's statement that the State should err on the side of high estimates of potential reductions from additional measures, given the uncertainties discussed in Responses 3.B.1 and 3.B.2, we find that the potential emissions reductions achievable in the San Joaquin Valley from many of the measures are not quantifiable at this time and that the State drew reasonable conclusions based on the information it evaluated. While the EPA appreciates that the commenter raises additional research studies not identified by the State in its analysis, as discussed in Responses 3.B.1 and 3.B.2, we have reviewed the studies and find that they do not contradict the State's conclusions. Thus, we find that the State's analysis of potential ammonia emissions reductions is neither arbitrary nor capricious.

We also find that CCEJN's claim that it is well-established that farmers do not adopt the most efficient practices is not well supported. To back this claim, the commenter cites two studies discussing the rates of adoption of precision agriculture technologies.¹¹⁴ However, these studies do not appear to indicate any reluctance on the part of farmers to adopt the most efficient practices. As discussed in Response 3.B.2, these papers discuss widespread adoption of precision agriculture technology while also acknowledging areas where there are opportunities for increased adoption, such as for specific crop types or farm sizes and for specific precision agriculture technologies, such as variable rate technology.¹¹⁵ Where

¹¹³ 2018 PM_{2.5} Plan, Appendix C, pp. C-311 to C-323; SJVUAPCD, "Final Draft Staff Report, Proposed Re-Adoption of Rule 4570 (Confined Animal Facilities)," June 18, 2009, at Appendix F, "Ammonia Reductions Analysis for Proposed Rule 4570 (Confined Animal Facilities)," June 15, 2006 (discussing various assumptions underlying the District's calculation of ammonia emissions factors).

¹¹⁴ Whitmore (2019) op. cit.; Lowenberg-DeBoer and Erickson (2019) op. cit.

¹¹⁵ Variable rate technology refers to the use of data and automation to optimize application of fertilizer, soil amendments, seed, or plant protection chemicals to optimize crop performance,

¹¹⁰ March 2023 Ammonia Supplement, Figure 5 (showing that dairy cattle account for an estimated 67.2 percent of ammonia emissions from CAFs).

¹¹¹ 2018 PM_{2.5} Plan, Appendix C, pp. C-312 to C-323.

¹¹² Id.; March 2023 Ammonia Supplement, pp. 25–26.

adoption has been slower, the studies point to feasibility constraints and the need for more research. For example, Lowenberg-DeBoer and Erickson (2019) emphasize that precision agriculture has been widely adopted and that in cases where technologies have been adopted at a slower pace, the authors attribute it to technological and economic feasibility challenges.¹¹⁶ The study authors also note that the studies they reviewed hypothesize that more reliable decision rules that account for the effects of moisture, temperature, soil organic matter, and other factors on nitrogen response may be needed to increase variable rate technology adoption.¹¹⁷ Whitmore (2019) similarly notes the complexity and high cost of new equipment as barriers to wider adoption of precision technology.¹¹⁸ CCEJN does not provide any evidence related to other measures in its letter or other measures in the State's analysis to support its claim.

Finally, we disagree with CCEJN's assertion that if Rule 4570 is effective, the State must consider making its optional requirements mandatory. As discussed earlier in this response, if the EPA approves a state's precursor demonstration showing that a particular PM_{2.5} precursor chemical species does not contribute significantly to PM_{2.5} levels above the standard in the area, the state is relieved of the obligation to control emissions of that precursor from existing sources in the relevant attainment plan.

Comment 3.C: Regarding the State's reliance on 2024 modeling results for its precursor analysis, CCEJN asserts that the State should not have relied on modeling of 2024, which is after the 2023 attainment deadline, and which nevertheless shows ammonia contributions that are above the contribution threshold. CCEJN further asserts that the use of 2024 modeling "violates the Act in three ways."

First, the commenter asserts that the approach ignores the requirement to demonstrate attainment as expeditiously as practicable because it does not consider ammonia reductions that may have resulted in attainment before 2023. They note that the State claimed it was close to attaining in 2020 and that meaningful reductions in ammonia would have most likely resulted in attainment earlier (*i.e.*, in 2021 or 2022).

Second, the commenter notes that the State relies not only on a future year but

a year after the attainment deadline. Because NO_x emissions are expected to be lower in 2024 than 2023, the commenter suggests that the impacts of ammonia reductions would be less in 2024 than in 2023 and that the impacts of ammonia reductions in 2023 are unknown. The commenter also claims that the EPA makes assumptions about how the State conducted its analysis and recommends that the EPA seek clarification from the State about whether the analysis relied on emissions projected from baseline (*i.e.*, existing) control measures or baseline measures plus measures committed to in the plan. If the State did not conduct the analysis "with numbers that are comparable to what are expected in 2023," the commenter contends that the EPA must require the State to redo the analysis.

Third, CCEJN asserts that the State's model indicating a design value of 12.03 µg/m³ cannot accurately describe 2023 conditions given that 2022 data show a design value well above 16 µg/m³. They conclude that the "EPA's approval of a precursor analysis that relies on such unrealistic modeling is therefore arbitrary and capricious and contrary to law."

Response 3.C: While the State relied on 2024 modeled sensitivities of PM_{2.5} to ammonia reductions, it is important to note that the EPA also considered the 2023 model responses via a NO_x-based interpolation between the State's model results for 2020 and 2024. The highest estimated response was at the Hanford site, 0.26 µg/m³ for 2024 and 0.27 µg/m³ for 2023, and did not change the EPA's conclusions regarding the ammonia precursor demonstration.¹¹⁹ In determining that ammonia does not contribute significantly in the San Joaquin Valley despite the Hanford response being above the 0.25 µg/m³ contribution threshold that the State derived for the 1997 annual PM_{2.5} NAAQS, we continue to rely on the abundant ambient evidence of excess ammonia relative to NO_x. This evidence includes evidence specific to the Hanford area, where mobile laboratory observations during the DISCOVER-AQ study showed ambient concentrations of ammonia that were approximately five times higher than those that were modeled.¹²⁰ These factors led the EPA to conclude that the model responses were likely overestimated and did not represent a significant contribution of ammonia to PM_{2.5} levels.

We further disagree with the commenter's assertion that the State's

approach ignores the requirement for expeditious attainment. The CAA requirement for expeditious attainment is not directly relevant for evaluating a precursor demonstration, which is mainly concerned with whether PM_{2.5} in the atmosphere is sensitive to emissions reductions of the precursor. For that purpose, the PM_{2.5} Precursor Demonstration Guidance provides for the use of modeled sensitivities of PM_{2.5} to a reduction in precursor emissions evaluated in the base year or a future year, noting that there are many considerations in choosing the appropriate year to model.¹²¹ The key factor for the State's use of a future year was the fact that sizable NO_x emissions reductions were projected to occur over time and would change the atmospheric chemistry in the San Joaquin Valley. The reductions are mainly due to the existing motor vehicle control program and would occur independent of any controls in, or EPA action on, the Plan.¹²² The sensitivity of PM_{2.5} concentrations to ammonia reductions decreases with decreasing NO_x emissions. Between 2020 and 2024, the modeled response to a 30 percent ammonia emissions reduction declines by 50 percent at the design value monitoring site, Bakersfield-Planz, from 0.24 µg/m³ down to 0.12 µg/m³. (The corresponding decline is 37 percent for the average over all monitoring sites.) Thus, much of the benefit of ammonia controls applied in 2020 would be lost by 2023 and 2024.

With regard to whether ammonia emissions reductions could have resulted in earlier attainment, the EPA used results from the Plan's attainment demonstration to assess the effect of a 30 percent ammonia reduction in 2022 and found that it would not have resulted in attainment in that year.¹²³ We estimated the 2022 design value as 15.4 µg/m³ by using a NO_x emissions-based interpolation between the Plan's 2018 and 2023 design values, 16.3 and 14.7 µg/m³, respectively.¹²⁴ Similarly we estimated the 2022 sensitivity to ammonia from the State's modeled sensitivities for 2020 and 2024. Applying a 30 percent ammonia reduction for 2022 resulted in a design value of 15.2 µg/m³, which is above the level of the 1997 annual PM_{2.5} NAAQS

¹²¹ PM_{2.5} Precursor Demonstration Guidance, p. 36.

¹²² 2018 PM_{2.5} Plan, Appendix B. NO_x emissions decrease 27 percent between 2020 and 2024 due to baseline measures.

¹²³ Spreadsheet "Estimated 2023 annual PM_{2.5} ammonia sensitivity and 2022 DV.xlsx," "2023 vs. 2024 response to 30% ammonia reduction," EPA Region IX, October 20, 2023.

¹²⁴ 15 µg/m³ SIP Revision, Appendix K, Table 33.

save time and money, and reduce environmental impacts.

¹¹⁶ Lowenberg-DeBoer and Erickson (2019) op. cit., p. 1552.

¹¹⁷ Id. at 1564–1565.

¹¹⁸ Whitmore (2019) op. cit.

¹¹⁹ 88 FR 45276, 45293, fn. 184.

¹²⁰ Kelly, J.T. et al. (2018), op. cit.

(i.e., 15.0 $\mu\text{g}/\text{m}^3$). Thus, we conclude that ammonia emissions reductions would not have resulted in attainment before the Plan's projected 2023 attainment date.

Regarding the use of 2024 modeled sensitivities in lieu of modeled sensitivities for 2023, the EPA finds that our conclusions would be the same for the purposes of our evaluation of the precursor demonstration. We estimated 2023 responses to ammonia emissions reductions by interpolating between the responses for available 2020 and 2024 modeling; the interpolation used projected NO_x emissions for 2020, 2023, and 2024 and found the estimated 2023 response to be only 0.01 $\mu\text{g}/\text{m}^3$ higher than in 2024.¹²⁵ While there are several differences between 2020 and 2024 modeled emissions for the various $\text{PM}_{2.5}$ precursors and direct $\text{PM}_{2.5}$, the key difference for assessing the change in the sensitivity of $\text{PM}_{2.5}$ to ammonia reductions is NO_x emissions levels. The modeling for 2020 and 2024 represent $\text{PM}_{2.5}$ design values for the NO_x emissions levels in 2020 and 2024, and their respective responses to a 30 percent ammonia emissions reduction. To estimate the $\text{PM}_{2.5}$ response to ammonia reductions in other years or for other control scenarios, only the NO_x emissions level is needed. The estimate does not depend on NO_x emissions differences between 2023 and 2024 calculated for baseline, controlled, or other scenarios, only on the resulting 2023 emissions level being evaluated.

The commenter states that it is unclear whether the precursor demonstration analysis relied on a baseline emissions inventory, or an inventory considering the controls in the plan. While this is not documented prominently in the submittal materials, the precursor demonstration modeling performed by the State used baseline projections,¹²⁶ that is, emissions expected with existing control measures and without new control measures from the 2018 $\text{PM}_{2.5}$ Plan or the 15 $\mu\text{g}/\text{m}^3$ SIP

Revision.¹²⁷ Notably, the EPA's conclusions for the precursor demonstration do not depend on which of the two inventories is used. For the interpolation to 2023, the EPA relied on controlled NO_x emissions levels (150.6 tpd) to estimate the 2023 response to 30 percent reduction to be 0.265 $\mu\text{g}/\text{m}^3$ (reported as 0.27 $\mu\text{g}/\text{m}^3$). Using baseline NO_x emissions (153.6 tpd), the estimated 2023 response is 0.275 $\mu\text{g}/\text{m}^3$, which is about 0.01 $\mu\text{g}/\text{m}^3$ higher. Thus, the difference between using the baseline or controlled emissions for assessing the sensitivity to ammonia emissions reductions is negligible.

Finally, the EPA disagrees that a monitored 2022 design value being "well above" the modeled 2023 design value invalidates the modeling for purposes of the precursor demonstration. As discussed in the EPA's modeling TSD for the 2018 $\text{PM}_{2.5}$ Plan,¹²⁸ the State determined that the model performance was excellent, and the EPA found the results to be adequate for attainment demonstration modeling. The modeling used a 2013 base year, i.e., the specific meteorological and emissions conditions of 2013, not those of 2022 (nor of the 2018 monitored value used in scaling the modeling results from the 2018 $\text{PM}_{2.5}$ Plan). Even when the modeling itself is valid, the model-predicted design value can differ from a recent monitored design value due to different meteorological conditions than in 2013 base case, emissions variability, and atypical events that affect the monitored value, but that are not necessarily reflected in the modeling because they are inherently unpredictable.¹²⁹ The greater uncertainty in the precursor demonstration, which supports the EPA's conclusion in this final action, is that the modeling seems to conservatively overestimate the sensitivity of $\text{PM}_{2.5}$ concentrations to ammonia reductions compared to what would be expected based on ambient

measurements of ammonia and nitrate, as discussed in Response 3A.

Comment 3.D: CCEJN's fourth concern with the precursor analysis is that it believes that "[t]he State improperly adopts a lax contribution threshold of 0.25 $\mu\text{g}/\text{m}^3$." The commenter acknowledges that the State's approach of using a 0.25 $\mu\text{g}/\text{m}^3$ threshold is consistent with the EPA's guidance but contends that the guidance is arbitrary and capricious and that the EPA should reject it in this rulemaking. To support their assertion, the commenter reasons that

[t]he result of the state's approach is that an area, like the San Joaquin Valley, that is failing to meet multiple successively rigorous standards for the same measurement of the same pollutant, may need to regulate a precursor only for purposes of the more rigorous standard. This is a senseless result because the failure to meet an already-outdated standard only highlights the necessity of taking all feasible regulatory steps, including regulating relevant precursors.

The commenter concludes that there is no advantage of two distinct thresholds because the area will need to apply the lower threshold eventually, and states that the "EPA's failure to grapple with this arbitrary result means that it has failed to provide a reasoned explanation for its guidance, and the guidance—or at least its application in this case—is arbitrary and capricious." For areas not meeting both the 1997 and 2012 annual $\text{PM}_{2.5}$ NAAQS, the commenter proposes that the EPA should require states to apply the threshold for the 2012 NAAQS for purposes of evaluating a precursor contribution for both NAAQS.

Response 3.D: The EPA disagrees that the same contribution threshold must be used regardless of the level of the NAAQS being examined. The EPA believes that applying a threshold that is proportional to the level of the NAAQS is appropriate and consistent with the Act; i.e., 0.2 $\mu\text{g}/\text{m}^3$ is appropriate for the 2012 annual $\text{PM}_{2.5}$ NAAQS of 12.0 $\mu\text{g}/\text{m}^3$, and 0.25 $\mu\text{g}/\text{m}^3$ is appropriate for the 1997 annual $\text{PM}_{2.5}$ NAAQS of 15.0 $\mu\text{g}/\text{m}^3$.

The contribution thresholds the EPA derived in the $\text{PM}_{2.5}$ Precursor Demonstration Guidance represent a change in air quality that is statistically indistinguishable from the inherent variability in the measured atmospheric concentrations. A contribution threshold that is proportional to, or scales with, the level of the NAAQS may also be termed a "relative" approach, since the size of the threshold is relative to the level of the NAAQS. The contribution thresholds in the $\text{PM}_{2.5}$

¹²⁵ Spreadsheet "Estimated 2023 annual $\text{PM}_{2.5}$ ammonia sensitivity and 2022 DV.xlsx," "Whether 30% ammonia reduction could attain early," EPA Region IX, October 20, 2023.

¹²⁶ 2018 $\text{PM}_{2.5}$ Plan, Appendix K, Section 5.6 "PM_{2.5} Precursor Sensitivity Analysis", p. 70: "To evaluate the impact of reducing emissions of different $\text{PM}_{2.5}$ precursors on $\text{PM}_{2.5}$ DVs, a series of model sensitivity simulations were performed, for which anthropogenic emissions of the precursor species were reduced by a certain percentage from the baseline emissions;" email dated September 19, 2019, from Jeremy Avise, CARB, to Scott Bohning, EPA Region IX, Subject: "FW: SJV species responses," with attachments, in which the attached tables have titles like "Difference in Annual $\text{PM}_{2.5}$ mass and species between the 2024 baseline run and the 30% PM reduction precursor run."

¹²⁷ In comparison to potential modeling of controlled emissions, the NO_x emissions for projected baseline years 2020 and 2024 are higher, ammonia would be less abundant relative to NO_x , and the responses to ammonia reductions would be higher. Relying on baseline rather than controlled NO_x emissions levels was therefore conservative for purposes of the ammonia precursor demonstration.

¹²⁸ EPA, "Technical Support Document, EPA Evaluation of Air Quality Modeling, San Joaquin Valley $\text{PM}_{2.5}$ Plan for the 2006 $\text{PM}_{2.5}$ NAAQS," February 2020.

¹²⁹ The issue of how model predictions may not match monitor observations despite a well-performing model, and how that does not in itself invalidate the precursor demonstration is discussed in more detail in the EPA's proposed disapproval of the 2018 $\text{PM}_{2.5}$ Plan portion addressing the 1997 annual $\text{PM}_{2.5}$ NAAQS. 86 FR 67329, 67335 (November 26, 2021).

Precursor Demonstration Guidance were derived from a relative variability estimate multiplied by the NAAQS level for the 2006 24-hour PM_{2.5} NAAQS and 2012 annual PM_{2.5} NAAQS. Notably, the PM_{2.5} Precursor Demonstration Guidance states:¹³⁰

As described in the Technical Basis Document, the monitoring site variability is first calculated as a percentage of the measured PM_{2.5}. Then the median percent variability from all sites is multiplied by the level of the NAAQS to get the threshold concentrations. Therefore, these thresholds represent a percentage of the 2006 24-hour NAAQS (35 µg/m³) and the 2012 annual NAAQS (12 µg/m³). Different thresholds may be applicable to other levels and/or forms of the NAAQS (either past or future).

The Technical Basis Document¹³¹ referred to in the guidance explains that relative variability (concentration changes as a fraction of total concentration) was found to be more stable than absolute variability (concentration changes in µg/m³), and notes that this “indicates that a central tendency value for the relative variability in the DV [design value]. Therefore, a representative value can be multiplied by the level of that NAAQS to obtain a value in concentration units (µg/m³ for PM_{2.5}) that is appropriately used to characterize variability.”¹³² The Technical Basis Document also explains that the “relative variability was fairly consistent across the range of design values, suggesting a commonality in the relative variability across a wide range of geographic regions, chemical regimes, and baseline air quality levels.”¹³³ Thus, a concentration amount that is relative, or proportional, to the NAAQS level is a better basis than a fixed concentration number for determining the size of a concentration change that is within the inherent variability of monitored concentrations. The superiority of the relative variability approach that was the basis of the PM_{2.5} Precursor Demonstration Guidance contribution threshold of 0.2 µg/m³ for the 2012 annual PM_{2.5} NAAQS makes it appropriate to scale that value according to the NAAQS level to arrive at 0.25 µg/m³ for the 1997 annual PM_{2.5} NAAQS.

Moreover, the EPA does not agree that it is arbitrary or contrary to the Act to

apply a lower contribution threshold or to potentially regulate a precursor only for a more stringent NAAQS—it is reasonable to expect that achieving lower PM_{2.5} concentrations may require regulation of additional sources of direct PM_{2.5} and/or PM_{2.5} precursors. This is true even if an area is nonattainment for both the higher and lower NAAQS and the EPA will ultimately be applying the lower contribution threshold for a subsequent plan to attain the more stringent NAAQS. Indeed, the PM_{2.5} SIP Requirements Rule at 40 CFR 51.1000 defines a precursor demonstration to mean analyses showing that precursor emissions do not contribute significantly to PM_{2.5} levels that exceed *the relevant PM_{2.5} standard* [emphasis added]. Applying a lower threshold for the 1997 annual PM_{2.5} NAAQS because the area is in nonattainment for a more stringent NAAQS could presume that the modeling and precursor demonstration in a future plan will show responses to ammonia reductions above the lower threshold and that ammonia will be determined to be significant, such that ammonia would need to be controlled. The EPA does not believe it is appropriate to prejudge the analyses for a potential future plan.

4. BACM/MSM Demonstration

Comment 4: Regarding the BACM demonstration, CCEJN notes that the EPA’s proposed approval does not address the CAA requirement for most stringent measures (MSM), asserting that such analysis is required for a 189(d) plan under 40 CFR 51.1010(c)(2)(i) and (c)(4), and 88 FR 45280, 45297, 45322. The commenter claims that it appears that the State acknowledges that the MSM requirement applies in its submittal and asserts that the EPA cannot approve the Plan until it reviews the State’s control measures under the MSM standard.

The commenter also states that “[t]he state’s control measures meet neither the BACM nor MSM standards.” They note that in previous letters to the EPA (as summarized in a previous letter attachment included as Exhibit B), Valley groups have identified numerous weaknesses and presented ways the District could strengthen its regulations. The commenter asserts that the EPA’s technical support document accompanying the proposed action addresses few of these weaknesses, and advises that “[t]o the extent EPA has not considered whether the suggestions in the letter constitute BACM or MSM for purposes of the 1997 annual standard, it should do so.” Specifically, the commenter notes that “[o]ne particularly glaring shortfall in the

state’s submission is its failure to contain any analysis of potential control measures to minimize soil NO_x emissions,” and suggests that the EPA must require the State to analyze the measures in Exhibit A to CCEJN’s comment letter (citing control measures described on pages 5 and 6), including measures to reduce soil NO_x emissions from fertilized farmlands.

Response 4: We disagree with CCEJN’s assertion that the EPA must review the State’s control measures analysis under the MSM standard. As outlined in the PM_{2.5} SIP Requirements Rule, the CAA requirement for MSM is tied to a specific trigger in the act—an extension of the Serious area deadline under CAA section 188(e).¹³⁴ The EPA addressed the relevance of MSM to a 189(d) plan as part of our discussion of the control strategy for such plan in the technical support document accompanying the final rule.¹³⁵

In addition to meeting the 5 percent emission reduction requirement for PM_{2.5} or any PM_{2.5} plan precursor, for any Serious nonattainment area that fails to attain by the Serious area attainment date, the state is required to update its control measures analysis in the section 189(d) plan. In the event the area previously had received an extension of the Serious area attainment date pursuant to section 188(e), the reevaluation of control measures referenced in section 51.1010(c)(2) should include a reevaluation of MSM. (For this reason, section 51.1010(c)(2)(i) refers to the reevaluation of MSM “as applicable.”) If, however, the area did not previously request and receive an extension of the Serious area attainment date under section 188(e), the MSM requirement does not apply.

Thus, we noted in the summary of the requirements for Serious PM_{2.5} areas that fail to attain in our proposed action that MSM is applicable only if the EPA granted an extension of the attainment date under CAA section 188(e) for the area for the NAAQS at issue.¹³⁶

As discussed in our proposal, California’s Serious area plan for the 1997 PM_{2.5} NAAQS submitted in 2015 included a request under CAA section 188(e) to extend the attainment date for the 1997 annual PM_{2.5} NAAQS by five years to December 31, 2020.¹³⁷ However, after considering public comments, the EPA denied California’s request for an extension of the attainment date and subsequently determined that the area failed to attain by the December 31, 2015 Serious area

¹³⁰ PM_{2.5} Precursor Demonstration Guidance, p. 17, fn. 20.

¹³¹ EPA, “Technical Basis for the EPA’s Development of the Significant Impact Thresholds for PM_{2.5} and Ozone,” EPA-454/R-18-001R-18-001, EPA OAQPS, April 2018, available at <https://www.epa.gov/nsr/significant-impact-levels-ozone-and-fine-particles>, https://www.epa.gov/sites/default/files/2018-04/documents/ozone_pm2.5_sils_technical_document_final_4-17-18.pdf.

¹³² Technical Basis Document, p. 26.

¹³³ Id. at 39.

¹³⁴ 81 FR 58010, 58094.

¹³⁵ EPA, “Response to Comments on the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements,” July 29, 2016.

¹³⁶ 88 FR 45276, 45280, fn. 57.

¹³⁷ Id. at 45277.

attainment date, triggering the requirement for the 189(d) plan. Consequently, because the San Joaquin Valley area did not receive an extension of the Serious area attainment date under CAA section 188(e), the MSM requirement does not apply for purposes of the 1997 annual PM_{2.5} NAAQS.

Regarding the commenter's claim that the State appears to acknowledge in its submission that MSM applies, we note that the State's controls analysis in the 2018 PM_{2.5} Plan was developed to address multiple PM_{2.5} NAAQS, including the 2006 PM_{2.5} NAAQS for which the State requested an attainment date extension under CAA section 188(e), triggering the MSM requirement for those NAAQS. Any assertion by the State in the SJV PM_{2.5} Plan that a particular measure meets the MSM standard may not necessarily indicate that the State believes that the requirement applies for the 1997 annual PM_{2.5} NAAQS. Regardless, regarding CCEJN's comment that the State's control measures do not meet the BACM or MSM standards, given that the MSM standard does not apply to the 1997 annual PM_{2.5} NAAQS, as discussed earlier in this response, we are responding only to the commenter's assertion regarding BACM.

We also disagree with the commenter's assertion that the control measures in the Plan do not meet the requirement for BACM for the 1997 annual PM_{2.5} NAAQS. As discussed in our proposed rule, in our review of the State's and District's BACM demonstration, we considered our evaluation of the State's and District's rules, supporting information provided in the SJV PM_{2.5} Plan, and our prior evaluations of the BACM and MSM demonstrations in the 2018 PM_{2.5} Plan for other PM_{2.5} NAAQS.¹³⁸ These prior evaluations include those to support our approval of the demonstration for BACM (including BACT) for the 1997 24-hour PM_{2.5} NAAQS,¹³⁹ our approval of the demonstrations for BACM and MSM for the 2006 24-hour PM_{2.5} NAAQS,¹⁴⁰ and our proposed disapproval of the demonstration for BACM for the 2012 annual PM_{2.5} NAAQS.¹⁴¹ The EPA's prior actions for the 1997 24-hour, 2006 24-hour, and 2012 annual PM_{2.5} NAAQS are relevant to our evaluation for this final rulemaking because the State relied on a common analysis for each of the PM_{2.5} standards. The EPA conducted a thorough analysis of the State's BACM

demonstration for purposes of these prior actions, and updated the analysis for certain source categories, as appropriate, for purposes of our proposed approval of the BACM demonstration in the SJV PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS.

Regarding the EPA's prior approval of the BACM demonstration in the 2018 PM_{2.5} Plan as meeting the CAA requirements for the 2006 24-hour PM_{2.5} NAAQS, we note that on September 17, 2020, a group of five environmental, public health, and community groups petitioned the Ninth Circuit Court of Appeals ("Ninth Circuit") for review of the EPA's final rulemaking approving the 2018 PM_{2.5} Plan's demonstration of BACM, BACT, and MSM for emissions sources of direct PM_{2.5} and NO_x for purposes of the 2006 PM_{2.5} NAAQS.¹⁴² On April 13, 2022, the Ninth Circuit denied the petitioners' challenge with respect to the EPA's approval of the Plan's BACM/MSM demonstration, upholding such approval for those NAAQS.

Following approval of the State's BACM and MSM demonstrations for the 2006 24-hour PM_{2.5} NAAQS, on December 29, 2021, the EPA proposed to approve portions of the 2018 PM_{2.5} Plan as meeting the Serious area requirements for the San Joaquin Valley for the 2012 annual PM_{2.5} NAAQS, including the requirement that the plan include BACM. However, after considering public comments, on October 5, 2022, the EPA proposed to disapprove portions of the District's BACM demonstration, including the evaluations of ammonia emissions sources and building heating sources.¹⁴³ We proposed to disapprove the BACM demonstration for ammonia sources based in part on our on proposed disapproval of the State's ammonia precursor analysis for the 2012 annual PM_{2.5} NAAQS,¹⁴⁴ as well as the State's control measure analysis for ammonia.¹⁴⁵ We proposed to disapprove the BACM demonstration for building heating sources based on recent control measure developments and the time horizon of the 2012 annual PM_{2.5} NAAQS portion of the SJV PM_{2.5}

Plan, which raised questions about the feasibility of implementing additional controls for such sources for BACM purposes in the San Joaquin Valley.¹⁴⁶ Notably, we did not re-propose action on any other portions of the State's and District's BACM demonstration that we had previously proposed to approve.

In response to the EPA's proposed disapproval of portions of the BACM demonstration for the 2012 annual PM_{2.5} NAAQS, CARB and the District developed and submitted additional information to support the ammonia precursor demonstration and building heating BACM demonstration for purposes of meeting the Serious area and CAA section 189(d) requirements for the 1997 annual PM_{2.5} NAAQS. Our proposal and accompanying "Technical Support Document, San Joaquin Valley PM_{2.5} Plan Revision for the 1997 Annual PM_{2.5} NAAQS," April 2023 ("EPA's 1997 Annual PM_{2.5} TSD") summarize the additional information provided by the State and District and the EPA's evaluation. Based on our review, we determined that the additional information provided by the State and District addressed the deficiencies identified in the proposed disapproval of the 2018 PM_{2.5} Plan for the 2012 annual PM_{2.5} NAAQS as they pertained to the 1997 annual PM_{2.5} NAAQS. Thus, considering our prior approvals of the State's and District's BACM analysis for the 1997 24-hour PM_{2.5} NAAQS, BACM and MSM analysis for the 2006 PM_{2.5} NAAQS (which was upheld by the Ninth Circuit), and the supplemental information provided to update the SJV PM_{2.5} Plan based on the latest information available, we proposed to approve the BACM demonstration for the 1997 annual PM_{2.5} NAAQS.

Regarding the measures in Exhibit B to CCEJN's comment letter, the EPA has reviewed and considered the recommendations for improvements to the District's PM_{2.5} control strategy as outlined in the two letters in Exhibit B sent by environmental groups to the EPA in 2021¹⁴⁷ and 2022.¹⁴⁸ A detailed summary of our evaluation of the feasibility of these measures, as well as numerous others, is provided in Sections III and IV of the "EPA Source Category and Control Measure Assessment and Reasoned Justification

¹⁴² See *Medical Advocates for Healthy Air v. EPA*, Case No. 20–72780, Dkt. #58–1 (9th Cir., April 13, 2022). The five environmental, public health, and community organizations, in order of appearance in the petition, are Medical Advocates for Healthy Air, National Parks Conservation Association, Association of Irrigated Residents, and Sierra Club.

¹⁴³ 87 FR 60494.

¹⁴⁴ Based on our proposed disapproval of the precursor demonstration for the 2012 annual PM_{2.5} NAAQS, we proposed to determine that ammonia remained a regulated precursor for that NAAQS in the San Joaquin Valley.

¹⁴⁵ 87 FR 60494, 60509.

¹⁴⁶ Id. at 60511–60512.

¹⁴⁷ Letter dated October 22, 2021, from environmental organizations to Michael S. Regan, Administrator, EPA, Subject: "Meeting Request to Discuss PM–2.5 Crisis in the San Joaquin Valley."

¹⁴⁸ Letter dated May 18, 2022, from environmental organizations to Michael S. Regan, Administrator, Environmental Protection Agency, Subject: "Meeting Request to Discuss PM–2.5 Crisis in the San Joaquin Valley."

¹³⁸ Id. at 45305–45306.

¹³⁹ 87 FR 4503 (January 28, 2022).

¹⁴⁰ 85 FR 44192 (July 22, 2020).

¹⁴¹ 86 FR 74310 (December 29, 2021).

Technical Support Document” (“Control Measure Assessment TSD”)¹⁴⁹ accompanying our proposed action to promulgate a federal implementation plan for contingency measures for the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS.¹⁵⁰ The EPA determined that the recommended measures are either not technologically feasible or not economically feasible within the two year timeframe for implementation as contingency measures discussed in the EPA’s draft guidance.¹⁵¹ Given that by statute, contingency measures are additional requirements that go beyond attainment planning requirements, and the shorter timeframe of the attainment plan for the 1997 annual PM_{2.5} NAAQS (*i.e.*, by December 31, 2023), we similarly conclude that these measures are not feasible for purposes of the BACM requirement for the SJV PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS.

Lastly, we disagree with CCEJN’s assertion that the EPA must require the State to analyze the control measures for soil NO_x emissions outlined in Exhibit A in order to approve the BACM demonstration for the 1997 annual PM_{2.5} NAAQS. The EPA previously addressed the issues of soil NO_x emissions and of analyzing potential controls for such emissions in the context of the 2018 PM_{2.5} Plan in the EPA’s “Response to Comments Document for the EPA’s Final Action on the San Joaquin Valley Serious Area Plan for the 2006 PM_{2.5} NAAQS,” June 2020 (“EPA’s 2020 Response to Comments”).¹⁵² More recently, the EPA also addressed the issue of soil NO_x emissions from the use of fertilizers and pesticides in the context of our final rulemaking approving CARB’s submission of emissions inventories for VOC and NO_x for the 2015 ozone NAAQS for areas in California (“2015 Ozone Inventory Final Rule”).¹⁵³

In both the EPA’s 2020 Response to Comments and the 2015 Ozone Inventory Final Rule, the EPA

acknowledged the studies cited by commenters finding that soil NO_x emissions from fertilizer and pesticide use contribute to atmospheric NO_x levels in California.¹⁵⁴ Particularly, the EPA acknowledged the growing body of research surrounding the identification and quantification of soil NO_x emissions from fertilizer application in agricultural soils. However, in light of the uncertainties and disagreements among the studies regarding the contribution of fertilized cropland soils to NO_x emissions in California, the EPA found that CARB’s emissions inventories met the applicable requirements of the CAA notwithstanding the absence of soil NO_x emissions from fertilizer or pesticide use.¹⁵⁵ Furthermore, for purposes of our final action on the San Joaquin Valley Serious Area Plan for the 2006 PM_{2.5} NAAQS, we determined that there was not sufficient information available to require a controls evaluation for soil NO_x emissions for purposes of the BACM analysis for those NAAQS.¹⁵⁶

Upon reviewing the studies cited by CCEJN in its comment letter, we similarly find that the information provided is not sufficient to compel a revision to the emissions inventories in the SJV PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS, given the large uncertainties in the emissions estimates. As discussed in Response 2.A, the magnitude of soil NO_x emissions varies based on temperature; agricultural practices, such as the timing and amount of fertilizer application and irrigation; crop type; and other factors. Additionally, soil NO_x is not directly emitted and involves numerous natural emissions sources and processes. Thus, soil NO_x emissions are inherently difficult to estimate and model. Likewise, given that the production of NO_x in the soil is complex, it may also be challenging to estimate the effects of potential controls. Due to the complexity of estimating soil NO_x emissions, the partially natural source of the emissions, and the uncertainties in the effectiveness of potential control measures, the EPA concludes that there is not sufficient information available at this time to warrant an evaluation of potential controls for soil NO_x emissions in the San Joaquin Valley for purposes of the BACM analysis for the 1997 annual PM_{2.5} NAAQS. We encourage CARB and the District to continue their ongoing efforts to resolve the uncertainties in soil NO_x emissions

and examine any implications for air quality modeling and planning.

5. Public Process

Comment 5: CCEJN asserts that the EPA must disapprove portions of the attainment plan for the 1997 annual PM_{2.5} NAAQS because the State did not provide public notice and the opportunity to comment on portions of the Plan.

The commenter identifies two submissions made by CARB in March 2023 and June 2023 to provide additional information relevant to the original SIP submissions comprising the Plan: the March 2023 Ammonia Supplement and the March 2023 Building Heating Supplement, discussing the ammonia precursor demonstration and the BACM requirement for building electrification, and the Title VI Supplement, addressing necessary assurances under CAA section 110(a)(2)(E). CCEJN notes that CAA section 110(a)(2) requires “[e]ach implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing.” The commenter states that the supplements are “required contents of such plans” and notes that the EPA’s supplemental proposal for the 2012 annual PM_{2.5} NAAQS indicated the EPA’s expectation that any Title VI necessary assurances would go through state-level notice and comment along with the remainder of the Plan.

Because CARB submitted these supplements directly to the EPA without first going through additional public process and after CARB had formally submitted the Plan, the commenter asserts that the EPA cannot rely upon these supplements to approve the State’s precursor demonstration, BACM demonstration, or necessary assurances under CAA section 110(a)(2)(E)(i).

Response 5: Generally, the EPA agrees with CCEJN that SIP submissions must meet the reasonable notice and public hearing requirements of CAA section 110(a)(2). This is a basic requirement for SIP submissions that appears in section 110(a)(1), section 110(a)(2), and section 110(l), as well as EPA regulations pertaining to the completeness of SIP submissions in 40 CFR part 51, Appendix V. However, the EPA does not agree that this requirement necessarily applies to all information of any type that a state may provide to the EPA. This includes such instances as when the state is providing additional information to supplement a SIP submission that did previously meet notice and public hearing process

¹⁴⁹ EPA Region IX, “EPA Source Category and Control Measure Assessment and Reasoned Justification Technical Support Document, Proposed Contingency Measures Federal Implementation Plan for the Fine Particulate Matter Standards for San Joaquin Valley, California,” July 2023.

¹⁵⁰ 88 FR 53431 (August 8, 2023).

¹⁵¹ EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, “DRAFT: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter” (“Draft Guidance”), March 16, 2023, p. 41.

¹⁵² EPA’s 2020 Response to Comments, pp. 148–156, Comments and responses 6.P–1 and 6.P–2.

¹⁵³ 87 FR 59015 (September 29, 2022).

¹⁵⁴ *Id.* at 59018.

¹⁵⁵ *Id.* at 59018–59020.

¹⁵⁶ EPA’s 2020 Response to Comments, p. 156.

requirements, particularly when the EPA has requested that the state provide such additional information to clarify an ambiguity in the original SIP submission or to aid the EPA in evaluating adverse comments raising an issue related to the original SIP submission.¹⁵⁷ The EPA considers it appropriate to rely on such supplemental information, even if it is not in the form of a formal SIP submission that underwent full notice and public hearing process, when it expands on and confirms information presented in the state's original SIP submission or addresses potential deficiencies in the pre-existing data.¹⁵⁸ In such situations, the EPA considers the relevant question to be whether the state provided reasonable notice and public hearing with respect to the issue as part of the original SIP submission. It would be illogical to require a state to restart the entire SIP development process and would delay the EPA's action on a SIP submission, thereby potentially delaying needed emissions reductions, were the Agency to interpret CAA section 110(a)(2) notice and public hearing requirements to apply to any and all supplemental information provided by state. Thus, the EPA disagrees with CCEJN's assertion that it is inappropriate for the Agency to rely on the additional information provided by CARB in the two supplements in its analysis of the SJV PM_{2.5} Plan because it would violate the requirement under section 110(a)(2) that plans submitted to the EPA for inclusion in the SIP must go through "reasonable notice and public hearing."

With respect to the 2023 Ammonia Supplement and the 2023 Building Heating Supplement, the EPA believes the information contained therein falls within the EPA's discretion to accept as a supplement, as it expands upon and confirms information provided in the State's previously submitted SIP submissions that did undergo the full notice and public hearing process. CARB submitted the supplement to "support action on the attainment plan" and the supplement was intended as "clarifying information" rather than a formal SIP revision.¹⁵⁹ Also, CARB

submitted this information in reaction to prior comments related to the EPA's proposed action on the SIP submissions with respect to the 2012 annual PM_{2.5} NAAQS, and in anticipation of receiving those same comments in this action. In this respect, CARB provided additional information that it anticipated the EPA would request to help evaluate the issues raised in such comments.

In the ammonia context, the 2018 PM_{2.5} Plan and 15 µg/m³ SIP Revision present the fundamental elements of the State's demonstration that ammonia does not contribute significantly to exceedances of the 1997 annual PM_{2.5} NAAQS, including research that supports its conclusion that ammonium nitrate PM_{2.5} formation in the San Joaquin Valley is NO_x-limited rather than ammonia-limited;¹⁶⁰ evidence that the area's measures targeting VOC reductions are already reducing ammonia;¹⁶¹ and an analysis of how the District's control measures compare with other state's rules and regulations.¹⁶² Upon initial review of the State's submission, and in light of related comments received on attainment plans for other PM_{2.5} NAAQS for the San Joaquin Valley, the EPA requested clarifying information and additional analysis to support the State's conclusions in the SJV PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS.¹⁶³ The information and analysis the State provided in the March 2023 Ammonia Supplement does not deviate from or fundamentally alter the analysis in the SJV PM_{2.5} Plan; rather, it provides a wide array of potential controls and analyses to support the fundamental conclusions in the submitted SIP. The EPA believes that CARB provided reasonable notice and public hearing on its position with respect to the ammonia precursor issue in the initial SIP submission, and the additional information in the March 2023 Ammonia Supplement merely expands upon that position. Moreover, by taking into account the information that CARB provided in that supplement

Regional Administrator, EPA Region 9, with enclosures.

¹⁶⁰ 2018 PM_{2.5} Plan, Appendix G, pp. 9–10; CARB December 2018 Staff Report, Appendix C, pp. 12–15; Attachment A to CARB's May 9, 2019, submittal letter.

¹⁶¹ 2018 PM_{2.5} Plan, Appendix C, Section C–25.

¹⁶² Id.

¹⁶³ 40 CFR 51.1010 authorizes the EPA to require supplemental information on potential controls when the EPA deems it necessary to evaluate the comprehensive precursor demonstration. The regulations and EPA guidance do not instruct on what state-level processes this supplemental information should go through in being submitted to the EPA. See PM_{2.5} Precursor Demonstration Guidance, p. 31.

during this rulemaking action, the EPA itself has provided the commenters with the opportunity to address that supplemental information now.

Similarly, the building heating BACM demonstration in the 2018 PM_{2.5} Plan provides the foundations and analysis for CARB's conclusions that the State is implementing BACM with respect to building heating appliances. As discussed in Section II.A.4, in 2020, the EPA approved this demonstration as meeting BACM for the 2006 24-hour PM_{2.5} NAAQS.¹⁶⁴ However, given comments concerning this same issue on an EPA proposal related to the 2018 PM_{2.5} Plan with respect to 2012 annual PM_{2.5} NAAQS, the EPA requested that the State support its conclusion with more up-to-date, additional analysis.¹⁶⁵ Like the supplemental information for the ammonia precursor demonstration, the March 2023 Building Heating Supplement merely provides additional support for the State's original analysis and determination that it is implementing BACM for this source category in the San Joaquin Valley area. The EPA believes that CARB provided reasonable notice and public hearing on its position with respect to the building heating and electrification issue during the development of initial SIP submission, and the additional information in the March 2023 Building Heating Supplement merely expands upon that position.

Thus, the EPA believes the State provided reasonable notice and opportunity for public engagement with respect to its conclusions in the ammonia precursor demonstration and building heating BACM elements of the SIP and satisfied the reasonable notice and public hearing requirements of the CAA.¹⁶⁶

With respect to the Title VI Supplement, the EPA acknowledges that

¹⁶⁴ 85 FR 44192 (July 22, 2020).

¹⁶⁵ 87 FR 60494 (October 5, 2022); Comment letter dated and received January 28, 2022, from Brent Newell, Public Justice, et al., to Rory Mays, EPA Region IX, including Exhibits 1 through 47. We note, however, that there is no Exhibit 23; so, there are 46 exhibits in total. Email dated February 1, 2022, from Brent Newell, Public Justice, to Rory Mays, EPA Region IX. The 13 environmental, public health, and community organizations are Public Justice, Central Valley Environmental Justice Network, Association of Irrigated Residents, Central Valley Air Quality Coalition, Leadership Counsel for Justice and Accountability, Valley Improvement Projects, The LEAP Institute, Little Manila Rising, Center for Race, Poverty, and the Environment, Central California Asthma Collaborative, Animal Legal Defense Fund, National Parks Conservation Association, and Food and Water Watch.

¹⁶⁶ The EPA notes that a review of the State's records submitted with the SIP indicates that the public did identify these two elements prior to and during the public hearing held on the State's approval of the SIP in 2021.

¹⁵⁷ The EPA has previously explained that it may be appropriate to rely on a supplemental letter from a state to resolve ambiguities in a SIP submission. See 80 FR 33840, 33888 (June 12, 2015).

¹⁵⁸ See 80 FR 33840, 33888 ("It is the EPA's practice to neither require a state to resubmit a SIP submission nor repropose action on the submission, so long as the clarification provided in the interpretive letter is a logical outgrowth of the proposed SIP provision.").

¹⁵⁹ Letter dated March 29, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman,

it provides additional information related to an issue that the State did not expressly address during the development of the SJV PM_{2.5} Plan, *i.e.*, the State did not previously engage in public process specifically with respect to CAA section 110(a)(2)(E) necessary assurances that implementation of the Plan would not be prohibited by Title VI. However, in this instance, the issue of necessary assurances arose in adverse comments on a related EPA proposed action on the same 2018 PM_{2.5} Plan with respect to the 2012 PM_{2.5} NAAQS.¹⁶⁷ In order to address the concerns raised by the commenter, the EPA sought additional information from the State to supplement the SJV PM_{2.5} Plan by providing necessary assurances and CARB provided that information in the Title VI Supplement to do so.

In light of prior comments, and the responsiveness of the Title VI Supplement to the prior comments, the EPA considers it appropriate to rely on the additional information provided by CARB in this way. Going forward, as part of developing new SIP submissions, the EPA requests that CARB and the District include consideration of issues related to compliance with Title VI as part of that process, in order to ensure public awareness and engagement. The public notice and comment process required for development of SIP submissions provides an opportunity for an air agency to share its position on necessary assurances publicly, and to develop the record supporting their analysis of CAA section 110(a)(2)(E)(i) as it pertains to a particular SIP submission. Through this process, the EPA expects states to develop adequate necessary assurances so that they can be reviewed during the air agency-level public comment process and subsequently by the EPA.¹⁶⁸

¹⁶⁷ 86 FR 74310 (December 29, 2021). Some of the environmental and community organizations that contributed to the adverse comments related to necessary assurances on the EPA's proposed SIP action for the 2012 annual PM_{2.5} NAAQS are among the organizations that provided the adverse comments on the EPA's proposal for the 1997 annual PM_{2.5} NAAQS discussed herein.

¹⁶⁸ The EPA notes that the content of the Title VI Supplement is substantially similar to recent submissions of necessary assurances from the State on the attainment plan for the 2015 ozone NAAQS (see "Staff Report, CARB Review of the San Joaquin Valley 2022 Plan for the 70 ppb 8-Hour Ozone Standard" (release date: December 16, 2022), pp. 21–23). The plan for the 2015 ozone NAAQS, which was submitted after the EPA's supplemental proposal on the plan for the 2012 annual PM_{2.5} NAAQS, was made available for public review during the State's public comment processes (see CARB's "Notice of Public Meeting to Consider Proposed San Joaquin Valley 70 parts per billion Ozone State Implementation Plan," dated December 16, 2022).

B. Comments From Central Valley Air Quality Coalition (CVAQ)

Comment 6: CVAQ's comments cover many of the same issues as the comments from CCEJN. In summary, they assert that the State's plan "improperly relies upon faulty emission inventories and modeling data, fails to regulate key PM_{2.5} precursors like ammonia and soil NO_x, does not analyze the most stringent measures needed for attainment, and does nothing to prove State compliance with Title VI of the Civil Rights [Act] (Title VI)." The commenter also notes that the two CARB-submitted supplements did not go through the State's public process, and that the EPA had an obligation to issue a federal implementation plan in January 2021 and has failed to do so.

Response 6: The EPA has addressed CVAQ's concerns about the emissions inventory and modeling data in Response 2.B; ammonia in Responses 3.A through 3.D; soil NO_x in Responses 2.A and 4; MSM in Response 4; Title VI in Responses 1.A and 1.B, Response 5, and in Response 7 that follows; and the State's public process in Response 5 of this document.

Regarding the EPA's federal implementation plan (FIP) obligation, we do not dispute that the EPA has had an obligation to implement a FIP for the San Joaquin Valley for the 1997 annual PM_{2.5} NAAQS due to a prior finding of failure to submit the required attainment plan. As we explained in the proposed rule, as a result of the EPA's December 6, 2018 determination effective January 7, 2019, that California had failed to submit the required attainment plan for the 1997 annual PM_{2.5} NAAQS, among other required SIP submissions for the San Joaquin Valley, the EPA became subject to a statutory deadline to promulgate a FIP for this purpose no later than two years after the effective date of that determination—*i.e.*, by January 7, 2021.¹⁶⁹ However, as a result of this final rulemaking approving all but the contingency measure requirement of the submitted Serious area and section 189(d) plan for the 1997 annual PM_{2.5} NAAQS, the only outstanding deficiency for these NAAQS relates to contingency measures. We note that CARB has submitted three SIP submissions to address the CAA contingency measure requirements for the 1997 annual PM_{2.5} NAAQS (as well as other PM_{2.5} NAAQS) in the San Joaquin Valley, including (1) the "PM_{2.5} Contingency Measure State Implementation Plan Revision,"

submitted to the EPA on June 8, 2023;¹⁷⁰ (2) amendments to District Rule 8051 ("Open Areas"), submitted to the EPA on October 16, 2023;¹⁷¹ and (3) the state-wide "California Smog Check Contingency Measure for the State Implementation Plan," submitted to the EPA on November 13, 2023.¹⁷² The EPA will act on the contingency measure SIP revisions, and/or promulgate a FIP for the contingency measure requirement for the 1997 annual PM_{2.5} NAAQS and other NAAQS, in a separate rulemaking.

C. Comments From a Private Individual

Comment 7: The private citizen commenter believes that the State's plan contains "aspirational and misleading 'assurances' of compliance with the Civil Rights Act" and that the "EPA has missed an opportunity to live up to the commitments of the Biden administration and EPA Administrator Regan to prioritize environmental justice and civil rights."

In addition, the commenter notes the length of time that has passed since the EPA committed to put out guidance on what would constitute "necessary assurances" under the Act and its failure to do so prior to accepting the necessary assurances demonstration in the SJV PM_{2.5} Plan for the 1997 annual PM_{2.5} NAAQS. The commenter recommends that a simple interim guidance could include: (1) "some sort of equity or environmental justice assessment," and (2) "consideration of alternative measures to lessen or eliminate any potentially discriminatory burdens revealed by that assessment."

The commenter provides a short summary of the interaction between CAA section 110(a)(2)(E) and Title VI at the EPA, including identifying a SIP rulemaking in 1997 where the connection between section 110(a)(2)(E) and Title VI was raised and a 2012 rulemaking pertaining to the San Joaquin Valley on which the EPA received comments about the same issue.

The commenter generally recommends that the EPA exercise its discretion in determining what constitutes necessary assurances to require more from the State in favor of a more rigorous posture as to what constitutes necessary assurances. In doing so, the commenter disputes the

¹⁷⁰ Letter dated June 7, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

¹⁷¹ Letter dated October 13, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

¹⁷² Letter dated November 13, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

EPA's distinction in its proposal between necessary assurances under CAA section 110(a)(2)(E) and a formal finding of compliance with Title VI.

Next, the commenter outlines the contents of CARB's Title VI supplement. In particular, the commenter alleges that CARB's Civil Rights and Discrimination Process does not have processes or procedures for handling a complaint originating from outside of CARB, that the policy has been rarely used, and was adopted prior to complaints filed at the EPA against CARB for procedural deficiencies in the State's policy. Additionally, the commenter believes that neither the EPA nor CARB has demonstrated that the State's policy will be implemented in a systemic manner to avoid disproportionate effects.

The commenter asserts that the EPA's approval of the necessary assurances conflates the concrete statutory requirements of Title VI with policy-based programs and policies of environmental justice. The commenter believes that relying on the policy-based environmental justice initiatives does not rise to the level of the systematic and defined methods of Title VI compliant laws.

The commenter then describes many of the environmental justice resources available to CARB and the EPA in developing and determining the adequacy of necessary assurances. The commenter acknowledges that the EPA identified many of these resources in its proposal but believes the necessary assurances discussion should demonstrate that these resources were considered and used in determining whether there is a disproportionate effect in a particular SIP-based action.

Ultimately, based on 2013 EPA guidance on compliance with CAA section 110(a)(2)(E) and the terms of conditions under Title VI for CARB receiving funding from the EPA, the commenter does not believe that CARB submitted a sufficient demonstration that the required Title VI compliance programs exist under CARB's purview. In their conclusion, the commenter notes that the EPA could conditionally approve the Plan, accompanied by an enforceable condition requiring CARB and the District to bring their programs into demonstrated compliance with Title VI.

Response 7: To the extent the comment letter is providing input to the EPA on content for a forthcoming guidance document for CAA section 110(a)(2)(E)(i) with respect to Title VI, such considerations are outside the scope of this action.

As we noted in our proposal, the EPA has discretion with regard to what may

constitute necessary assurances under CAA section 110(a)(2)(E)(i). For this action, we believe the State has provided adequate necessary assurances to support approval, under these specific facts and circumstances. The EPA notes that what constitutes necessary assurances for purposes of Title VI for a given SIP submission depends upon the facts and circumstances of the Plan, and the Agency may require more or different information as needed in other SIP actions. This finding does not limit the Agency to review for different factors in the future.

Importantly, as explained in the proposal action, the EPA's evaluation of necessary assurances pertains to CAA section 110(a)(2)(E)(i) compliance with respect to a specific SIP submission, and not to Title VI compliance more broadly.¹⁷³ Formal findings of compliance with Title VI follow procedures outlined in the CFR after administrative complaints are filed with the EPA alleging discrimination prohibited by Title VI and the other civil rights laws,¹⁷⁴ or if the EPA initiates an affirmative compliance review.¹⁷⁵ Section 110(a)(2)(E)(i), in contrast, requires a state to provide necessary assurances that the state's implementation of the SIP submission at issue is not prohibited by federal law, including Title VI. As an additional point of clarification, this necessary assurances analysis concerning Title VI is distinct from considerations of environmental justice more broadly. Title VI involves specific considerations of federal law as it pertains to individuals on the basis of race, color, or national origin. The language at issue in CAA section 110(a)(2)(E)(i) is specific to implementation of the SIP submissions and prohibitions under Title VI.

The EPA separately reviewed information related to environmental justice considerations and those considerations are addressed in Section IV of this document. The EPA reiterates that in our proposed approval of the Plan, the EPA completed a Demographic Index analysis of the area subject to the Plan, identifying environmental burdens and susceptible populations in disadvantaged communities in the San Joaquin Valley nonattainment area. As explained in more detail in Section II.A.1 of this document, we believe the State has provided the necessary assurances, including information that through its initial implementation that

the State has meaningfully considered input from the public through public outreach that is beyond the minimum legal requirements for public comment during SIP development, and that the Plan submission complies with CAA section 110(a)(2)(E)(i).

With respect to the "EPA's processing prior (to this 2023 action but subsequent to the 2016 policy) complaints against CARB and in which it had noted several procedural deficiencies," the EPA is not aware of any complaints filed against CARB within that time period regarding CARB's Civil Rights and Discrimination Complaint Process, and no complaint was specifically cited to by the commenter.¹⁷⁶ The EPA notes that it publishes all external civil rights complaints and compliance reviews online.¹⁷⁷

III. Motor Vehicle Emissions Budgets and Transportation Conformity

The EPA previously determined that the 2020 and 2023 motor vehicle emissions budgets in the 15 µg/m³ SIP Revision were adequate for use in transportation conformity findings. In a letter dated February 1, 2022, the EPA notified CARB and other agencies involved in the interagency consultation process in the San Joaquin Valley that we had reviewed the 2020 RFP and 2023 attainment year budgets in the 15 µg/m³ SIP Revision and found that they are adequate for transportation conformity purposes.¹⁷⁸ The EPA announced the availability of the budgets and notified the public of the adequacy finding via a **Federal Register**

¹⁷⁶ On June 6, 2016, the EPA resolved a civil rights complaint filed against CARB and the Bay Area Air Quality Management District. After an investigation by the EPA's Office of Civil Rights (OCR), the Agency found "insufficient evidence of current non-compliance with Title VI or EPA's Title VI regulation" and closed the complaint. In the letter closing the complaint, the EPA notes that "OCR has provided technical assistance to CARB to improve the elements of its non-discrimination program," including improvements to CARB's Civil Rights and Discrimination Complaint Process. The closure letter specifically found "CARB has also adopted a grievance procedure that is contained in the Civil Rights Policy and Discrimination Complaint Process that provides complainants a prompt and impartial investigation of and response to complaints filed with CARB alleging discrimination in CARB's programs or activities prohibited by the federal non-discrimination statutes." The EPA does not believe this complaint resolution and the conclusions therein conflicts with the determinations in this final action. https://www.epa.gov/sites/default/files/2016-06/documents/2r-00-r9_carb_resolution_letter.pdf.

¹⁷⁷ EPA, External Civil Rights Docket, <https://www.epa.gov/external-civil-rights/external-civil-rights-docket-2014-present>.

¹⁷⁸ Letter dated February 1, 2022, from Matthew Lakin, Acting Director, Air and Radiation Division, EPA Region IX, to Richard Corey, Executive Officer, CARB.

¹⁷³ 88 FR 45276, 45320.

¹⁷⁴ 40 CFR 7.120.

¹⁷⁵ 40 CFR 7.115.

notice on February 10, 2022.¹⁷⁹ This adequacy finding became effective on February 25, 2022 and the budgets have been used in transportation conformity determinations in the San Joaquin Valley area since that date.

The EPA proposed approval of these same budgets, shown in Table 1 of this document, on July 14, 2023.^{180 181} The Plan establishes separate direct PM_{2.5} and NO_x subarea budgets, based on EMFAC2014, for each county, and partial county (for Kern County), in the San Joaquin Valley.¹⁸² The EPA

discussed the State's evaluation of the significance/insignificance factors for ammonia, SO₂, and VOC, and re-entrained road dust emissions in the proposed rule.¹⁸³ In this action, the EPA is finalizing approval of the State's demonstration that emissions of ammonia, SO₂, and VOCs do not contribute significantly to PM_{2.5} levels that exceed the 1997 annual PM_{2.5} NAAQS in the San Joaquin Valley. Therefore, consistent with the transportation conformity regulation,¹⁸⁴ motor vehicle emissions budgets are not

required for transportation-related emissions of ammonia, SO₂, and VOC for purposes of the 1997 annual PM_{2.5} NAAQS in the San Joaquin Valley. In addition, since neither the State nor the EPA has made a finding that re-entrained road dust emissions are significant, under 40 CFR 93.103(b)(3) and 93.122(f), re-entrained road dust emissions are not required to be included in the budgets for 1997 annual PM_{2.5} NAAQS in the San Joaquin Valley.

TABLE 1—MOTOR VEHICLE EMISSIONS BUDGETS FOR THE SAN JOAQUIN VALLEY FOR THE 1997 ANNUAL PM_{2.5} NAAQS
[Annual average, tons per day]

County	2020 (RFP year)		2023 (attainment year)	
	PM _{2.5}	NO _x	PM _{2.5}	NO _x
Fresno	0.9	25.3	0.8	15.1
Kern	0.8	23.3	0.7	13.3
Kings	0.2	4.8	0.2	2.8
Madera	0.2	4.2	0.2	2.5
Merced	0.3	8.9	0.3	5.3
San Joaquin	0.6	11.9	0.6	7.6
Stanislaus	0.4	9.6	0.4	6.1
Tulare	0.4	8.5	0.4	5.2

Source: 15 µg/m³ SIP Revision, Appendix D, Table 18. Budgets are rounded up to the nearest tenth of a ton.

For the reasons discussed in Sections IV.D and IV.E of the proposed rule, the EPA is approving the attainment, RFP, and 5 percent demonstrations, respectively, in the SJV PM_{2.5} Plan. The 2020 RFP and 2023 attainment year budgets are consistent with these demonstrations, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.118(e)(4) and (5). For these reasons, the EPA is finalizing approval of the 2020 and 2023 budgets listed in Table 1 of this document.

The Plan also included budgets for direct PM_{2.5} and NO_x emissions for 2017 (RFP milestone year) and 2026 (post-attainment quantitative milestone year). We are not approving the 2017 budgets¹⁸⁵ or the post-attainment year 2026 budgets at this time. Although the post-attainment year quantitative milestone is a required element of the Serious area plan, it is not necessary to demonstrate transportation conformity for 2026 or to use the 2026 budgets in transportation conformity

determinations until such time as the area fails to attain the 1997 annual PM_{2.5} NAAQS. Therefore, the EPA is not taking action on the submitted budgets for 2026 in the SJV PM_{2.5} Plan at this time. However, if the EPA determines that the San Joaquin Valley has failed to attain the 1997 annual PM_{2.5} NAAQS by the applicable attainment date, the EPA would begin the budget adequacy and approval processes under 40 CFR 93.118 for the 2026 post-attainment year budgets concurrent with such determination that the area failed to attain.

Conformity Trading Mechanism

Also on July 14, 2023, the EPA proposed to approve a trading mechanism for transportation conformity analyses that would allow the MPOs in the area to use future decreases in NO_x emissions from on-road mobile sources to offset any on-road increases in direct PM_{2.5} emissions as allowed for under 40 CFR 93.124(b).^{186 187} As described in the proposed rule, the EPA reviewed the trading mechanism and found it is

appropriate for transportation conformity purposes in the San Joaquin Valley for the 1997 annual PM_{2.5} NAAQS.¹⁸⁸ The methodology for estimating the trading ratio for conformity purposes is essentially an update (based on newer modeling) to the State's approach, approved in the previous plan, to model the effect of areawide direct PM_{2.5} and NO_x emissions reductions on ambient PM_{2.5}, and to express the ratio of these modeled sensitivities as an inter-pollutant trading ratio.

In a previous action on the 2018 PM_{2.5} Plan for the 2012 annual PM_{2.5} NAAQS, we found that the State's approach is a reasonable method to use to develop ratios for transportation conformity purposes and approved the 6.5 to 1 NO_x to PM_{2.5} trading mechanism as an enforceable component of the transportation conformity program for the San Joaquin Valley for the 2012 PM_{2.5} NAAQS.¹⁸⁹ Here, we similarly find that the State's approach is reasonable and are approving the 6.5 to 1 NO_x for PM_{2.5} trading mechanism as enforceable components of the

¹⁷⁹ 87 FR 7834 (February 10, 2022).

¹⁸⁰ 88 FR 45276, 45322.

¹⁸¹ The EPA did not receive any comments related to our proposed approval of the motor vehicle emissions budgets during the 30-day comment period.

¹⁸² 40 CFR 93.124(c) and (d).

¹⁸³ 88 FR 45276, 45316–45317.

¹⁸⁴ 40 CFR 93.102(b)(2)(v).

¹⁸⁵ We are not approving the 2017 budgets because such budgets would not be used in any future transportation conformity determination because the Plan includes budgets for 2020.

¹⁸⁶ 88 FR 45276, 45322.

¹⁸⁷ The EPA did not receive any comments related to our proposed approval of the trading mechanism for transportation conformity during the 30-day comment period.

¹⁸⁸ 88 FR 45276, 45318–45319.

¹⁸⁹ See 86 FR 49100, 49128 (September 1, 2021) (proposed rule) and 86 FR 67343, 67346 (November 26, 2021) (final rule).

transportation conformity program for the San Joaquin Valley for the 1997 annual PM_{2.5} NAAQS. This trading ratio replaces the 9 to 1 NO_x to PM_{2.5} trading ratio approved for the San Joaquin Valley for analysis years after 2014 for the 1997 annual PM_{2.5} NAAQS.¹⁹⁰

IV. Environmental Justice Considerations

As described in detail in our proposal, the EPA reviewed environmental and demographic data for the San Joaquin Valley using the EPA's environmental justice (EJ) screening and mapping tool ("EJSCREEN"),¹⁹¹ and compared the data to the corresponding data for the United States as a whole. The results of the analysis are provided for informational and transparency purposes.

This final action approves the State's plan for attaining the 1997 annual PM_{2.5} NAAQS. Information on the 1997 annual PM_{2.5} NAAQS and its relationship to health impacts can be found at 62 FR 38652 (July 18, 1997). We expect that this action and resulting emissions reductions will generally be neutral or contribute to reduced environmental and health impacts on all populations in the San Joaquin Valley, including people of color and low-income populations. At a minimum, this action would not worsen existing air quality and is expected to ensure the area is meeting requirements to attain and/or maintain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Final Action

For the reasons discussed in this final rule, the proposed rule, and the related technical support documents, under CAA section 110(k)(3), the EPA is approving the portions of the SJV PM_{2.5} Plan as meeting CAA requirements for implementation of the 1997 annual PM_{2.5} NAAQS as follows:

(1) We are finding that the 2013 base year emissions inventories continue to

satisfy the requirements of CAA section 172(c)(3) and 40 CFR 51.1008 for purposes of both the Serious area and the CAA section 189(d) attainment plans, and to find that the forecasted inventories for the years 2017, 2018, 2019, 2020, 2023, and 2026 provide an adequate basis for the BACM, RFP, five percent, and modeled attainment demonstration analyses;

(2) We are approving the following elements as meeting the Serious nonattainment area planning requirements:

(a) the BACM/BACT demonstration as meeting the requirements of CAA section 189(b)(1)(B) and 40 CFR 51.1010(a);

(b) the demonstration (including air quality modeling) that the Plan provides for attainment as expeditiously as practicable as meeting the requirements of CAA sections 179(d) and 189(b) and 40 CFR 51.1011(b);

(c) the RFP demonstration as meeting the requirements of CAA sections 172(c)(2) and 171(1) and 40 CFR 51.1012; and

(d) the quantitative milestone demonstration as meeting the requirements of CAA section 189(c) and 40 CFR 51.1013;

(3) We are approving the following elements as meeting the CAA section 189(d) planning requirements:

(a) the BACM/BACT demonstration as meeting the requirements of CAA sections 189(a)(1)(C)¹⁹³ and 189(b)(1)(B) and 40 CFR 51.1010(c);

(b) the demonstration that the Plan will, at a minimum, achieve an annual five percent reduction in emissions of NO_x as meeting the requirements of CAA section 189(d) and 40 CFR 51.1010(c);

(c) the demonstration (including air quality modeling) that the Plan provides for attainment as expeditiously as practicable as meeting the requirements of CAA sections 179(d) and 189(d) and 40 CFR 51.1011(b);

(d) the RFP demonstration as meeting the requirements of CAA sections 172(c)(2) and 171(1) and 40 CFR 51.1012; and

(e) the quantitative milestone demonstration as meeting the requirements of CAA section 189(c) and 40 CFR 51.1013;

(4) We are approving the motor vehicle emissions budgets for 2020 and 2023 as shown in Table 1 of this final rulemaking because they are derived from approvable RFP and attainment demonstrations and meet the requirements of CAA section 176(c) and 40 CFR part 93, subpart A; and

(5) We are approving the trading mechanism provided for use in transportation conformity analyses for the 1997 annual PM_{2.5} NAAQS, in accordance with 40 CFR 93.124(b).

As discussed in Section I.B of the proposal, on November 26, 2021, the EPA partially approved and partially disapproved portions of the 2018 PM_{2.5} Plan that addressed attainment of the 1997 annual PM_{2.5} NAAQS in the San Joaquin Valley nonattainment area. The elements that the EPA disapproved include the attainment demonstration, comprehensive precursor demonstration, five percent annual emissions reductions demonstration, BACM demonstration, RFP demonstration, quantitative milestones, motor vehicle emissions budgets, and contingency measures. This disapproval was effective on December 27, 2021. In a separate final partial approval and partial disapproval action, also effective December 27, 2021, the EPA disapproved the contingency measure element of the 2018 PM_{2.5} Plan as it relates to the requirements for the Serious area plan 2006 24-hour PM_{2.5} NAAQS and the Moderate area plan for the 2012 annual PM_{2.5} NAAQS.¹⁹⁴

In our November 26, 2021 final disapprovals, we noted that offset and highway sanctions under CAA sections 179(b)(2) and 179(b)(1), respectively, would not apply if California submits, and the EPA approves, a SIP submission that corrects all of the deficiencies identified in our final actions prior to the imposition of sanctions.¹⁹⁵ Through this final approval action, we find that California has corrected the deficiencies associated with the Serious area and CAA section 189(d) SIP elements for the 1997 annual PM_{2.5} NAAQS for the San Joaquin Valley (except for the contingency measures element). Thus, upon the effective date of this final rule, all sanctions and any sanctions clocks associated with the Serious area and CAA section 189(d) SIP elements for the 1997 annual PM_{2.5} NAAQS for the San Joaquin Valley (except the contingency measures element) will be permanently terminated.

This final action does not address the prior disapprovals of the contingency measure elements for the 1997 annual

¹⁹⁰ 76 FR 69896.

¹⁹¹ EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at <https://www.epa.gov/ejscreen/what-ejscreen>. The EPA used EJSCREEN to obtain environmental and demographic indicators representing each of the eight counties in the San Joaquin Valley. These indicators are included in EJSCREEN reports that are available in the rulemaking docket for this action.

¹⁹² EPA Region IX, "EJSCREEN Analysis for the Eight Counties of the San Joaquin Valley Nonattainment Area," August 2022.

¹⁹³ As discussed in Section III.B of the proposal, a section 189(d) plan must address any outstanding Moderate or Serious area requirements that have not previously been approved. Because we have not previously approved a subpart 4 RACM demonstration for the San Joaquin Valley nonattainment area, we also proposed to approve the BACM/BACT demonstration in the SJV PM_{2.5} Plan as meeting the subpart 4 RACM/RACM requirement for the area (88 FR 45276, 45322).

¹⁹⁴ 86 FR 67343.

¹⁹⁵ 86 FR 67329.

PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS. Therefore, all sanctions and any sanctions clocks associated with the disapprovals of the contingency measure elements for those standards will continue to apply in the San Joaquin Valley as outlined in the November 26, 2021 final disapprovals unless or until the EPA approves a SIP submission or submissions meeting the outstanding contingency measure requirements for these NAAQS. As discussed in Response 6, CARB has submitted three SIP submissions to address the CAA contingency measure requirements for the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS in the San Joaquin Valley. The EPA will act on these submissions and determine the effects on the sanctions, if any, in accordance with 40 CFR 52.31 through one or more separate rulemaking actions.

VI. Statutory and Executive Order Reviews

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

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

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs federal agencies to identify and address

“disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA's evaluation of environmental justice is described in the section of this document titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information

in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 2024. 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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 5, 2023.

Martha Guzman Aceves,
Regional Administrator, Region IX.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

- 2. Section 52.220 is amended by adding paragraphs (c)(537)(ii)(A)(9) and (10) and (c)(537)(ii)(B)(7), (8), and (9) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(537) * * *

(ii) * * *

(A) * * *

(9) CARB Resolution No. 21–21, September 23, 2021, submitted as a revision to the 2018 PM_{2.5} Plan on

November 8, 2021, by the Governor's designee.

(10) "Staff Report, Proposed SIP Revision for the 15 µg/m³ Annual PM_{2.5} Standard for the San Joaquin Valley," August 13, 2021, submitted as a revision to the 2018 PM_{2.5} Plan on November 8, 2021, by the Governor's designee.

(B) * * *

(7) 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards ("2018 PM_{2.5} Plan"), adopted November 15, 2018 (portions pertaining to the 1997 annual PM_{2.5} NAAQS only, and excluding Chapter 4 ("Attainment Strategy for PM_{2.5}"), Chapter 5 ("Demonstration of Federal Requirements for 1997 PM_{2.5} Standards"), Chapter 6 ("Demonstration of Federal Requirements for 2006 PM_{2.5} Standards"), Chapter 7 ("Demonstration of Federal Requirements for 2012 PM_{2.5} Standards"), Appendix D ("Mobile Source Control Measure Analyses"), Appendix H ("RFP, Quantitative Milestones, and Contingency"), and Appendix K ("Modeling Attainment Demonstration")).

(8) "Attainment Plan Revision for the 1997 Annual PM_{2.5} Standard," August 19, 2021, excluding Appendix H, section H.3 ("Contingency Measures"), submitted as a revision to the 2018 PM_{2.5} Plan on November 8, 2021, by the Governor's designee.

(9) SJVUAPCD Governing Board Resolution No. 21–08–13, August 19, 2021, submitted as a revision to the 2018 PM_{2.5} Plan on November 8, 2021, by the Governor's designee.

* * * * *

■ 3. Section 52.237 is amended by revising paragraph (a)(11) to read as follows:

§ 52.237 Part D disapproval.

(a) * * *

(11) The contingency measures portion of the 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards ("2018 PM_{2.5} Plan"), adopted November 15, 2018, are disapproved for San Joaquin Valley with respect to the 1997 annual PM_{2.5} NAAQS because they do not meet the requirements of Part D of the Clean Air Act.

* * * * *

■ 4. Section 52.244 is amended by adding paragraph (f)(4) to read as follows:

§ 52.244 Motor vehicle emissions budgets.

* * * * *

(f) * * *

(4) San Joaquin Valley, for the 1997 annual PM_{2.5} NAAQS only (years 2020

and 2023 budgets only), approved January 16, 2024.

[FR Doc. 2023–27088 Filed 12–13–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket Number MARAD–2023–0086]

RIN 2133–AB98

Amendment to the Federal Ship Financing Program Regulations; Financial Requirements

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This document serves to inform interested parties and the public that the Maritime Administration (MARAD) is amending its regulations implementing the Federal Ship Financing Program's (Title XI Program) financial requirements. This action is necessary to implement statutory changes and update the existing financial requirements imposed on Title XI Program obligors to align with more up-to-date vessel financing and federal credit best practices.

DATES: This rule will be effective January 16, 2024.

FOR FURTHER INFORMATION CONTACT: David M. Gilmore, Director, Office of Marine Financing, at (202) 366–5737, or via email at marinefinancing@dot.gov. You may send mail to Mr. Gilmore at Department of Transportation, Maritime Administration, Office of Marine Financing, 1200 New Jersey Avenue SE, Washington, DC 20590. If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Transportation, through MARAD, is authorized to provide guarantees of debt (obligation guarantees) to finance all types of vessel construction and shipyard modernization and improvement, except for fishing vessels. The Title XI Program is a loan guarantee program, administered by MARAD, which was established under Title XI of the Merchant Marine Act, 1936, Public Law 74–835, codified at 46 U.S.C. Chapter 537, as amended (the "Act"). Title XI provides for the full faith and credit of the United States, acting by and through

the Maritime Administrator, for the payment of debt obligations for: (1) U.S. shipowners for the purpose of financing or refinancing U.S. flag vessels constructed, reconstructed, or reconditioned in U.S. shipyards; and (2) U.S. shipyards for the purpose of financing advanced shipbuilding technology and modern shipbuilding technology of a privately-owned shipyard facility located in the U.S. As the Title XI Program guarantees full payment of the obligation's unpaid principal and interest in the event of a default by the borrower, both the statute and regulations contain several criteria and requirements intended to reduce the risk of a loan default. Though the Title XI Program regulations have been amended over the years, the current financial requirements and limitations remain substantially the same as when MARAD introduced them in 1978. As lending practices have evolved, MARAD's regulatory standards have not changed to reflect modern lending practices for vessel financing. For example, when the regulations were implemented, certain leases were not included as an expense under generally accepted accounting principles (GAAP), but today GAAP requires that all leases be included as an expense. Today, retained earnings are also expected to be included in any calculation of equity or net worth pursuant to GAAP.

Accordingly, the modifications to the regulations will eliminate confusion and align the Title XI Program regulations with modern accounting standards.

Prior to execution of a guarantee, MARAD is bound by statute to, among other things, make determinations of economic soundness of the project and the financial and operating capability of the applicant. To that end, the Title XI regulations currently require each borrower, and operator if applicable, to have and maintain: (1) working capital of at least \$1; (2) at least 90 percent of its equity as shown on the last audited balance sheet; and (3) long-term debt not to exceed twice its equity. By this amendment, MARAD is modernizing its financial review process by removing static financial covenants and loan thresholds and replacing them with a review and evaluation of the creditworthiness of each borrower based on revenue metrics based on federal credit and maritime lending best practices. The use of these revenue metrics is intended to improve the quality of MARAD financial requirements applied to new borrowers. As part of its regular programmatic evaluation process, MARAD frequently seeks feedback from potential applicants

and borrowers on its processes. Potential applicants have advised MARAD that the challenges caused by the regulatory requirements are a reason why they will not use the program. Borrowers also have cited the incompatibility of Title XI debt financial covenants with the other lender covenants as an obstacle in the prompt processing and approval of loan guarantee applications.

The “National Defense Authorization Act for Fiscal Year 2020,” (Pub. L. 116–92; December 20, 2019) (“NDAA 2020”) established the Federal Financing Bank as the “preferred lender” for the Title XI Program. Additionally, the NDAA 2020 directed MARAD to periodically review Title XI application procedures and documents to assure they “meet current commercial best practices to the extent permitted by law.” The 2020 NDAA also provided that MARAD establish a process for expedited consideration of low-risk applications which would “utilize, to the extent practicable, relevant Federal and industry best practices found in the maritime and shipbuilding industries.” As a result, MARAD identified best practices from federal credit programs that make loans and obligation guarantees similar to the Title XI Program. MARAD considered a review of federal credit practices that identified the Title XI Program was the only program with regulatorily-imposed financial covenants and thresholds.¹ This deviation from federal credit best practices was highlighted as a significant hinderance to the Title XI Program’s ability to tailor the terms of credit assistance to address the characteristics of a specific project.

Restrictions on the flexibility of the program limit the program’s ability to succeed. Reliance on the current static metrics and limited amortization requirements prevent the Title XI Program from adjusting its financial terms and conditions and debt amortization when best credit practices would recommend otherwise. The amendments made to the regulation under this final rule are intended to attract a higher volume of high-quality applicants and mitigate risk to the U.S. Government.

Moreover, with the implementation of the Federal Financing Bank as the preferred lender for Title XI obligation guarantees, there is no longer a need for the strict uniformity in the regulatory structure of the guaranteed obligations. Previously, Title XI guaranteed debt was

marketed to the public through investment banks. This created a need for uniformity to encourage the purchase of the debt by entities not familiar with maritime financings and to allow for easier resale by a debt purchaser to a third-party at a future date. The expectation of uniformity by the market limited the payment schedule options available for Title XI Program participants in circumstances where it may have been in the U.S. Government’s best interest to structure the debt differently to mitigate risk.

Due to the length of time since the regulations were last updated, the availability of modern financial requirements of similar federal programs, the evolving maritime environment, changes to federal credit and maritime lending best practices, and updates to the Title XI statute, MARAD is amending its regulations. These amendments include permitting MARAD to use financial requirements, consistent with federal credit and maritime lending best practices for entities having a similar credit rating that MARAD determines are necessary and appropriate to protect the interest of the United States. The amendments will also allow MARAD to use alternative methods of amortization, other than level principal or level debt payment, when an independent financial advisor approved by MARAD conducts independent analysis and review and demonstrates that such other method is in the best interests of the United States.

The final rule will update the lending parameters in the current regulations, which no longer best achieve the intended purpose of minimizing the risk of Title XI Program defaults and will better align the lending practices to reflect federal credit and maritime lending best practices. Additionally, MARAD expects that the amended regulations will reduce the economic burden on applicants in complying with Title XI Program requirements that are inconsistent with other lending instruments. MARAD also expects that the updated lending parameters will encourage the construction of vessels in United States shipyards which otherwise would not meet the current constrained Title XI Program financial requirements.

Response to Comments

In developing this rule, MARAD published a notice of proposed rulemaking in the **Federal Register** on April 25, 2023 (88 FR 24962) with a sixty-day comment period which closed on June 26, 2023. MARAD received one comment from Argent Group, Ltd. a

financial services firm specializing in the Jones Act maritime industry.

The commenter expressed concern that the proposed modifications to the regulations for both the qualifying requirements of a company to close on the Title XI Program financing documents as well as the continuing financial compliance requirements for a company to maintain throughout the time the Title XI Program financing documents are in effect.

The commenter proposed a modification to the regulation that was the same for both sections. The commenter noted that the changes to the regulation made it unclear what the financial requirements would be for a company and proposed MARAD maintain substantially similar financial tests as exist in the current regulations except when a company has existing credit agreements then MARAD should apply those financial covenants or ratios.

MARAD does not agree that maintaining the current financial compliance requirements provides clarity as the commenter suggests. The statute has been updated several times since the regulations were last updated. The final rule conforms MARAD creditworthiness review standards with the statute. Additionally, the commenter proposes that MARAD adopt requirements to provide for an alternative to the existing financial compliance covenants in instances where the company has existing private sector credit agreements. MARAD does not agree. The option to incorporate the financial compliance covenants or ratios of applicable private sector credit agreements already exists in MARAD regulations.

The commenter expressed concern about the proposed modification to the regulation for changes to the amortization schedule of guaranteed obligations requiring independent analysis by a third-party expert. The commenter noted that MARAD regularly retains third party experts and, while MARAD would likely consult third-party experts as part of any adjustment to the amortization schedule of guaranteed obligations, nowhere else in the regulation is there a requirement that MARAD use third-party experts to determine what is in the best interests of the United States Government. MARAD agrees and is removing that requirement from the final rule.

I. Regulatory Analyses and Notices

Privacy Act

Anyone can search the electronic form of all comments received into any

¹ U.S. Department of Transportation, Maritime Administration, *Federal Credit and Maritime Lending Industry Best Practices*, June 2020. Available at <https://www.maritime.dot.gov/grants/title-xi/statute-regulations-and-guidance>.

of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

Executive Order 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures.

Under Executive Order (E.O.) 12866, as amended (58 FR 51735, October 4, 1993, 88 FR 21879, April 11, 2023), supplemented by E.O. 13563, as amended (76 FR 3821, January 18, 2011, 88 FR 21879, April 11, 2023) and USDOT policies and procedures, a determination must be made whether a regulatory action is "significant," and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the order. The order defines "significant regulatory action" as one 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 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 impact 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 set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This rulemaking has been determined to be a non-significant regulatory action under section 3(f) of E.O. 12866 by the Office of Information and Regulatory Affairs (OIRA) within OMB.

Analysis of Benefits and Costs

The Title XI Program guarantees full payment of the obligation's unpaid principal and interest in the event of a default by the borrower. Both the statute and MARAD's implementing regulations also contain several criteria and requirements intended to reduce the risk of a loan default. Though the Title XI Program regulations have been amended over the years, the current

financial requirements and limitations remain substantially the same as when they were introduced in 1978. As lending practices have evolved, the regulatory standards have not changed to reflect current lending practices for vessel financing.

Benefits

The major benefits of amending Part 298 will be to: (1) modernize MARAD's financial review process by removing static financial covenants and loan thresholds and replacing them with best practices intended to improve the quality of MARAD financial reviews; and (2) allow MARAD to examine more indicators of financial health, thus improving MARAD's ability to accurately assess applicants and to better mitigate financial risk to the Government.

Costs

MARAD does not believe that the rulemaking is likely to impose quantifiable or nonquantifiable costs. The primary function of this regulatory change is to modernize MARAD financial review methods and processes, thereby improving MARAD's ability to evaluate applicants.

Analysis of Alternatives

On December 20, 2019, the NDAA 2020 directed MARAD "to utilize, to the extent practicable, relevant Federal and industry best practices found in the maritime and shipbuilding industries." In considering potential alternatives, MARAD reviewed several Federal credit programs that make loans and obligation guarantees similar to the Title XI Program. MARAD considered a review of Federal credit practices that identified the Title XI Program as the only Federal program with regulatorily-imposed financial covenants and thresholds.² The report found that the static regulatory requirements significantly hindered the Title XI Program's ability to tailor the terms of credit assistance to address the characteristics of a specific project. MARAD considered the report's findings in light of its current practices and is in this final rule amending the regulations to conform to the report's findings.

Executive Order 13132 (Federalism)

MARAD has examined the rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no

additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The Agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will not have "substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government."

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

MARAD has determined that this rulemaking, in which MARAD proposes to amend its regulations implementing the Title XI Program financial requirements to implement statutory changes and update the existing financial requirements imposed on Title XI Program obligors, will not significantly or uniquely affect the communities of Indian Tribal Governments when analyzed under the principles and criteria contained in E.O. 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive order do not apply.

Executive Order 12372 (Intergovernmental Review)

The requirements of E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking, because it would not directly affect the interests of State and local governments.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires MARAD to assess whether this rulemaking would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. Potential applicants to the Title XI program are vessel owners and operators, as well as shipyard owners. These industries fit under NAICS codes 336611, Ship Building and Repairing and NAICS codes 483111–483212, which cover different types of transportation by vessel and would include vessel owners and operators.³ The SBA defines a small

² U.S. Department of Transportation, Maritime Administration, *Federal Credit and Maritime Lending Industry Best Practices*, June 2020. Available at <https://www.maritime.dot.gov/grants/title-xi/statute-regulations-and-guidance>.

³ These NAICS codes are 483111/483112 Deep Sea Freight/Passenger Transportation, 483113/483114 Coastal and Great Lakes Freight/Passenger Transportation, and 483211/483212 Inland Water Freight/Passenger Transportation. Navigational

business under NAICS code 36611 as a business with 1,250 employees or less and under NAICS code. The SBA defines small businesses under NAICS codes 483111–483212 as businesses with 500–1,500 employees or less, depending on the specific NAICS code.

The Title XI Program guarantees full payment of the obligation's unpaid principal and interest in the event of a default by the borrower. The program maintains a \$5,000 application fee, a fee that has not increased in 30 years and would remain unchanged by this proposal. MARAD also estimates that the application process currently takes approximately 150 hours, a figure that would also remain unchanged by this proposal. The program provides substantial financial assistance to maritime industry participants, and the changes are intended to eliminate challenges caused by the regulatory requirements, a reason cited by stakeholders as to why they will not use the program. The rule is also intended to make Title XI debt financial covenants compatible with other lender covenants, which stakeholders cited as an obstacle in the prompt processing and approval of loan guarantee applications. MARAD intends for the changes to attract a higher volume of high-quality applicants to the program. Based on the foregoing, MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988 (Civil Justice Reform)

E.O. 12988 requires that agencies promulgating new regulations or reviewing existing regulations take steps to minimize litigation, eliminate ambiguity and to reduce burdens on the regulated public. MARAD has reviewed this rulemaking and has determined that this rulemaking action conforms to the applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform,

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would 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 1 year, and if so, to take steps to minimize these unfunded mandates. This action will not result in additional expenditures by State, local, or tribal

governments or by any members of the private sector. Therefore, MARAD has not prepared an assessment pursuant to the Unfunded Mandates Reform Act.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a federal agency unless the collection displays a valid OMB control number. This rulemaking amends an existing regulation without any change to the contemplated submission of information which might otherwise result in a change to the applicant's burden hours. Therefore, the rulemaking can rely on the existing information collected under OMB control number 2133–0018. Information submitted by applicants to the program will continue to be used to evaluate an applicant's project and capabilities, make the required determinations, and administer any agreements executed upon approval of loan guarantees.

List of Subjects in 46 CFR Part 298

Obligation guarantees.

For the reasons described in the preamble, the Maritime Administration amends 46 CFR part 298 to read as follows:

PART 298—OBLIGATION GUARANTEES

Subpart B—Eligibility

■ 1. The authority citation for 46 CFR part 298 is revised to read as follows:

Authority: 46 U.S.C. chapter 537; 49 CFR 1.93.

■ 2. Amend § 298.13 by revising the introductory text of paragraph (d), paragraph (d)(2)(ii), the introductory text of paragraphs (d)(3) and (e), and paragraphs (e)(3)(i) and (f) through (i) to read as follows:

§ 298.13 Financial requirements.

* * * * *

(d) *Financial definitions.* For the purpose of this section and §§ 298.35, 298.36, and 298.42 of this part:

(2) * * *

(ii) In determining current liabilities, you must deduct any excess of untermiated voyage expenses over untermiated voyage revenue.

(3) “Equity” or “Net Worth” means, as of any date, (the total of paid-in-capital stock, paid-in surplus, earned surplus, retained earnings, and appropriated surplus,) and all other amounts that would be included in net worth in accordance with GAAP, but does not include:

* * * * *

(e) *Applicability.* The financial resources must be adequate to meet the financial terms MARAD requires pursuant to paragraph (f) of this section.

(3) * * *

(i) A pro forma balance sheet at the time of the application; and

* * * * *

(f) *Financial requirements at Closing.* As a condition of disbursement of a guaranteed loan, the Company must demonstrate financial performance that supports a reasonable prospect of repayment taking into account foreseeable negative economic conditions.

(1) The financial requirements of this section are applicable to Companies qualifying under one of the following three categories:

(i) Owner as vessel operator, where the owner is to be the vessel operator;

(ii) Lessee or charterer as operator, where the lessee or charterer is to be the vessel operator; or

(iii) Owner as general shipyard facility, where the owner of a shipyard project is a general shipyard facility.

(2) Qualifying financial performance will be substantiated by financial results over at least the trailing 12 quarters and/or demonstrated by pro-forma financial performance that is underpinned by reasonable assumptions.

(3) Qualifying creditworthiness will be substantiated by reviewing and evaluating applicants based on revenue metrics which include the following non-exhaustive list:

(i) Market factors;

(ii) Strategic positioning;

(iii) Management and governance;

(iv) Pro-forma financial strength;

(v) Project specific factors; and

(vi) Loan terms.

(g) *Adjustments to financial requirements at Closing.* If the owner, although not operating a vessel, assumes any of the operating responsibilities, MARAD may adjust the financial requirements of the owner and operator by increasing the requirements of the owner and decreasing those of the operator.

(h) *Subordinated debt considered to be equity.* With MARAD approval, part

Services to Shipping, under NAICS code 488330 may also be applicable. SBA defines a small business under this NAICS code as having an average annual revenue of \$41.5 million or less.

of the equity requirements applicable under paragraph (c) of this section may be satisfied by debt, fully subordinated by a subordination agreement with MARAD, as to the payment of principal and interest on the Secretary's Note and any claims secured as provided for in the Security Agreement or the Mortgage. Repayment of subordinated debt may be made only from funds available for payment of dividends or for other distributions, in accordance with requirements of the Title XI Reserve Fund and Financial Agreement (described in section 298.35). Such subordinated debt must not be secured by any interest in property that is security for Guarantees under Title XI, unless the obligor and the lender enter into a written agreement approved by MARAD. The written agreement must provide, among other things, that if any Title XI financing or advance by us to the obligor occurs in the future, such security interest of the lender must become subordinated to any indebtedness to MARAD incurred by the obligor and to any security interest obtained by MARAD in that property or other property, with respect to the subsequent indebtedness.

(i) *Modified requirements.* MARAD may waive or modify the financial terms or requirements otherwise applicable under sections 298.35 and 298.42, upon determining that there is adequate security for the guarantees or that such waiver or modification is in the best interests of the United States. MARAD may impose similar financial requirements on any person providing other security for the guarantees.

Subpart C—Guarantees

§ 298.21 [Amended]

■ 3. Amend § 298.21, in paragraph (b)(1), by removing the word “Equity” and adding in its place the word “equity”.

■ 4. Amend § 298.22 by revising paragraph (b) to read as follows:

§ 298.22 Amortization of Obligations.

()*(*)*(*)*(*)
(b) Usually, the payment of principal (amortization) must be made semi-annually, but in no event less frequently than on an annual basis, and in either case the amortization must be in equal payments of principal (level principal), unless MARAD approves the periodic payment of a constant aggregate amount, comprised of both interest and principal components that are variable in amount (level payment). No other method of amortization will be allowed that would reduce the amount of periodic amortization below that determined under the level principal or level payment basis at any time prior to maturity of the obligations, except where a third-party expert approved or engaged by MARAD conducts an independent analysis and review of a project and structure of an obligation and demonstrates that such other method is in the best interests of the United States.

Subpart D—Documentation

■ 5. Amend § 298.35 by revising the introductory text of paragraphs (b)(2) and (d) to read as follows:

§ 298.35 Title XI Reserve Fund and Financial Agreement.

()*(*)*(*)*(*)

(b) * * *

(2) *Supplemental covenants which may become applicable.* Unless, after giving effect to such transaction or transactions, during any fiscal year of the Company, the Company must remain in compliance with financial terms and requirements specified by MARAD based on the agency's evaluation for financial performance and creditworthiness and appropriate to protect the interest of the United States. The Company must not, without prior MARAD written consent:

()*(*)*(*)*(*)

(d) *Deposits.* Unless the Company, as of the close of its accounting year, was subject to and in compliance with the financial terms required by paragraph (b)(2) of this section, the Company must make one or more deposits to MARAD to be held by the Depository (the Title XI Reserve Fund), as further provided for in the depository agreement. The amount of deposit for any year, or period less than a full year, where applicable, will be determined as follows:

()*(*)*(*)*(*)

(Authority: National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116–92, 46 U.S.C. chapter 537, 49 CFR 1.93(a))

By order of the Maritime Administrator.
T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–27441 Filed 12–13–23; 8:45 am]

BILLING CODE 4910–81–P

Proposed Rules

Federal Register

Vol. 88, No. 239

Thursday, December 14, 2023

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA-2011-F-0172]

Menu Labeling: Supplemental Guidance for Industry (Edition 2); Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled “Menu Labeling: Supplemental Guidance for Industry (Edition 2).” The draft guidance, when finalized, will update the existing guidance to add new questions and answers to address voluntary declaration of added sugars and voluntary declaration of nutrition information for menus on third-party platforms.

DATES: Submit either electronic or written comments on the draft guidance by February 12, 2024 to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance 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-2011-F-0172 for “Menu Labeling: Supplemental Guidance for Industry.” 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.” We will review this copy, including the claimed confidential information, in our 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 draft guidance to the Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Sonia Hudson, Office of Nutrition and Food Labeling (HFS-820), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2731; or Holli Kubicki, Office of Regulations and Policy (HFS-024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2378.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 1, 2014 (79 FR 71156), we published a final rule on nutrition labeling of standard menu items in restaurants and similar retail food establishments to implement the menu labeling provisions

of section 403(q)(5)(H) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)(H)) (“Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments”). The menu labeling requirements are codified at § 101.11 (21 CFR 101.11). Before these requirements, consumers could find nutrition information on most packaged foods; however, this labeling was not generally and consistently available in restaurants and similar retail food establishments that serve ready-to-eat, prepared food. Providing calorie and other nutrition information for ready-to-eat prepared foods in restaurants and similar retail food establishments enables consumers to make informed and healthful dietary choices.

In the **Federal Register** of May 5, 2018 (83 FR 20731), we announced the availability of a final guidance entitled “Menu Labeling; Supplemental Guidance for Industry” that addresses stakeholder questions regarding the implementation of nutrition labeling requirements for foods sold in covered establishments and includes examples of alternatives to aid in compliance. A “covered establishment” is a restaurant or similar retail food establishment that is a part of a chain with 20 or more locations doing business under the same name (regardless of the type of ownership, e.g., individual franchises) and offering for sale substantially the same menu items, as well as a restaurant or similar retail food establishment that voluntarily registers with FDA to be covered by the Federal menu labeling requirements (§ 101.11(a); see 21 U.S.C. 343(q)(5)(H)(i)).

We are announcing the availability of a draft guidance for industry entitled “Menu Labeling; Supplemental Guidance for Industry (Edition 2).” The draft guidance is a revision to the guidance issued in May 2018. We are including two new questions and answers regarding voluntarily declaring added sugars as part of additional written nutrition information and voluntarily providing nutrition information consistent with the menu labeling requirements through third-party platforms. The guidance, if finalized, will support further alignment of menu labeling with our Nutrition Facts label regulation at 21 CFR 101.9, because we recommend that covered establishments voluntarily include the declaration of “added sugars” as part of the additional written nutrition information under § 101.11(b)(2)(ii)(A). Additionally, with the popularity of using third-party platforms, such as third-party online ordering websites and delivery applications to order food for

pickup and delivery from chain restaurants and similar retail food establishments, we recommend the voluntary disclosure of calorie information for standard menu items to help consumers make informed and healthful decisions when ordering their meals online using a third-party platform.

On November 6–8, 2023, FDA hosted a virtual public meeting and listening session to explore what Federal Agencies, communities, and private industry are doing to encourage the reduced consumption of added sugars. Issuing this draft guidance is one important step that FDA can take to make progress towards this goal.

FDA is issuing the draft guidance to receive comments on the new questions and answers, and, as appropriate, will move the questions and answers to the final guidance document, after reviewing comments and incorporating any changes to the questions and answers. For ease of reference, a question retains the same number when it moves from the draft guidance to the final guidance.

We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance contains proposed information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to publish a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, we will publish a 60-day notice of the proposed collection of information in a future issue of the **Federal Register**.

This draft guidance also refers to previously approved FDA collections of information. The collections of information in § 101.11 have been

approved under OMB control number 0910–0782.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/FoodGuidances,h> <https://www.fda.gov/regulatory-information/search-fda-guidance-documents,or> <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: December 8, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–27450 Filed 12–13–23; 8:45 am]

BILLING CODE 4164–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 21–341; FCC 23–95, FR ID 186836]

Protecting Consumers From SIM-Swap and Port-Out Fraud

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission adopted a *Further Notice of Proposed Rulemaking (FNPRM)* that seeks comment on whether to harmonize the existing requirements governing customer access to Customer Proprietary Network Information (CPNI) with the new Subscriber Identity Module (SIM) change authentication and protection measures that the Commission adopted; whether limitations on employee access to CPNI prior to customer authentication should be extended to all telecommunications carriers; what steps the Commission can take to harmonize government efforts to address SIM swap and port-out fraud; and how providers should notify customers of failed authentication attempts.

DATES: Comments are due on or before January 16, 2024, and reply comments are due on or before February 12, 2024. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public and other interested parties on or before February 12, 2024.

ADDRESSES: You may submit comments, identified by WC Docket No. 21–341, by any of the following methods:

■ *Federal Communications Commission’s website:* <https://www.fcc.gov>

apps.fcc.gov/ecfs/. Follow the instructions for submitting comments.

■ **People with Disabilities:** Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Nicole Ongele, Federal Communications Commission, 45 L Street SW, Washington, DC 20554, or send an email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For further information, contact Melissa Kinkel at melissa.kinkel@fcc.gov or (202) 418-7958. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Nicole Ongele, Nicole.Ongele@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking* in WC Docket No. 21-341, FCC 23-95, adopted on November 15, 2023 and released on November 16, 2023. The full text of the document is available on the Commission's website at <https://docs.fcc.gov/public/attachments/FCC-23-95A1.pdf>. The Providing Accountability Through Transparency Act, Public Law 118-9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this *FNPRM* is available at <https://www.fcc.gov/proposed-rulemakings>. To request materials in accessible formats for people with disabilities (e.g. braille, large print, electronic files, audio format, etc.), send an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice).

Paperwork Reduction Act

The *FNPRM* may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995. All such new or modified information collection requirements will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on any

new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals in the *FNPRM* on small entities. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *FNPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

Ex Parte Presentations

The proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline

applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Comment Period and Filing Procedures

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. Commenters should refer to WC Docket No. 21-341 when filing in response to this *FNPRM*.

- **Electronic Filers:** Comments may be filed electronically by accessing ECFS at <https://www.fcc.gov/ecfs>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

U.S. Postal Service first-class, Express, and Priority Mail must be addressed to 45 L Street NE, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Synopsis

1. *Harmonizing the CPNI Safeguards Rules.* In this *FNPRM*, we first seek comment on whether to harmonize the existing requirements governing customer access to CPNI with the SIM change authentication and protection measures we adopt. This *FNPRM* expands on questions the Commission asked in the *SIM Swap and Port-Out Fraud Notice* and several comments in the record, but seeks more targeted feedback on a specific approach. In particular, in the *SIM Swap and Port-Out Fraud Notice*, the Commission asked “whether any new or revised customer authentication measures . . . would offer benefits for all purposes.” The Commission also asked whether there are “benefits to providing expanded authentication requirements before providing access to CPNI to someone claiming to be a carrier’s customer,” as well as “whether any heightened authentication measures required (or prohibited) should apply for access to all CPNI, or only in cases where SIM change requests are being made.” Additionally, the Commission proposed to add a prohibition on the use of recent payment and call detail information to authenticate customers for online access to CPNI.

2. Several commenters suggested that we harmonize our CPNI authentication rules with the SIM change authentication rules we adopt. These commenters offered several rationales that potentially support harmonization of these rules, including that: (1) The CPNI authentication requirements are outdated and therefore vulnerable to fraud; (2) inconsistent rules are more burdensome on carriers; (3) some carriers default to specified authentication measures and are disincentivized from adopting more secure measures; (4) a prescribed list provides a road map for bad actors; and (5) the existing CPNI authentication requirements could undermine stronger

authentication measures for SIM changes and number ports. Harmonization also would be consistent with commenters’ assertions that carriers need flexibility to implement more secure authentication measures. We seek comment on these justifications.

3. We also seek comment on other potential justifications for harmonization. For instance, we tentatively conclude that harmonized authentication and protection requirements will be easier for wireless providers to implement and therefore will reduce costs and burdens on carriers, including small carriers. We further tentatively conclude that multiple authentication standards and protection requirements may be confusing for customers. Are these tentative conclusions correct?

4. We seek comment on any reasons why we should not harmonize our CPNI and SIM change authentication rules. For example, would it be costly and burdensome for carriers, particularly small carriers, to adjust the CPNI authentication and protection practices they have already implemented to comply with the authentication requirements we adopted? Are there other reasons harmonized rules would increase the costs or burdens on carriers, including small carriers? Is there anything unique about CPNI or SIM changes that warrants different authentication measures? For instance, even if the existing measures for CPNI authentication may be outdated and less secure, are modifications to the rules unwarranted because the risk of harm from unauthorized access to CPNI is lower than from SIM swap fraud?

5. If we do choose to harmonize the rules addressing customer access to CPNI with our new SIM change safeguards, we seek comment on the extent to which the rules should be harmonized. We seek comment whether to remove the prescriptive authentication requirements in our current CPNI rules and replace them with the single requirement that carriers use secure methods of authenticating the identity of a customer prior to disclosing CPNI. We also seek comment on whether to use the same definition of secure methods of authentication, which are those that are reasonably designed to confirm a customer’s identity and excluding use of readily available biographical information, account information, recent payment information, call detail information, or any combination of these factors. Additionally, we seek comment on whether the procedures we require carriers to adopt for responding to failed

authentication attempts in connection with SIM change requests should apply to all other CPNI authentications as well. We also seek comment on whether the CPNI customer access rules should be harmonized with any of the other SIM change protections we adopt. Should the limits on access to CPNI by employees who receive inbound customer communications prior to authentication of the customer apply to all telecommunications carriers? Should the CPNI rules only be harmonized to include some of these measures? If so, which measures should and should not be harmonized and why? Should we harmonize the customer notification rules for all account changes? Additionally, are there any other rules that would need to be modified for consistency if we harmonize the CPNI rules, such as the Commission’s Telecommunications Relay Service (TRS) CPNI rules? Should the Commission apply any harmonized rules to all customer proprietary information?

6. We tentatively conclude that we should rely on the same legal authority we used to originally implement the CPNI authentication rules in order to harmonize any of the CPNI rules, and seek comment on this tentative approach. In the *2007 CPNI Order* (72 FR 31948 (June 8, 2007)), as with the rules we adopted, we relied primarily on section 222 to implement the CPNI authentication rules, and we tentatively conclude this provision continues to provide us with sufficient authority to harmonize those rules with the SIM change rules. We seek comment on this tentative conclusion. We also seek comment on whether there are any legal implications for the harmonization approach we propose. For instance, in the *2016 Broadband Privacy Order* (81 FR 87274 (Jan. 3, 2017)), the Commission harmonized the CPNI rules for voice providers with those it had adopted for broadband internet access service providers, but those rules were nullified by Congress pursuant to the Congressional Review Act, which prohibits the Commission from reissuing a disapproved rule “in substantially the same form” and from issuing a new rule “that is substantially the same as such a rule.” We tentatively conclude that the 2017 action by Congress has no effect on the options we may consider here and seek comment on this tentative conclusion.

7. *Harmonizing Government Efforts to Address SIM Swap and Port-Out Fraud.* We seek comment on what steps the Commission can take to harmonize government efforts to address SIM swap and port-out fraud. As several

commenters noted, SIM swap and port-out fraud implicates the authentication practices of other industries. We recognize that there may be other efforts within the government to tackle SIM swap and port-out fraud to address the broader implications of these harmful practices. We seek information about those other efforts and the extent to which they seek to address the practices of wireless providers. We also seek comment on how the Commission can work with other government entities to harmonize our approaches to addressing SIM swap and port-out fraud.

8. *Customer Notification of Failed Customer Authentication Attempts.* We seek comment on whether we should require wireless providers to immediately notify customers in the event of a failed authentication attempt, except to the extent otherwise required by the Safe Connections Act of 2022 (47 U.S.C. 345) or the Commission's rules implementing that statute. We believe that such notifications could empower customers to take action to prevent unauthorized access to their account when failed authentication attempts are fraudulent. Should we require all telecommunications carriers to provide such notifications to customers? In the event the Commission were to require such notifications, we tentatively conclude that the notifications should be reasonably designed to reach the customer associated with the account but otherwise would permit wireless providers to determine the method of providing these notifications, taking into consideration the needs of survivors pursuant to the Safe Connections Act and our implementing rules. We also tentatively conclude that such notifications should use "clear and concise language" but do not propose to prescribe particular content or wording for the notifications.

9. Industry commenters assert that "a carrier does not typically know why a customer authenticates until after the customer has successfully authenticated." Based on these assertions, should we permit carriers to employ "reasonable risk assessment techniques to determine when a failed authentication attempt requires customer notification," or require notification only in instances of multiple failed attempts, or when there is reasonable suspicion of fraud? What are the benefits and costs of doing so, for both providers and customers? If we were to require customer notification only where there were multiple failed authentication attempts, what standard would we use to determine what constitutes "multiple," and how would providers track multiple authentication

attempts across different platforms (i.e., phone, application, and website)?

10. *Other Consumer Protection Measures.* We reiterate the Commission's request for comment on whether there are any additional requirements the Commission should consider that would help protect customers from SIM swap or port-out fraud or assist them with resolving problems resulting from such incidents. For example, should we require wireless providers to explicitly exclude resolution of SIM change and port-out fraud disputes from arbitration clauses in providers' agreements with customers or abrogate such clauses? Would this provide meaningful additional protections to customers from SIM swap and port-out fraud? What would be the costs to wireless providers, particularly small providers, from such a requirement?

11. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

Initial Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Protecting Consumers from SIM Swap and Port-Out Fraud Further Notice of Proposed Rulemaking (FNPRM)*. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided on the first page of the item. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

13. In the *SIM Swap and Port-Out Fraud Report and Order (Report and Order)* (88 FR 85794 (Dec. 8, 2023)), the Commission adopts rules to address fraudulent practices that transfer a customer's wireless service to a bad actor, allowing the bad actor to gain access to information associated with the customer's account, and permitting the bad actor to receive the text messages and phone calls intended for the customer. Specifically, the *Report and Order* revises the Commission's Customer Proprietary Network Information (CPNI) and Local Number Portability (LNP) rules to require wireless providers to adopt secure methods of authenticating a customer before redirecting a customer's phone number to a new device or provider. The *Report and Order* also requires wireless providers to immediately notify customers whenever a SIM change or port-out request is made on customers' accounts, and take additional steps to protect customers from SIM swap and port-out fraud. This approach sets baseline requirements that establish a uniform framework across the mobile wireless industry while giving wireless providers the flexibility to deliver the most advanced and appropriate fraud protection measures available.

14. In this *FNPRM*, we seek comment on whether to harmonize the existing requirements governing customer access to CPNI with the SIM change authentication and protection measures adopted in the *Report and Order*. This *FNPRM* expands on questions asked in the *SIM Swap and Port-Out Fraud Notice* (86 FR 57390 (Oct. 15, 2021)) and several comments in the record, but seeks more targeted feedback on a specific approach. The *FNPRM* explores whether justifications identified by commenters in the record, or any other justifications, provide a rationale for harmonizing the existing CPNI rules with the customer protection measures adopted in the *Report and Order*, as well as any reasons why the Commission should not harmonize its existing CPNI rules with the SIM swap fraud protection measures adopted in the *Report and Order*.

15. Recognizing that there may be other efforts within the government to tackle SIM swap and port-out fraud to address the broader implications of these harmful practices, the *FNPRM* also seeks comment on information about those other efforts and what steps the Commission can take to harmonize government efforts to address SIM swap and port-out fraud. The *FNPRM* also

seeks comment on whether to require wireless providers to immediately notify customers in the event of a failed authentication attempt, except to the extent otherwise required by the Safe Connections Act of 2022 (47 U.S.C. 345) or the Commission's rules implementing that statute, or whether to permit carriers to employ reasonable risk assessment techniques to determine when a failed authentication attempt requires customer notification, or require notification only in instances of multiple failed attempts or when there is reasonable suspicion of fraud.

B. Legal Basis

16. The proposed action is authorized pursuant to sections 1, 4, 201, 222, 251, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201, 222, 251, 303(r), and 332.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

17. 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 which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

18. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, 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 Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

19. 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.

20. 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, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."

1. Providers of Telecommunications and Other Services

21. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

22. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or

fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

23. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

24. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms

operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

25. *Competitive Local Exchange Carriers (Competitive LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

26. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these

providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

27. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

28. *Toll Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size

standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

29. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

30. *Wireless Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Wireless Resellers. The closest industry with an SBA small business size standard is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications and they do not operate transmission facilities and

infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA size standard for this industry, a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services during that year. Of that number, 1,375 firms operated with fewer than 250 employees. Thus, for this industry under the SBA small business size standard, the majority of providers can be considered small entities.

31. *Satellite Telecommunications.* This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than \$25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, a little more than half of these providers can be considered small entities.

32. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g. dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies

firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

2. Internet Service Providers

33. *Wired Broadband internet Access Service Providers (Wired ISPs).*

Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

34. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA’s small business size standard. However, in light of the general data on fixed technology service providers in the Commission’s 2022 *Communications Marketplace Report*, we believe that the majority of wireline internet access service providers can be considered small entities.

35. *Wireless Broadband internet Access Service Providers (Wireless ISPs or WISPs).* Providers of wireless broadband internet access service include fixed and mobile wireless providers. The Commission defines a WISP as “[a] company that provides end-users with wireless access to the internet[.]” Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send

information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules. Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees.

36. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA’s small business size standard. However, based on data in the Commission’s 2022 *Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general, as well as on terrestrial fixed wireless broadband providers in general, we believe that the majority of wireless internet access service providers can be considered small entities.

37. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

38. In this *FNPRM*, we seek comment on whether to harmonize the existing requirements governing customer access to CPNI with the SIM change authentication and protection measures adopted in the *Report and Order*, and if so, the extent to which the rules should be harmonized. We tentatively conclude that harmonized authentication and protection requirements will be easier for wireless providers to implement and therefore will reduce costs and burdens on carriers, including small carriers. Recognizing that there may be other efforts within the government to tackle SIM swap and port-out fraud to address the broader implications of these harmful practices, the *FNPRM* also seeks comment on information about those other efforts and what steps the Commission can take to harmonize government efforts to address SIM swap and port-out fraud.

39. Should the Commission decide to modify existing rules or adopt new rules to harmonize its existing CPNI rules with rules to protect customers from SIM swap fraud, such action could potentially result in increased, reduced, or otherwise modified recordkeeping, reporting, or other compliance requirements for affected providers of service. Likewise, should the Commission decide to adopt rules requiring notification of a failed authentication attempt, such action could potentially result in increased, reduced, or otherwise modified recordkeeping, reporting, or other compliance requirements. We seek comment on the effect of any proposals on small entities. Entities, especially small businesses, are encouraged to quantify the costs and benefits of any reporting, recordkeeping, or compliance requirement that may be established in this proceeding. We anticipate the information we receive in comments including, where requested, cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *FNPRM*.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

40. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed 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 and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

41. In this *FNPRM*, we seek comment on whether we should harmonize the existing requirements governing customer access to CPNI with the SIM change authentication and protection measures adopted in the *Report and Order*, and if so, the extent to which the rules should be harmonized. Among the justifications on which we seek comment are whether inconsistent rules are more burdensome on carriers and whether carriers need flexibility to implement more secure authentication measures. We also tentatively conclude that harmonized authentication and protection requirements will be easier for wireless providers to implement and therefore will reduce costs and burdens on carriers. In considering additional alternatives, we also ask whether it would it be costly and burdensome for carriers to adjust the CPNI authentication and protection practices they have already implemented to comply with the authentication requirements adopted in the *Report and Order*, and whether there are other reasons harmonized rules could increase the costs or burdens on carriers, including small carriers. Regarding notification to customers of failed authentication attempts, the *FNPRM* seeks comment whether the Commission should require immediate notification by all telecommunications carriers or only wireless providers. The *FNPRM* also asks whether providers should be required to notify customers immediately of all failed authentication attempts, or whether instead to permit carriers to employ reasonable risk

assessment techniques to determine when failed authentication attempts require customer notification, or require notification only in instances of multiple failed attempts or when there is reasonable suspicion of fraud. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *FNPRM* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

42. None.

Paperwork Reduction Act of 1995 Analysis

This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

II. Ordering Clauses

43. Accordingly, *it is ordered* that, that pursuant to the authority contained in sections 1, 2, 4, 201, 222, 251, 303, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201, 222, 251, 303, and 332, this *Further Notice of Proposed Rulemaking* in WC Docket No. 21–341 *is adopted*.

44. *It is further ordered* that the Commission’s Office of the Secretary, Reference Information Center, *shall send* a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2023–26701 Filed 12–13–23; 8:45 am]

BILLING CODE 6712–01–P

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

USAID Revisions to ADS 201 Evaluation Report Requirements

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Notice of information collection; request for comment.

SUMMARY: USAID invites public comment on our intent to request the Office of Management and Budget's (OMB's) approval for a new information collection. The Foreign Assistance Transparency and Accountability Act (2016) and The Foundations for Evidence Based Policy-Making Act (2019) enhance the transparency, accuracy, and reliability of USAID program and activity evaluations and processes of data collection and reporting. To comply with these Acts, USAID is currently revising the policy associated with its Evaluation Report Requirements. The requirements collect information from evaluators to establish the validity of research methodologies, standardize the presentation of research, ensure accuracy, and identify any conflicts of interest that could create bias or influence data analysis, findings, or recommendations. USAID is soliciting comments for this collection.

DATES: Comments are due January 16, 2024.

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: Tania Alfonso, talfonso@usaid.gov, 202-712-0144.

SUPPLEMENTARY INFORMATION: USAID, 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 the proposed information collection. This proposed information collection was previously published in the **Federal Register** (88 FR 18292) on March 28, 2023.¹ This notice allows for an additional 30 days for public comments.

Title of Collection: USAID Revisions to ADS 201 Evaluation Report Requirements.

OMB Control Number: To be issued by OMB.

Type of Review: A new information collection.

Respondents/Affected Public: USAID evaluation contractors.

Estimated Number of Respondents: 32.

Estimated Number of Annual Responses: 4.25.

Estimated Time per Response: 8.25 hours.

Total Estimated Number of Annual Burden Hours: 1,195 per year.

Abstract: After a contractor is hired to evaluate a program or activity, USAID issues to the contractor three standardized information collection forms that are designed to ensure compliance with data quality and reporting standards as outlined in USAID's Automated Directives System (ADS) 201 and its annexes, including: one of three optional Evaluation Design Matrices; an Evaluation Report Template to be used for the submission of the final, and; a Disclosure of Conflicts of Interest to be completed by the contractor's team leaders and researchers. The Evaluation Design Matrix provides a structured format for the contractor to present the overall approach and methodology for the contracted evaluation. Specifically, the optional form asks contractors to detail key research questions, sources of information, scope and methodology, and study limitations in the form of a

table. The Evaluation Report Template guides the evaluator in submitting a final draft of the research report, including requiring the use of appropriate branding and marking on the cover page, style and formatting of the report, and required information and order of sections. Finally, external evaluators and evaluation team members are required to complete and submit to USAID a Disclosure of Conflicts of Interest form to disclose all relevant facts regarding real or potential conflicts of interest that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the evaluator or evaluation team member is not able to maintain independence and, thus, is not capable of exercising objective and impartial judgment on all issues associated with conducting and reporting the work. USAID uses the data from the collection of information in these three types of forms for internal decision-making and external reporting requirements to the U.S. Congress. Copies of the information collection forms can be found in USAID's Learning Lab in the Evaluation Toolkit. The data collected in the required forms will be available to the public when the Final Report is posted on the Development Experience Clearinghouse.

USAID and the Office of Management and Budget are particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

¹ USAID initially published a Notice of the proposed information collection, "USAID Revisions to ADS 201 Evaluation Report Requirements," in the **Federal Register** on March 28, 2023 [88 FR 18292]. Due to a clerical error, the comment period closed after 56 days on May 23, 2023, and therefore did not meet not the statutory 60-day comment period required by the PRA. A **Federal Register** Notice published on [INSERT DATE] reopened the comment period for an additional 4 days.

e.g., permitting electronic submissions of responses.

Tania Alfonso,

PPL/LER, Program Cycle Supervisory Team Lead, USAID.

[FR Doc. 2023–27487 Filed 12–13–23; 8:45 am]

BILLING CODE 6116–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Background Investigator Quality Control Survey

AGENCY: USAID.

ACTION: Availability of survey.

SUMMARY: Quality control survey to allow the USAID Office of Security Field Investigations program to obtain feedback on its background investigator workforce from members of the general public who are interviewed by USAID background investigators.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

ADDRESSES: USAID, SEC/FI, 1300 Pennsylvania Ave. NW, 4th Floor, Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Brian Shemonsky, (202) 712–1734, bshemonsky@usaid.gov.

SUPPLEMENTARY INFORMATION: USAID currently conducts this quality control process via U.S. Mail and telephone calls. The agency is seeking to both modernize and simplify this process.

Brian Shemonsky,

Background Investigations Program Manager.

[FR Doc. 2023–27430 Filed 12–13–23; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–48–2023]

Foreign-Trade Zone (FTZ) 164; Authorization of Production Activity; Vallourec Star, LP; (Semi-Finished Steel Casing); Muskogee, Oklahoma

On August 11, 2023, Vallourec Star, LP submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 164A, in Muskogee, Oklahoma.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 56589, August 18, 2023). On December 11, 2023, the applicant was notified of the FTZ Board’s decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board’s regulations, including section 400.14.

Dated: December 11, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–27481 Filed 12–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–233–2023]

Foreign-Trade Zone 24; Application for Subzone; GMA Accessories DBA Capelli New York; Pittston, Pennsylvania

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Eastern Distribution Center, Inc., grantee of FTZ 24, requesting subzone status for the facility of GMA Accessories DBA Capelli New York (Capelli), located in Pittston, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on December 8, 2023.

The proposed subzone (28.08 acres) is located at 901 Sathers Drive, Pittston, Pennsylvania. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 24.

In accordance with the FTZ Board’s regulations, Juanita Chen of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board’s Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is January 23, 2024. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 7, 2024.

A copy of the application will be available for public inspection in the

“Online FTZ Information Section” section of the FTZ Board’s website, which is accessible via www.trade.gov/ftz.

For further information, contact Juanita Chen at juanita.chen@trade.gov.

Dated: December 11, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–27483 Filed 12–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Nordwind Airlines, Leningradskaya str., Building 25, Office 27. 28, Moscow Region, Khimki City, 141402, Russia; Order Renewing Temporary Denial of Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the Regulations”),¹ I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on June 15, 2023. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because Nordwind Airlines (“Nordwind”) has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

I. Procedural History

On June 24, 2022, I signed an order denying Nordwind’s export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

and was effective upon issuance.² The TDO was subsequently renewed on December 20, 2022³ and again on June 15, 2023,⁴ in accordance with Section 766.24(d) of the Regulations.⁵

On November 21, 2023, BIS, through OEE, submitted a written request for a third renewal of the TDO. The written request was made more than 20 days before the TDO's scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to serve a copy of the renewal request on Nordwind in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an "imminent violation" of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). "A violation may be 'imminent' either in time or degree of likelihood." 15 CFR 766.24(b)(3). BIS may show "either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations." *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge "is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]" *Id.* A "lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation." *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO's expiration, should set forth the basis for BIS's belief that renewal is necessary, including any additional or changed circumstances. *Id.* "In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year." ⁶ *Id.*

B. The TDO and BIS's Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation's ("Russia's") further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number ("ECCN") 9A991 (Section 746.8(a)(1) of the EAR).⁷ BIS will review any export or reexport license applications for such items under a policy of denial. *See* Section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft ("AVS") (Section 740.15 of the EAR).⁸ Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin

content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE's request for renewal for a period of one year is based upon the facts underlying the issuance of the initial TDO, the renewal orders subsequently issued in this matter, and evidence that continues to develop during this investigation. These facts and evidence demonstrate that Nordwind has continued, and continues, to act in blatant disregard for U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on June 24, 2022, was based on evidence that Nordwind engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022, from destinations including, but not limited to, Yerevan, Armenia, Istanbul, Turkey, and Sharm el-Sheikh, Egypt, without the required BIS authorization.⁹ Further evidence submitted by BIS indicated that Nordwind also continued to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of Section 736.2(b)(10) of the Regulations.

As discussed in the prior renewal orders, BIS presented evidence indicating that, after the initial June 24, 2022, TDO issued, Nordwind continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and within Russia, in violation of the Regulations and the TDO itself.¹⁰ The December 20, 2022, order detailed flights into and out of Russia from/to Sharm el-Sheikh, Egypt and Bokhtar, Tajikistan.¹¹ The June 15, 2023 renewal order documented a similar pattern of prohibited conduct including a flight from Tehran, Iran to Moscow, Russia.¹²

² The TDO was published in the **Federal Register** on June 29, 2022 (87 FR 38704).

³ The December 20, 2022 renewal order was published in the **Federal Register** on December 27, 2022 (87 FR 79725).

⁴ The June 15, 2023 renewal order was published in the **Federal Register** on June 21, 2023 (88 FR 40202). The renewal order was subsequently modified on June 27, 2023 and published in the **Federal Register** on June 30, 2023 (88 FR 42290). The June 27, 2023 modification made no changes to the scope or length of prohibitions against Nordwind.

⁵ At the time of the renewal, Section 766.24(d) provided that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation.

⁶ 88 FR 59791 (Aug. 30, 2023).

⁷ 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List ("CCL") under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

⁸ 87 FR 13048 (Mar. 8, 2022).

⁹ Publicly available flight tracking information shows, for example, that on March 7, 2022, serial number ("SN")

40874 flew from Yerevan, Armenia to Kazan, Russia; SN 40233 flew from Istanbul, Turkey to Kazan, Russia; and SN 40236 flew from Sharm el-Sheikh, Egypt to Moscow, Russia.

¹⁰ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

¹¹ Publicly available flight tracking information shows that on December 3, 2022, SN 42059 flew from Sharm el-Sheikh, Egypt to Orenberg, Russia and on December 2, 2022, SN 40874 flew from Hurghada, Egypt to Moscow, Russia. In addition, on November 29, 2022, SN 35700 flew from Bokhtar, Tajikistan to Moscow, Russia.

¹² Publicly available flight tracking information shows that SN 35700 flew from Bokhtar, Tajikistan to Orsk, Russia on June 2, 2023. Additionally, SN

Since that time, Nordwind continued to engage in conduct prohibited by the TDO and Regulations. In its November 21, 2023, request for renewal of the TDO, BIS submitted evidence that Nordwind continues to operate aircraft subject to the EAR and classified under

ECCN 9A991.b, both on flights into and within Russia, in violation of the June 15, 2023 renewal order and/or the Regulations. Specifically, BIS's evidence and related investigation demonstrates that Nordwind continued to operate aircraft subject to the EAR, including,

but not limited to, on flights into and out of Russia from/to Bishkek, Kyrgyzstan and Bokhtar, Tajikistan as well as domestically within Russia. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73313	35700	737-82R	Khujand, TJ/Kazan, RU	December 6, 2023.
RA-73313	35700	737-82R	Kazan, RU/St. Petersburg, RU	December 2, 2023.
RA-73313	35700	737-82R	Osh, KG/Ufa, RU	December 1, 2023.
RA-73313	35700	737-82R	Dushanbe, TJ/Orenburg, RU	November 8, 2023.
RA-73313	35700	737-82R	Bishkek, KG/Kazan, RU	November 2, 2023.
RA-73317	40874	737-82R	Cheboksary, RU/Sochi, RU	December 5, 2023.
RA-73317	40874	737-82R	Khujand, TJ/Kazan RU	November 27, 2023.
RA-73317	40874	737-82R	Dushanbe, TJ/Kazan, RU	November 26, 2023.
RA-73317	40874	737-82R	Dushanbe, TJ/Samara, RU	November 6, 2023.
RA-73317	40874	737-82R	Khujand, TJ/Kazan, RU	October 6, 2023.
RA-73314	40233	737-8KN	Bokhtar, TJ/Orsk, RU	December 5, 2023.
RA-73314	40233	737-8KN	Dushanbe, TJ/Moscow, RU	December 5, 2023.
RA-73314	40233	737-8KN	Kazan, RU/Moscow, RU	December 1, 2023.
RA-73314	40233	737-8KN	Osh, KG/Tyumen, RU	November 4, 2023.
RA-73314	40233	737-8KN	Bokhtar, TJ/Moscow, RU	November 1, 2023.

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS demonstrates that Nordwind has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because Nordwind has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Nordwind, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, Nordwind Airlines, Leningradskaya str., building 25, office 27. 28m, Moscow region, Khimki city, 141402, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in

any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

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

A. Export, reexport, or transfer (in-country) to or on behalf of Nordwind any item subject to the EAR except

directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Nordwind of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Nordwind acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Nordwind of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from Nordwind in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Nordwind, or service any item, of whatever origin, that is owned, possessed or controlled by Nordwind if such service involves

40874 flew from Tehran, Iran to Moscow, Russia on

May 16, 2023 and SN 42233 flew from Osh, Kyrgyzstan to Tyumen, Russia on June 10, 2023.

the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Nordwind by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, Nordwind may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Nordwind as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Nordwind and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for one year.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–27475 Filed 12–13–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

**Bureau of Industry and Security,
Washington, DC 20230**

**Siberian Airlines d/b/a S7 Airlines,
633104, Novosibirskaya obl., g. Ob.
prospekt Mozzherina, d. 10 ofis 201;
Order Renewing Temporary Denial of
Export Privileges**

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the

Regulations”),¹ I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on June 15, 2023. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because Siberian Airlines d/b/a S7 Airlines (“Siberian”) has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

I. Procedural History

On June 24, 2022, I signed an order denying Siberian’s export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations and was effective upon issuance.² The TDO was subsequently renewed on December 20, 2022³ and again on June 15, 2023,⁴ in accordance with Section 766.24(d) of the Regulations.⁵

On November 21, 2023, BIS, through OEE, submitted a written request for a third renewal of the TDO. The written request was made more than 20 days before the TDO’s scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to serve a copy of the renewal request on Siberian in

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

² The TDO was published in the **Federal Register** on June 29, 2022 (87 FR 38709).

³ The December 20, 2022 renewal order was published in the **Federal Register** on December 23, 2022 (87 FR 78921).

⁴ The June 15, 2023 renewal order was published in the **Federal Register** on June 21, 2023 (88 FR 40205).

⁵ At the time of the renewal, Section 766.24(d) provided that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation.

accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent’s export privileges upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO’s expiration, should set forth the basis for BIS’s belief that renewal is necessary, including any additional or changed circumstances. *Id.* “In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year.”⁶ *Id.*

B. The TDO and BIS’s Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation’s (“Russia’s”) further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia’s access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia’s defense,

⁶ 88 FR 59791 (Aug. 30, 2023).

aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number ("ECCN") 9A991 (Section 746.8(a)(1) of the EAR).⁷ BIS will review any export or reexport license applications for such items under a policy of denial. See Section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft ("AVS") (Section 740.15 of the EAR).⁸ Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license

requirement before it can travel to Russia.

OEE's request for renewal for a period of one year is based upon the facts underlying the issuance of the initial TDO, the renewal orders subsequently issued in this matter, and evidence that continues to develop during this investigation. These facts and evidence demonstrate that Siberian has continued, and continues, to act in blatant disregard for U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on June 24, 2022, was based on evidence that Siberian engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022, from destinations including, but not limited to, Atyrau, Kazakhstan, Bishkek, Kyrgyzstan, and Urgench, Uzbekistan, without the required BIS authorization.⁹ Further evidence submitted by BIS indicated that Siberian also continued to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of Section 736.2(b)(10) of the Regulations.

As discussed in the prior renewal orders, BIS presented evidence indicating that, after the initial June 24,

2022, TDO issued, Siberian continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and within Russia, in violation of the Regulations and the TDO itself.¹⁰ The December 20, 2022, order detailed flights into and out of Russia from/to Bangkok, Thailand, Antalya, Turkey, and Urgench, Uzbekistan.¹¹ The June 15, 2023, renewal order documented a similar pattern of prohibited conduct.¹²

Since that time, Siberian continued to engage in conduct prohibited by the TDO and Regulations. In its November 21, 2023, request for renewal of the TDO, BIS submitted evidence that Siberian continues to operate aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in violation of the June 15, 2023, renewal order and/or the Regulations. Specifically, BIS's evidence and related investigation demonstrates that Siberian continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia, including from/to Antalya and Istanbul, Turkey, Bangkok, Thailand, Beijing, China, Dubai, United Arab Emirates, and Fergana, Uzbekistan, as well as domestically within Russia. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73668	41709	737-8LP	Bangkok, TH/Irkutsk, RU	December 4, 2023.
RA-73668	41709	737-8LP	Irkutsk, RU/Novosibirsk, RU	December 4, 2023.
RA-73668	41709	737-8LP	Beijing, CN/Irkutsk, RU	December 3, 2023.
RA-73668	41709	737-8LP	Bangkok, TH/Irkutsk, RU	November 16, 2023.
RA-73668	41709	737-8LP	Dubai, AE/Novosibirsk, RU	October 30, 2023.
RA-73670	41710	737-8LP	Bangkok, TH/Irkutsk, RU	December 4, 2023.
RA-73670	41710	737-8LP	Fergana, UZ/Irkutsk, RU	December 1, 2023.
RA-73670	41710	737-8LP	Novosibirsk, RU/Irkutsk, RU	November 21, 2023.
RA-73670	41710	737-8LP	Beijing, CN/Novosibirsk, RU	November 17, 2023.
RA-73670	41710	737-8LP	Bangkok, TH/Irkutsk, RU	November 8, 2023.
RA-73667	41707	737-8LP	Antalya, TR/Moscow, RU	December 4, 2023.
RA-73667	41707	737-8LP	Dubai, AE/Moscow, RU	December 3, 2023.
RA-73667	41707	737-8LP	Ufa, RU/Moscow, RU	December 1, 2023.
RA-73667	41707	737-8LP	Istanbul, TR/Moscow, RU	November 16, 2023.
RA-73667	41707	737-8LP	Urgench, UZ/Moscow, RU	November 10, 2023.

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire

record, I find that the evidence presented by BIS demonstrates that Siberian has acted in violation of the Regulations and the TDO; that such violations have been significant,

deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is

⁷ 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List ("CCL") under Categories 0-2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

⁸ 87 FR 13048 (Mar. 8, 2022).

⁹ Publicly available flight tracking information shows, for example, that on March 10, 2022, serial

number ("SN") 41400 flew from Atyrau, Kazakhstan to Moscow, Russia. On May 1, 2022, SN 41707 flew from Bishkek, Kyrgyzstan to Novosibirsk, Russia and, on March 4, 2022, SN 41841 flew from Urgench, Uzbekistan to Moscow, Russia.

¹⁰ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

¹¹ Publicly available flight tracking information shows, for example, that on November 30, 2022, SN 41709 flew from Bangkok, Thailand to Irkutsk,

Russia. SN 41707 flew from Antalya, Turkey to Novosibirsk, Russia on November 19, 2022, and from Urgench, Uzbekistan to Moscow, Russia on December 10, 2022.

¹² Publicly available flight tracking information shows that SN 41707 flew from Istanbul, Turkey to Moscow, Russia on May 20, 2023. Additionally, SN 41709 flew from Beijing, China to Irkutsk, Russia on May 27, 2023. Further, SN 41710 flew from Bangkok, Thailand to Irkutsk, Russia on May 20, 2023.

appropriate because Siberian has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Siberian, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, Siberian Airlines d/b/a S7 Airlines, 633104, Novosibirskaya obl., g. Ob, prospekt Mozzherina, d. 10 ofis 201, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

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

A. Export, reexport, or transfer (in-country) to or on behalf of Siberian any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Siberian of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Siberian acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Siberian of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from Siberian in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Siberian, or service any item, of whatever origin, that is owned, possessed or controlled by Siberian if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Siberian by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, Siberian may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days

before the expiration date. A renewal request may be opposed by Siberian as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Siberian and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for one year.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–27476 Filed 12–13–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Pobeda Airlines, 108811, Russian Federation, Moscow, p. Moskovskiy, Kievskoe shosse 22nd km, 4/1. Moscow, Russia; Order Renewing Temporary Denial of Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the Regulations”),¹ I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on June 15, 2023. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because Pobeda Airlines (“Pobeda”) has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

I. Procedural History

On June 24, 2022, I signed an order denying Pobeda’s export privileges for a

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations and was effective upon issuance.² The TDO was subsequently renewed on December 20, 2022³ and again on June 15, 2023,⁴ in accordance with Section 766.24(d) of the Regulations.⁵

On November 21, 2023, BIS, through OEE, submitted a written request for a third renewal of the TDO. The written request was made more than 20 days before the TDO's scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to serve a copy of the renewal request on Pobeda in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an "imminent violation" of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). "A violation may be 'imminent' either in time or degree of likelihood." 15 CFR 766.24(b)(3). BIS may show "either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations." *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge "is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]" *Id.* A "lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation." *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO's expiration, should set forth the basis for BIS's belief that renewal is necessary, including any additional or changed circumstances. *Id.* "In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year." ⁶ *Id.*

B. The TDO and BIS's Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation's ("Russia's") further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number ("ECCN") 9A991 (Section 746.8(a)(1) of the EAR).⁷ BIS will review any export or reexport license applications for such items under a policy of denial. *See* Section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft ("AVS") (Section 740.15 of the EAR).⁸ Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin

content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE's request for renewal for a period of one year is based upon the facts underlying the issuance of the initial TDO, the renewal orders subsequently issued in this matter, and evidence that continues to develop during this investigation. These facts and evidence demonstrate that Pobeda has continued, and continues, to act in blatant disregard for U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on June 24, 2022, was based on evidence that Pobeda engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022, from destinations including, but not limited to, Antalya, Turkey, Gazipasa, Turkey, and Istanbul, Turkey, without the required BIS authorization.⁹ Further evidence submitted by BIS indicated that Pobeda also continued to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of Section 736.2(b)(10) of the Regulations.

As discussed in the prior renewal orders, BIS presented evidence indicating that, after the initial June 24, 2022 TDO issued, Pobeda continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and within Russia, in violation of the Regulations and the TDO itself.¹⁰ The December 20, 2022 order detailed flights into and out of Russia from/to Minsk, Belarus.¹¹ The June 15, 2023 renewal order documented a similar pattern of prohibited conduct.¹²

⁹ Publicly available flight tracking information shows, for example, that on March 6, 2022, serial number ("SN") 64862 flew from Antalya, Turkey to Moscow, Russia. On March 7, 2022, SN 64863 flew from Gazipasa, Turkey to Moscow, Russia, and, on March 6, 2022, SN 64864 flew from Istanbul, Turkey to Mineralnye Vody, Russia.

¹⁰ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

¹¹ Publicly available flight tracking information shows, for example, the following flights: (1) on November 26, 2022, SN 61793 flew from Minsk, Belarus to Moscow, Russia; (2) on December 3, 2023, SN 41238 flew from Minsk, Belarus to Moscow, Russia; and (3) on November 24, 2022, SN 64866 flew from Minsk, Belarus to Moscow, Russia.

¹² Publicly available flight tracking information shows that SN 41227 flew from Istanbul, Turkey to Moscow, Russia on May 24, 2023. Additionally, SN 41238 flew from Dubai, United Arab Emirates to Moscow, Russia on May 31, 2023. Further, SN

² The TDO was published in the **Federal Register** on June 29, 2022 (87 FR 38707).

³ The December 20, 2022, renewal order was published in the **Federal Register** on December 23, 2022 (87 FR 78925).

⁴ The June 15, 2023, renewal order was published in the **Federal Register** on June 21, 2023 (88 FR 40200).

⁵ At the time of the renewal, Section 766.24(d) provided that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation.

⁶ 88 FR 59791 (Aug. 30, 2023).

⁷ 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List ("CCL") under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

⁸ 87 FR 13048 (Mar. 8, 2022).

Since that time, Pobeda continued to engage in conduct prohibited by the TDO and Regulations. In its November 21, 2023, request for renewal of the TDO, BIS submitted evidence that Pobeda continues to operate aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and

within Russia, in violation of the June 15, 2023, renewal order and/or the Regulations. Specifically, BIS's evidence and related investigation demonstrates that Pobeda continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia, including from/to Dubai,

United Arab Emirates, and Gazipasa and Istanbul, Turkey, Gyumri, Armenia, and Minsk, Belarus, as well as domestically within Russia. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73242	41227	737-8LJ	Moscow, RU/Minsk, BY	November 29, 2023.
RA-73242	41227	737-8LJ	Dubai, AE/Beslan, RU	November 28, 2023.
RA-73242	41227	737-8LJ	Abu Dhabi, UAE/Moscow, RU	November 26, 2023.
RA-73242	41227	737-8LJ	Istanbul, TR/Moscow, RU	November 15, 2023.
RA-73242	41227	737-8LJ	Gyumri, AM/Moscow, RU	November 6, 2023.
RA-73248	41238	737-8LJ	Abu Dhabi, AE/Moscow, RU	December 4, 2023.
RA-73248	41238	737-8LJ	Yekaterinburg, RU/Moscow, RU	December 4, 2023.
RA-73248	41238	737-8LJ	Istanbul, TR/Moscow, RU	November 27, 2023.
RA-73248	41238	737-8LJ	Samarkand, UZ/Moscow, RU	November 7, 2023.
RA-73248	41238	737-8LJ	Dubai, AE/Moscow, RU	November 2, 2023.
RA-73250	41242	737-8LJ	Istanbul, TR/Makhachkala, RU	December 4, 2023.
RA-73250	41242	737-8LJ	Dubai, AE/Makhachkala, RU	December 3, 2023.
RA-73250	41242	737-8LJ	Chelyabinsk, RU/Moscow, RU	December 2, 2023.
RA-73250	41242	737-8LJ	Gazipasa, TR/Moscow, RU	November 10, 2023.
RA-73250	41242	737-8LJ	Samarkand, UZ/Moscow, RU	November 8, 2023.

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS demonstrates that Pobeda has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because Pobeda has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Pobeda, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, Pobeda Airlines, 108811, Russian Federation, Moscow, p. Moskovskiy, Kievskoe shosse, 22nd km, 4/1. Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any

way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

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

A. Export, reexport, or transfer (in-country) to or on behalf of Pobeda any

item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Pobeda of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Pobeda acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Pobeda of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from Pobeda in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Pobeda, or service any item, of whatever origin,

that is owned, possessed or controlled by Pobeda if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Pobeda by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, Pobeda may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Pobeda as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Pobeda and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for one year.

Matthew S. Axelrod,
Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–27474 Filed 12–13–23; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–887]

Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: 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 POSCO and its affiliated companies (collectively, the POSCO single entity), the sole exporter subject to this review, did not make sales of subject merchandise in the United States at less than normal value during the period of review (POR), May 1, 2021, through April 30, 2022.

DATES: Applicable December 14, 2023.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or William Horn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–4868, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 2023, Commerce published the preliminary results of the administrative review of the antidumping duty order on carbon and alloy steel cut-to-length plate from the Republic of Korea.¹ We invited interested parties to comment on the *Preliminary Results*. For a complete description of the events that occurred subsequent to the *Preliminary Results*, see the Issues and Decision Memorandum.²

Scope of the Order³

The merchandise subject to the *Order* is carbon and alloy steel cut-to-length plate. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

¹ See *Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022*, 88 FR 40207 (June 21, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, “Issues and Decision Memorandum for the Final Results in the 2021–2022 Antidumping Duty Administrative Review of Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

³ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders*, 82 FR 24096 (May 25, 2017) (*Order*).

The products subject to the *Order* may also enter under the following HTSUS subheadings: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7206.11.1000, 7226.11.9060, 7229.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the *Order* is dispositive. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.

Analysis of Comments Received

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

Changes Since the Preliminary Results

Based on the comments received from the POSCO single entity and record information, we made certain changes to our preliminary calculation of the weighted-average dumping margin for the POSCO single entity. For a discussion of these changes, see the Issues and Decision Memorandum.

Final Results of Review

As a result of this review, we determine the following estimated weighted-average dumping margin exists for the period May 1, 2021, through April 30, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
POSCO single entity ⁴ .	0.00 (<i>de minimis</i>).

Disclosure

Commerce intends to disclose the calculations for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(b).

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). 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).

Where the respondent's weighted-average dumping margin is either zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.⁵ Accordingly, because the final weighted-average dumping margin for POSCO in this review is zero percent, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Consistent with Commerce's clarification of its assessment practice, for entries of subject merchandise during the POR produced by the POSCO single entity for which it did not know the merchandise was destined for the United States, 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.⁶

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the POSCO single entity will be equal to the weighted-average dumping margin established in the final results of this administrative review (*i.e.*, 0.00 percent); (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 7.10 percent *ad valorem*, the all-others rate established in the LTFV investigation.⁷

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative

protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 7, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. The POSCO Single Entity
- V. Changes Since the *Preliminary Results*
- VI. Discussion of the Issues
 - Comment 1: Whether Commerce Erroneously Applied the General and Administrative (G&A) and Financial (INTEX) Expense Ratios for the Affiliated Service Centers' Resales
 - Comment 2: Whether Commerce Incorrectly Omitted POSCO's Sales to Affiliated Customers Prior to Conducting the Arm's-Length Test
 - Comment 3: Correction of a Clerical Error
- VII. Recommendation

[FR Doc. 2023-27438 Filed 12-13-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-508-814]

Brass Rod From Israel: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that brass rod from Israel is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2022, through March

⁴ Commerce continues to find that POSCO, POSCO International Corporation, POSCO MS, and certain distributors and service centers (*i.e.*, Taechang Steel Co., Ltd. and Winsteel Co., Ltd.) are affiliated pursuant to section 771(33)(E) of the Act, and further that these companies should be treated as a single entity (collectively, the POSCO single entity) pursuant to 19 CFR 351.401(f). See *Preliminary Results PDM* at 1.

⁵ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101, 8102 (February 14, 2012).

⁶ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

⁷ See *Order*, 82 FR at 24098.

31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 14, 2023.

FOR FURTHER INFORMATION CONTACT: Andrew Hart, 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) 482-1058.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on May 24, 2023.¹ On September 8, 2023, Commerce postponed the preliminary determination of this investigation until November 24, 2023.² On November 24, 2023, Commerce extended the deadline for issuing the preliminary determination by 14 days until December 7, 2023.³

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁴ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly

at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The product covered by this investigation is brass rod from Israel. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,⁵ in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation and accompanying discussion and analysis of all comments timely received, see the Preliminary Scope Decision Memorandum.⁷ As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily modified, in one respect, the scope language as it appeared in the *Initiation Notice*. See the revised scope in Appendix I to this notice.

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.⁸ Commerce intends to issue a final scope decision with the final determination in the concurrent countervailing duty (CVD) investigation of brass rod from India, currently due on December 11, 2023.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated

constructed export prices in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, see the Preliminary Decision Memorandum.

All-Others Rate

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

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

Preliminary Determination

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

Exporter/producer	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Finkelstein Metals Ltd	35.88	Not Applicable.
All Others	35.88	Not Applicable.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject

merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping

¹ See *Brass Rod from Brazil, India, Israel, Mexico, the Republic of Korea, and South Africa: Initiation of Less-Than-Fair-Value Investigations*, 88 FR 33575 (May 24, 2023) (*Initiation Notice*).

² See *Brass Rod from Brazil, India, Israel, Mexico, the Republic of Korea, and South Africa: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 88 FR 62054 (September 8, 2023).

³ See Memorandum, "Tolling of Deadlines," dated November 24, 2023.

⁴ See Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Brass Rod from Israel" dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁶ See *Initiation Notice*, 88 FR at 33576.

⁷ See Memorandum, "Less-Than-Fair-Value Investigations of Brass Rod from Brazil, India, Israel, Mexico, the Republic of Korea, and South

Africa and Countervailing Duty Investigations of Brass Rod from India, Israel, and the Republic of Korea: Preliminary Scope Decision Memorandum," dated September 25, 2023 (Preliminary Scope Decision Memorandum).

⁸ Case briefs, other written comments, and rebuttal briefs submitted by parties in response to this preliminary LTFV determination should not include scope-related issues. See Preliminary Scope Decision Memorandum; and "Public Comment" section of this notice, *infra*.

margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate may be found in the Preliminary Determination section above. Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

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

Verification

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

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in

this investigation.⁹ A timeline for the submission of case briefs and written comments will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁰ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹¹

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹² Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹³

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

Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.¹⁴

On October 6, 2023, pursuant to 19 CFR 351.210(e), Finkelstein requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹⁵ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months.¹⁶ In addition, Commerce is tolling all deadlines for this investigation for a period of 90 days.¹⁷

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this

⁹ See 19 CFR 351.309(c)(1)(i); see also 19 CFR 351.303 (for general filing requirements).

¹⁰ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023).

¹¹ See 19 CFR 351.309(c)(2) and (d)(2).

¹² We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹³ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

¹⁴ See 19 CFR 351.210(e)(2).

¹⁵ See Finkelstein's Letter, "Request for Postponement of Final Determination and Provisional Measures Period," dated October 6, 2023.

¹⁶ See 19 CFR 351.210(e)(2).

¹⁷ See Memorandum, "Tolling of All Deadlines," dated concurrently with this notice.

preliminary determination or 45 days after the final determination whether these imports of brass rod from Israel are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

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

Dated: December 7, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are brass rod and bar (brass rod), which is defined as leaded, low-lead, and no-lead solid brass made from alloys such as, but not limited to the following alloys classified under the Unified Numbering System (UNS) as C27450, C27451, C27460, C34500, C35000, C35300, C35330, C36000, C36300, C37000, C37700, C48500, C67300, C67600, and C69300, and their international equivalents.

The brass rod subject to this investigation has an actual cross-section or outside diameter greater than 0.25 inches but less than or equal to 12 inches. Brass rod cross-sections may be round, hexagonal, square, or octagonal shapes as well as special profiles (e.g., angles, shapes), including hollow profiles.

Standard leaded brass rod covered by the scope contains, by weight, 57.0–65.0 percent copper; 0.5–3.0 percent lead; no more than 1.3 percent iron; and at least 15 percent zinc. No-lead or low-lead brass rod covered by the scope contains by weight 59.0–76.0 percent copper; 0–1.5 percent lead; no more than 0.35 percent iron; and at least 15 percent zinc. Brass rod may also include other chemical elements (e.g., nickel, phosphorous, silicon, tin, etc.).

Brass rod may be in straight lengths or coils. Brass rod covered by this investigation may be finished or unfinished, and may or may not be heated, extruded, pickled, or cold-drawn. Brass rod may be produced in accordance with ASTM B16, ASTM B124, ASTM B981, ASTM B371, ASTM B453, ASTM B21, ASTM B138, and ASTM B927, but such conformity to an ASTM standard is not required for the merchandise to be included within the scope.

Excluded from the scope of this investigation is brass ingot, which is a casting of unwrought metal unsuitable for conversion into brass rod without remelting, that contains, by weight, at least 57.0 percent copper and 15.0 percent zinc.

The merchandise covered by this investigation is currently classifiable under subheadings 7407.21.9000, 7407.21.7000, and 7407.21.1500 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the scope may also enter under HTSUS subheadings 7403.21.0000, 7407.21.3000, and 7407.21.5000. The HTSUS subheadings and UNS alloy designations are provided for convenience and customs

purposes. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of the Investigation
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

[FR Doc. 2023–27439 Filed 12–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Stanford University et al.; Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). On November 1, 2023, the Department of Commerce published a notice in the **Federal Register** requesting public comment on whether instruments of equivalent scientific value, for the purposes for which the instruments identified in the docket(s) below are intended to be used, are being manufactured in the United States. *See Application(s) for Duty-Free Entry of Scientific Instruments, 88FR74977, November 1, 2023. (Notice).* We received no public comments.

Docket Number: 23–014. Applicant: Stanford University, Department of Neurosurgery, Ivan Soltesz Laboratory, 1201 Welch Road, Stanford, CA 94305. Instrument: 50 mW Fiber-coupled DPSS 473nm blue lasers (x5). Manufacturer: Shanghai Laser & Optics Century Co., Ltd., China. Intended Use: The instrument will be used to control the activity of neuronal populations in the brain of mice in order to study how altering the activity of specific neurons can lead to changes in mouse behavior and/or the emergence of pathological activity in the brain. Specifically, mice will be genetically induced to express particular optogenetic receptors in neuronal populations in the brain. These lasers will be used to deliver light into the brain via implanted fiberoptic cannula. The receptors, when activated by light, cause an increase in the activity of the neurons in which they are expressed. Lasers will be controlled through an external controller in order to only turn on in response to specific behaviors detected in the mouse. The

goal of these studies is to identify specific populations of neurons responsible for the emergence of various behaviors and brain states. These insights will enable the identification of neuronal targets for future therapeutic intervention to treat various neurological disorders.

Docket Number: 23–015. Applicant: University of Connecticut, 3107 Horsebarn Hill Road, Unit 4210, Storrs, CT 06269. Instrument: Swim Tunnel Respirometry Systems and Vertical Resting Respirometry Systems. Manufacturer: Loligo Systems, Denmark. Intended Use: The instrument Respirometry refers to the study of an organism's metabolic rates. For this research, water bath respirometry systems will be used to measure how the metabolic rates of small-bodied fish and bivalves (oysters, mussels, clams, etc.) are influenced by the different environmental conditions including temperature change and the presence of chemical stressors such as contaminants. This scientific equipment order involvestwo complete swim tunnel respirometry systems (1500 mL chamber size for small-bodied fish species) and four vertical respirometry chambers (bivalve species) which allow for the measure of an organism's metabolic rate by measuring oxygen consumption over time. This research falls under the broader scientific area of study known as organismal bioenergetics. The order is broken down into component parts (for example, chambers, pumps, tubing, temperature controls) which together comprise the complete respirometry systems.

Dated: December 11, 2023.

Gregory W. Campbell,

Director, Subsidies and Economic Analysts, Enforcement and Compliance.

[FR Doc. 2023–27482 Filed 12–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–812]

Certain Carbon and Alloy Steel Cut-to-Length Plate From Belgium: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Industeel Belgium S.A. (Industeel) made

sales of subject merchandise at less than normal value during the period of review (POR), May 1, 2021, through April 30, 2022.

DATES: Applicable December 14, 2023.

FOR FURTHER INFORMATION CONTACT: Steven Seifert or Jerry Xiao, 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) 482–3350 and (202) 482–2273, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 2023, Commerce published in the **Federal Register** the preliminary results of the 2021–2022 administrative review ¹ of the antidumping duty order on certain carbon and alloy steel cut-to-length plate from Belgium.² In July 2023, we received a case brief from Nucor Corporation (the petitioner) and a rebuttal brief from Industeel.³ On September 26, 2023, we extended the deadline for the final results until December 12, 2023.⁴ For a description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.⁵ Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the *Order* are certain carbon and alloy steel plate from Belgium. A complete description of the merchandise subject to the *Order* is contained in the Issues and Decision Memorandum.

¹ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022*, 88 FR 39229 (June 15, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders*, 82 FR 24096 (May 25, 2017) (*Order*).

³ See Petitioner’s Letter, “Nucor’s Case Brief and Hearing Request,” dated July 17, 2023; see also Industeel’s Letter, “Industeel’s Rebuttal Brief,” dated July 27, 2023.

⁴ See Memorandum, “Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated September 26, 2023.

⁵ See Memorandum, “Issues and Decision Memorandum for the Final Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this administrative review are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding the *Preliminary Results*, and for the reasons explained in the Issues and Decision Memorandum, we made certain changes to the preliminary weighted-average margin calculation for Industeel for the final results or review.⁶

Final Determination of No Shipments

In the *Preliminary Results*, we found that NLMK Belgium did not have shipments of subject merchandise during the POR.⁷ No party comments on this preliminary finding. Therefore, for the final results of this review, we continue to find that NLMK Belgium did not have any shipments of subject merchandise during the POR.⁸

Final Results of Review

As a result of this review, we determine that the following weighted-average dumping margin exists for the period May 1, 2021, through April 30, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Industeel Belgium S.A	2.65

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results of review to

⁶ See Issues and Decision Memorandum.

⁷ See *Preliminary Results*, 88 FR 39229 and PDM at the section titled, “Preliminary Determination of No Shipments.” NLMK Belgium is comprised of: NLMK Clabecq S.A.; NLMK Plate Sales S.A.; NLMK Sales Europe S.A.; NLMK Manage Steel Center S.A.; and NLMK La Louviere S.A.

⁸ See Issues and Decision Memorandum at the section titled, “Final Determination of No Shipments.”

parties within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce will determine, 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), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales. 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.

For entries of subject merchandise during the POR produced by Industeel for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation of 5.40 percent *ad valorem*,⁹ if there is no rate for the intermediate company(ies) involved in the transaction.

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

Upon publication of this notice in the **Federal Register**, the following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Industeel will be will be equal to the

⁹ See *Order*.

weighted-average dumping margin established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.40 percent, the all-others rate established in the LTFV investigation for this proceeding.¹⁰ These cash 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 an 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 violation subject to sanction.

Notification to Interested Parties

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

Dated: December 8, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Final Determination of No Shipments
- V. Changes Since the Preliminary Results
- VI. Discussion of the Issues
 - Comment 1: Adjustment to Cost of Manufacturing (COM)
 - Comment 2: Adjustments under the Major Input Rule
 - Comment 3: Selection of the Correct Universe of Sales for Industeel for the POR and Calculation of Home Market Commissions
- VII. Recommendation

[FR Doc. 2023-27493 Filed 12-13-23; 8:45 am]

BILLING CODE 3510-DS-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before January 16, 2024.

ADDRESSES: Written comments regarding the burden estimated or any other aspect of the information collection should be submitted within 30 days of this notice's publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the website's search function. Comments can be entered electronically by clicking on the "comment" button next to the information collection on the "OIRA Information Collections Under Review" page, or the "View ICR—Agency Submission" page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting

<https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the "Commission" or "CFTC") by clicking on the "Submit Comment" box next to the descriptive entry for OMB Control No. 3038-0093, at <https://comments.cftc.gov/FederalRegister/PublicInfo.aspx>.

Or by either of the following methods:

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the Commission's regulations.¹ The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

Maura Dundon, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, 202-418-5286, email: mdundon@cftc.gov.

SUPPLEMENTARY INFORMATION:

Title: Part 40, Provisions Common To Registered Entities (OMB Control No. 3038-0093). This is a request for extension of a currently approved information collection.

Abstract: This collection of information involves the collection and

¹⁰ See Order.

¹ 17 CFR 145.9.

submission to the Commission of information from registered entities concerning new products, rules, and rule amendments pursuant to the procedures outlined in §§ 40.2, 40.3, 40.5, 40.6, and 40.10 found in 17 CFR part 40. Part 40 of the Commission's regulations implements section 5c(c) of the CEA and sets forth provisions that are common to registered entities, including designated contract markets ("DCMs"), derivatives clearing organizations ("DCOs"), swap execution facilities ("SEFs") and swap data repositories ("SDRs"). Part 40 establishes requirements and procedures for registered entities to submit information about their rules and products to the Commission prior to implementing rules, listing products for trading, or accepting products for clearing. Part 40 generally provides two means for registered entities to submit rules and products to the Commission. Typically, a registered entity elects to certify that their product (§ 40.2) or rule (§ 40.6) complies with the CEA and the Commission regulations. This process is known as self-certification. Alternatively, a registered entity may seek Commission approval of the product (§ 40.3) or rule (§ 40.5).² The regulations also include special certification provisions (§ 40.10) for certain rules submitted by systemically important DCOs ("SIDCOs").

On October 3, 2023, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 88 FR 68112 ("60-Day Notice"). The Commission did not receive any relevant comments on the 60-Day Notice that addressed its PRA burden estimates.

Respondents/Affected Entities: Designated Contract Markets, Swap Execution Facilities, Derivatives Clearing Organizations, and Swap Data Repositories.

Burden Statement: OMB Control Number 3038-0093 reflects the information collection burden under Commission regulations associated with product filings (§§ 40.2 and 40.3); rule filings (§§ 40.5 and 40.6); and SIDCO filings (§ 40.10). As part of this renewal, the Commission has updated its burden estimates to reflect current filing volumes and burden hours.

² Commission regulations may expressly or impliedly trigger the requirement for a registered entity to make a submission pursuant to part 40. For example, the Commission's part 150 regulation on position limits contains an express requirement to make a § 40.5 rule filing in certain circumstances. See 17 CFR 150.9(a).

Provisions Common to Regulated Entities IC

The Commission estimates the average burden of the Provisions Common to Regulated Entities IC as follows:

• Product Submissions (§ 40.2 and 40.3)

Estimated Number of Respondents: 70.³

Annual Responses by Each Respondent: 12.⁴

Estimated Hours per Response: 21.⁵

Estimated Total Hours per Year: 17,640.

• Rule Submissions (§§ 40.5 and 40.6)

Estimated Number of Respondents: 70.⁶

Annual Responses by Each Respondent: 20.⁷

Estimated Hours per Response: 2.

Estimated Total Hours per Year: 2,800.

• SIDCO Submissions (§ 40.10)

Estimated Number of Respondents: 2.

Annual Responses by each Respondent: 1.⁸

Estimated Hours per Response: 50.

Estimated Total Hours per Year: 100.

There are no capital costs or operating and maintenance costs associated with this collection.

³ The estimated number of 70 respondents includes 16 active DCMs, 23 registered SEFs, 15 registered DCOs, 5 provisionally registered SDRs, plus pending applications for those entities.

⁴ The 3-year average of total responses for §§ 40.2 and 40.3 submissions combined was 848 responses, calculated by taking the annual total submissions received under §§ 40.2 and 40.3 combined from all entities and averaging them for the years of 2020, 2021 and 2022. The estimated number of reports per respondent is calculated as 848 responses/70 respondents = 12 responses per respondent).

⁵ The 21-hour estimate for product submissions reflects industry comments received in 2018. See 83 FR 43855, 43856 (Aug. 28, 2018); Supporting Statement at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201808-3038-003.

⁶ See *supra* n.3.

⁷ The 3-year average of total responses for §§ 40.5 and 40.6 submissions combined was 1,412 responses, calculated by taking the annual total submissions received under §§ 40.5 and 40.6 combined from all entities and averaging them for the years of 2020, 2021 and 2022. The estimated number of reports per respondent is calculated as 1,412 responses/70 respondents = 20 responses per respondent).

⁸ The 3-year average of total responses for § 40.10 submissions was 2, calculated by taking the annual total submissions received under § 40.10 from all SIDCOs and averaging them for the years of 2020, 2021 and 2022. The average number of reports per respondent is 1, calculated as 2 responses divided by 2 respondents (2 responses/2 respondents = 1 response per respondent).

(Authority: 44 U.S.C. 3501 *et seq.*)

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023-27490 Filed 12-13-23; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0208]

Agency Information Collection Activities; Comment Request; Revised Second Chance Pell Experiment and Prison Education Program (PEP) Data Collection

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 12, 2024.

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-0208. 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 Beth Grebeldinger, 202-377-4018.

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: Revised Second Chance Pell Experiment and Prison Education Program (PEP) Data Collection.

OMB Control Number: 1845–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: Private sector; State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 675.

Total Estimated Number of Annual Burden Hours: 6,750.

Abstract: This is a request for a new information collection to collect programmatic and student information from participating institutions. This collection will cover the required statutory reporting for both the revised Second Chance Pell experiment and Prison Education Programs (PEPs) for confined or incarcerated individuals. Since schools participating in the Second Chance Pell experiment have three years to transition their programs under the experiment to comply with the PEP requirements, the data collected for the experiment and the PEP provisions is almost identical. The only difference is the specific information collected from institutions participating in the Second Chance Pell to provide a status of their progress in converting their current programs under the experiment to be in compliance with the PEP provisions.

Dated: December 11, 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. 2023–27491 Filed 12–13–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0210]

Agency Information Collection Activities; Comment Request; Foreign Institution Reporting Requirements Under the CARES Act

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 12, 2024.

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–0210. 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 www.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 Beth Grebeldinger, 202–377–4018.

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: Foreign Institution Reporting Requirements under the CARES Act.

OMB Control Number: 1845–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: State, local, and Tribal governments; private sector.

Total Estimated Number of Annual Responses: 104.

Total Estimated Number of Annual Burden Hours: 52.

Abstract: The Department of Education (the Department) is requesting a new information collection, 1845–NEW, Foreign Institution Reporting Requirements under the CARES Act, be made available for full clearance with public comment. Section 3510(a) of the CARES Act, Public Law 116–136 (March 27, 2020), authorized the Secretary of Education (Secretary) to permit a foreign institution, in the case of a public health emergency, major disaster or emergency, or national emergency declared by the applicable government authorities in the country in which the foreign institution is located, to provide any part of an otherwise eligible program to be offered via distance education for the duration of such emergency or disaster and the following payment period for purposes of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*). Additionally, under section 3510(d) of

the CARES Act, the Secretary may allow a foreign institution to enter into a written arrangement with an institution of higher education located in the United States that participates in the Federal Direct Loan Program under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a *et seq.*) for the purpose of allowing a student of the foreign institution who is a borrower of a loan made under such part to take courses from the institution of higher education located in the United States. The CARES Act requires foreign institutions that use either type of authority described above to report such use to the Secretary. Institutions are required to report use of either distance education or written arrangements to the Department no later than 30 days after it begins offering coursework online to Direct Loan recipients. The Department must also collect specific information from a school that requests a waiver in order to determine if the school is eligible to receive the waiver. On May 12, 2020, Federal Student Aid, an Office of the Department, notified foreign institutions of the new authority and requested that any foreign institution who wished to utilize this new authority to respond with information specified in the email. This information collection was discontinued following the discontinuation of the national COVID-19 emergency status. However, due to other global situations we are now requesting a new collection to allow for the on-going use of the CARES Act waiver.

Dated: December 11, 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. 2023-27484 Filed 12-13-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23-64-000.

Applicants: Rocky Mountain Natural Gas LLC.

Description: Report Filing: RMNG Supplemental SOC Filing to be effective N/A.

Filed Date: 12/7/23.

Accession Number: 20231207-5061.

Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: RP24-229-000.

Applicants: East Tennessee Natural Gas, LLC.

Description: 4(d) Rate Filing: Dec 2023 Terminated Agreements Cleanup to be effective 1/7/2024.

Filed Date: 12/7/23.

Accession Number: 20231207-5000.

Comment Date: 5 p.m. ET 12/19/23.

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.

Filings in Existing Proceedings

Docket Numbers: RP24-213-001.

Applicants: MountainWest Pipeline, LLC.

Description: Tariff Amendment: Revised FGRP Report for 2024 to be effective 1/1/2024.

Filed Date: 12/7/23.

Accession Number: 20231207-5143.

Comment Date: 5 p.m. ET 12/19/23.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.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.

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: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-27388 Filed 12-13-23; 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: EG24-54-000.

Applicants: MS Solar 5, LLC.

Description: MS Solar 5, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/8/23.

Accession Number: 20231208-5156.

Comment Date: 5 p.m. ET 12/29/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24-597-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revised Service Agreement No. 6258 re: NITSA among PJM and Wabash Valley to be effective 11/16/2023.

Filed Date: 12/7/23.

Accession Number: 20231207-5199.

Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: ER24-598-000.

Applicants: McFarland Solar A, LLC.

Description: § 205(d) Rate Filing: McFarland Solar A, LLC LGIA Co-Tenancy Agreement to be effective 12/8/2023.

Filed Date: 12/7/23.

Accession Number: 20231207-5204.

Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: ER24-599-000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Transmission Access Charge Balancing Account Adjustment (TACBAA) 2024 to be effective 3/1/2024.

Filed Date: 12/7/23.

Accession Number: 20231207-5213.

Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: ER24-600-000.

Applicants: Baldy Mesa Solar, LLC.

Description: § 205(d) Rate Filing: Baldy Mesa Solar, LLC Shared Facilities Agreement to be effective 12/8/2023.

Filed Date: 12/7/23.

Accession Number: 20231207-5221.

Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: ER24-601-000.

Applicants: Baldy Mesa Solar, LLC.

Description: § 205(d) Rate Filing: Baldy Mesa Solar, LLC LGIA Co-

Tenancy Agreement to be effective 12/9/2023.

Filed Date: 12/8/23.

Accession Number: 20231208–5001.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–602–000.

Applicants: Ohio Power Company.

Description: § 205(d) Rate Filing: Ohio Power Company Category Status Change to be effective 12/9/2023.

Filed Date: 12/8/23.

Accession Number: 20231208–5048.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–603–000.

Applicants: Southern California Edison Company.

Description: Tariff Amendment: Termination of eTariff Record, Solar Star 4 LGIA—TOT821/SA No. 236 to be effective 2/7/2024.

Filed Date: 12/8/23.

Accession Number: 20231208–5076.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–604–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, Service Agreement No. 5751; Queue No. AF2–087 to be effective 2/7/2024.

Filed Date: 12/8/23.

Accession Number: 20231208–5077.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–605–000.

Applicants: Southern California Edison Company.

Description: Tariff Amendment: Termination of eTariff Record, Solar Star 3 LGIA—TOT795/SA No. 235 to be effective 2/7/2024.

Filed Date: 12/8/23.

Accession Number: 20231208–5078.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–606–000.

Applicants: McFarland Solar B, LLC.

Description: § 205(d) Rate Filing: McFarland Solar B, LLC LGIA Co-Tenancy Agreement to be effective 12/9/2023.

Filed Date: 12/8/23.

Accession Number: 20231208–5127.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–607–000.

Applicants: Silver Peak Energy, LLC.

Description: § 205(d) Rate Filing: Silver Peak Energy, LLC SFA Concurrence to be effective 12/9/2023.

Filed Date: 12/8/23.

Accession Number: 20231208–5132.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–608–000.

Applicants: Silver Peak Energy, LLC.

Description: § 205(d) Rate Filing: Silver Peak Energy, LLC LGIA Co-Tenancy Agreement to be effective 12/9/2023.

Filed Date: 12/8/23.

Accession Number: 20231208–5140.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–609–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 5545; Queue No. AE2–125 to be effective 2/7/2024.

Filed Date: 12/8/23.

Accession Number: 20231208–5141.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–610–000.

Applicants: Soldier Creek Wind, LLC.

Description: § 205(d) Rate Filing: Soldier Creek Wind, LLC Interim Shared Facilities Agreement to be effective 12/9/2023.

Filed Date: 12/8/23.

Accession Number: 20231208–5148.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–611–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ISA & CSA, SA Nos. 5231 & 5232; Queue #AC1–048/AC2–053 to be effective 11/22/2023.

Filed Date: 12/8/23.

Accession Number: 20231208–5150.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–612–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 6597; Queue No. AF2–294 (amend) to be effective 2/7/2024.

Filed Date: 12/8/23.

Accession Number: 20231208–5161.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–613–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ISA, Service Agreement No. 5360; Queue No. Z1–116 to be effective 2/7/2024.

Filed Date: 12/8/23.

Accession Number: 20231208–5168.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: ER24–614–000.

Applicants: Public Service Company of New Mexico.

Description: Compliance filing: PNM Refund Report to be effective N/A.

Filed Date: 12/8/23.

Accession Number: 20231208–5187.

Comment Date: 5 p.m. ET 12/29/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.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: December 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–27486 Filed 12–13–23; 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 Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–35–000.

Applicants: Grain Belt Express LLC v. Midcontinent Independent System Operator, Inc.

Description: Complaint of Grain Belt Express LLC v. Midcontinent Independent System Operator, Inc.

Filed Date: 12/6/23.

Accession Number: 20231206–5195.

Comment Date: 5 p.m. ET 1/15/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–682–006.

Applicants: Duke Energy Progress, LLC.

Description: Compliance filing: DEP—Compliance Filing to Establish Effective Date to be effective 1/1/2023.

Filed Date: 12/7/23.

Accession Number: 20231207–5147.
Comment Date: 5 p.m. ET 12/28/23.
Docket Numbers: ER23–2799–001.
Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Response to Commission's 11/7/23 Deficiency Letter in ER23–2799 to be effective 8/10/2023.

Filed Date: 12/7/23.

Accession Number: 20231207–5177.
Comment Date: 5 p.m. ET 12/28/23.
Docket Numbers: ER23–2812–001.
Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Submission of Response to Deficiency Letter, Original ISA, SA No. 7065 to be effective 12/31/9998.

Filed Date: 12/7/23.

Accession Number: 20231207–5128.
Comment Date: 5 p.m. ET 12/28/23.
Docket Numbers: ER24–577–000.
Applicants: Puckett Solar, LLC.

Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 12/7/2023.

Filed Date: 12/6/23.

Accession Number: 20231206–5160.
Comment Date: 5 p.m. ET 12/27/23.
Docket Numbers: ER24–578–000.
Applicants: Regan Solar, LLC.

Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 12/7/2023.

Filed Date: 12/6/23.

Accession Number: 20231206–5161.
Comment Date: 5 p.m. ET 12/27/23.
Docket Numbers: ER24–579–000.
Applicants: Solar Star Lost Hills, LLC.

Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 12/7/2023.

Filed Date: 12/6/23.

Accession Number: 20231206–5162.
Comment Date: 5 p.m. ET 12/27/23.
Docket Numbers: ER24–580–000.
Applicants: Toms River Merchant Solar, LLC.

Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 12/7/2023.

Filed Date: 12/6/23.

Accession Number: 20231206–5166.
Comment Date: 5 p.m. ET 12/27/23.
Docket Numbers: ER24–581–000.
Applicants: Toms River Net Meter Solar, LLC.

Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 12/7/2023.

Filed Date: 12/6/23.

Accession Number: 20231206–5169.
Comment Date: 5 p.m. ET 12/27/23.
Docket Numbers: ER24–582–000.
Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Amendment to 4 Service Agreements re: FirstEnergy Reorganization to be effective 12/31/9998.

Filed Date: 12/6/23.

Accession Number: 20231206–5174.
Comment Date: 5 p.m. ET 12/27/23.
Docket Numbers: ER24–583–000.
Applicants: Midcontinent

Independent System Operator, Inc.
Description: 205(d) Rate Filing: 2023–12–07_SA 3374 Entergy Louisiana-Amite Solar 1st Rev GIA (J909) to be effective 11/30/2023.

Filed Date: 12/7/23.

Accession Number: 20231207–5067.
Comment Date: 5 p.m. ET 12/28/23.
Docket Numbers: ER24–584–000.
Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 362 to be effective 11/7/2023.

Filed Date: 12/7/23.

Accession Number: 20231207–5076.
Comment Date: 5 p.m. ET 12/28/23.
Docket Numbers: ER24–585–000.
Applicants: MidAmerican Energy Company.

Description: 205(d) Rate Filing: IA between CIPC and MidAm for Mockingbird to be effective 12/8/2023.

Filed Date: 12/7/23.

Accession Number: 20231207–5094.
Comment Date: 5 p.m. ET 12/28/23.
Docket Numbers: ER24–586–000.
Applicants: Southern California Edison Company.

Description: Tariff Amendment: Terminate eTariff Record, Pajuela Peak Wind Park GIA—WDT1097TOC/SA No. 638 to be effective 2/6/2024.

Filed Date: 12/7/23.

Accession Number: 20231207–5095.
Comment Date: 5 p.m. ET 12/28/23.
Docket Numbers: ER24–587–000.
Applicants: Midcontinent

Independent System Operator, Inc., Ameren Illinois Company.

Description: 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023–12–07_SA 2686 2nd Amended Ameren-SIPC WCA to be effective 2/24/2024.

Filed Date: 12/7/23.

Accession Number: 20231207–5139.
Comment Date: 5 p.m. ET 12/28/23.
Docket Numbers: ER24–588–000.
Applicants: PacifiCorp.

Description: 205(d) Rate Filing: Cheyenne Light, Fuel and Power Co. Engineering & Procurement Agreement to be effective 12/8/2023.

Filed Date: 12/7/23.

Accession Number: 20231207–5140.
Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: ER24–589–000.
Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original NSA, Service Agreement No. 7138; Queue No. AE1–109 to be effective 2/6/2024.

Filed Date: 12/7/23.

Accession Number: 20231207–5142.
Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: ER24–590–000.
Applicants: Elgin Energy Center, LLC
Description: Tariff Amendment: Notice of Cancellation—MBR Tariff to be effective 12/7/2023.

Filed Date: 12/7/23.

Accession Number: 20231207–5154.
Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: ER24–591–000.
Applicants: Elgin Energy Center, LLC.
Description: Tariff Amendment: Notice of Cancellation—Reactive Tariff to be effective 12/7/2023.

Filed Date: 12/7/23.

Accession Number: 20231207–5158.
Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: ER24–592–000.
Applicants: Rocky Road Power, LLC.
Description: Tariff Amendment: Notice of Cancellation to be effective 12/7/2023.

Filed Date: 12/7/23.

Accession Number: 20231207–5161.
Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: ER24–593–000.
Applicants: San Diego Gas & Electric Company.

Description: 205(d) Rate Filing: 2024 RS Filing to be effective 1/1/2024.

Filed Date: 12/7/23.

Accession Number: 20231207–5168.
Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: ER24–594–000.
Applicants: Salka Cabazon Wind LLC.
Description: 205(d) Rate Filing: Notice of Succession to be effective 12/8/2023.

Filed Date: 12/7/23.

Accession Number: 20231207–5171.
Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: ER24–595–000.
Applicants: Southwestern Public Service Company.

Description: Tariff Amendment: 2023–12–07 Sagamore Gen-2016–123–124–125 E&P NOC to be effective 12/8/2023.

Filed Date: 12/7/23.

Accession Number: 20231207–5180.
Comment Date: 5 p.m. ET 12/28/23.

Docket Numbers: ER24–596–000.
Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Amendment to WMPA, SA No. 5981; Queue No. AG1–386 to be effective 2/6/2024.

Filed Date: 12/7/23.

Accession Number: 20231207–5191.
Comment Date: 5 p.m. ET 12/28/23.

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: December 7, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023–27389 Filed 12–13–23; 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 Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–230–000.

Applicants: MIGC LLC.

Description: § 4(d) Rate Filing: Interim Fuel Filing to be effective 1/7/2024.

Filed Date: 12/7/23.

Accession Number: 20231207–5209.

Comment Date: 5 p.m. ET 12/19/23.

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.

Filings in Existing Proceedings

Docket Numbers: PR23–64–001.

Applicants: Rocky Mountain Natural Gas LLC.

Description: § 284.123 Rate Filing: RMNG Amended SOC Filing to be effective 7/15/2023.

Filed Date: 12/8/23.

Accession Number: 20231208–5060.

Comment Date: 5 p.m. ET 12/29/23.

Docket Numbers: RP24–213–002.

Applicants: MountainWest Pipeline, LLC.

Description: Tariff Amendment: Amended 2024 FGRP Filing to be effective 1/1/2024.

Filed Date: 12/8/23.

Accession Number: 20231208–5000.

Comment Date: 5 p.m. ET 12/20/23.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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.

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: December 8, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–27488 Filed 12–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–564–000]

VESI 12 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 VESI 12 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 December 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

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: December 7, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-27390 Filed 12-13-23; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2023-0474; FRL-11384-02-OCSPP]

Endocrine Disruptor Screening Program (EDSP); Near-Term Strategies for Implementation; Notice of Availability and Request for Comment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: In the *Federal Register* of October 27, 2023, EPA announced the availability of and solicited comment on near-term strategies to help the Agency meet its obligations and commitments under the Federal Food, Drug, and Cosmetic Act (FFDCA), which requires, that EPA screen for and protect against endocrine disrupting effects in humans. This document extends the comment period, which was scheduled to end on December 26, 2023, for 60 days.

DATES: The comment period for the document published in the *Federal Register* of October 27, 2023, at 88 FR 73841 (FRL-11384-01-OCSPP) is

extended. Comments must be received on or before February 26, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2023-0474, through the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Catherine Aubee, Endocrine Disruptor Screening Program (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (202) 566-1030; email address: pesticidequestions@epa.gov.

SUPPLEMENTARY INFORMATION:

To give stakeholders additional time to review materials and prepare comments, EPA is hereby extending the comment period established in the *Federal Register* document of October 27, 2023, at 88 FR 73841 (FRL-11884-01-OCSPP) for 60 days, from December 26, 2023, to February 26, 2023. More information on the action can be found in the *Federal Register* of October 27, 2023.

To submit comments or access the docket, please follow the detailed instructions provided under **ADDRESSES**. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

(Authority: 7 U.S.C. 136 *et seq.* and 21 U.S.C. 346a)

Dated: December 6, 2023.

Michal Freedhoff,
Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023-27405 Filed 12-13-23; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 18-122; DA 23-1132; FR ID 190109]

Wireless Telecommunications Bureau Adopts Final Deadlines for Submission of C-Band Reimbursement Claims

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireless Telecommunications Bureau (WTB or Bureau) adopts two final reimbursement claims submission deadlines by which eligible incumbents and other eligible stakeholders are required to submit any outstanding transition-related claims to the C-band Relocation Payment Clearinghouse (RPC) for processing as part of the ongoing transition of the 3.7–4.2 GHz band (C-band). On October 13, 2023, the Bureau issued a Public Notice seeking comment on certain proposals advanced by the RPC, AT&T, Verizon, and SES relating to the conclusion of the C-band transition reimbursement program and wind down of the RPC's operations. After review of the record, WTB adopts: February 5, 2024, as the submission deadline to the RPC for all reimbursement claims for costs incurred and paid by claimants as of December 31, 2023, including all lump sum election claims by incumbent earth station operators; and July 1, 2024, as the submission deadline to the RPC for all reimbursement claims for costs incurred and paid by claimants after December 31, 2023.

DATES: Applicable December 5, 2023.

ADDRESSES: Federal Communications Commission, 45 L St NE, Washington, DC 20554.

People with Disabilities. To request materials in accessible formats (braille, large print, electronic files, audio format) for people with disabilities, send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Susan Mort of the Wireless Telecommunications Bureau, at (202) 418-2429 or Susan.Mort@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice, *Wireless Telecommunications Bureau Adopts Final Deadlines for Submission of C-Band Reimbursement Claims*, released on December 5, 2023. The full text of this document is available for public inspection online at <https://www.fcc.gov/document/wtb-adopts-c-band-claim-deadlines>.

1. With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) adopts two final reimbursement claims submission deadlines by which eligible incumbents and other eligible stakeholders are required to submit any outstanding transition-related claims to the C-band Relocation Payment Clearinghouse (RPC) for processing as part of the ongoing transition of the 3.7–4.2 GHz

band (C-band). On October 13, 2023, the Bureau issued a Public Notice seeking comment on certain proposals advanced by the RPC, AT&T, Verizon, and SES relating to the conclusion of the C-band transition reimbursement program and wind down of the RPC's operations. After review of the record, WTB adopts: (1) February 5, 2024, as the submission deadline to the RPC for all reimbursement claims for costs incurred and paid by claimants as of December 31, 2023, including all lump sum election claims by incumbent earth station operators; and (2) July 1, 2024, as the submission deadline to the RPC for all reimbursement claims for costs incurred and paid by claimants after December 31, 2023. WTB defers action on other proposals as detailed below.

2. For the small number of anticipated claims that may be incurred and/or paid after July 1, 2024, whether a one-time or recurring cost, to be considered for reimbursement, the claimant must submit the claim(s) for RPC review through its Coupa portal and pursuant to its procedures before the July 1, 2024 deadline with the best supporting documentation and information available at that time. The Bureau directs the RPC and relevant claimants to coordinate in advance of the submission of such claims and, as appropriate, on a process and timeline for submitting any additional documentation that the RPC may deem necessary to evaluate the eligibility of such claims and safeguard against fraud, waste, or abuse. The Bureau strongly cautions claimants that all reimbursement claims, including the submission of any anticipated claims that have not been incurred and paid prior to July 1, 2024, remain subject to the RPC's review and approval, consistent with its delineated responsibilities and the standards articulated in the *3.7 GHz Report and Order*, and that no inferences are intended nor should be taken about the eligibility of any claims for reimbursement as part of the C-band transition reimbursement program by virtue of their submission for RPC review. The Bureau also cautions claimants that the submission of anticipated claims in this manner should not be viewed or used as a means to circumvent the finality of the final claims submission deadlines. Anticipated claims submitted through these means should be as specific in nature as possible and not open-ended, and claimants must still demonstrate that such claims meet the eligibility criteria established by the Commission in the *3.7 GHz Report and Order* in

order to be reimbursed. That said, WTB believes that there is sufficient latitude as part of the normal discourse between the RPC and claimants in the claims review process, and as part of our appeals process, to allow for subsequently amended claims in appropriate circumstances where an initial claim was timely filed.

3. In addition, given that the RPC must complete its review of any such claims in the first instance, the Bureau believes that a waiver of sections 27.1415 or 27.1418(b)(2) of the Commission's rules, as suggested by Intelsat, is not necessary for any anticipated claims to be submitted to the RPC for review, nor would it be appropriate at this time as we decline to prejudge the merits of any individual future claims, particularly in the absence of any specific factual record on such claims before us at this juncture. To the extent that the relevant claimant and/or any 3.7 GHz Service Licensee(s) disagree with the RPC's initial determination on whether such claims are reimbursable, they may seek recourse from the RPC and the Bureau pursuant to our existing appeals procedures.

4. The Bureau reminds all C-band transition claimants and other eligible stakeholders must submit all reimbursement claims to the RPC, including for lump sum elections, by the relevant deadline as set forth above. So long as a reimbursement claim is submitted to the RPC through its Coupa portal and pursuant to its procedures and our above guidance by the relevant deadline, even if the RPC later finds upon review that additional information is needed from the claimant in order to process the claim, a claimant's submission of a claim through Coupa and pursuant to the RPC's procedures and our above guidance is sufficient to meet our deadline requirement. The Bureau directs the RPC to consider any claims which are not submitted in this manner by the relevant deadline as untimely, and the RPC need not process or reimburse such claims. To the extent there is any question about which claims submission deadline is the relevant one for any given reimbursement claim, the RPC will make the initial determination, subject to Bureau review on appeal pursuant to our established procedures.

5. In their *ex parte*, AT&T and Verizon requested that the Commission adopt certain deadlines to facilitate the conclusion of the C-band transition reimbursement process. The Bureau agrees that AT&T's and Verizon's proposals that the Commission specify when the RPC should issue a final

funding request, set a deadline for the RPC to process all claims, and set a deadline for the RPC to finish its program audit are premature and, accordingly, the Bureau declines to make a determination on these proposals at this time. The Bureau likewise defers action on either a general or specific deadline by which the RPC must process individual reimbursement claims.

6. While WTB does not believe that adoption of either a general or specific deadline for RPC processing is appropriate at this time, and could inadvertently delay the review process to the extent the Bureau was called to resolve any timing disputes, WTB directs the RPC to continue expeditiously processing both pending and future reimbursement claims upon receipt of all required information from claimants, while maintaining all necessary safeguards to prevent fraud, waste, and abuse. The RPC should prioritize the processing of any residual pending claims submitted prior to the release of this Public Notice with the goal of resolution by March 30, 2024, and strive to resolve any later submitted claims within 90 days from submission. By the same token, claimants are instructed to ensure that their claims are timely submitted to the RPC with all required documentation, and to promptly respond to the RPC's requests for supplemental information, which in most cases should be no later than 30 days from any such request. To the extent that the claimant is not responsive to the RPC's requests for supplemental information in a timely manner, the RPC may process related claims on the basis of the information previously submitted by such claimant.

7. Finally, WTB declines to require any specific process measures that may unnecessarily limit the RPC in its ability to initially review claims or its duty to prevent fraud, waste, or abuse. WTB also clarifies that nothing in this Public Notice is intended to limit the RPC's ability to perform any necessary tasks to either: (1) recoup appropriate costs for the benefit of the C-band transition reimbursement program and the 3.7 GHz Service Licensees, such as through the sale of unused satellites; (2) as appropriate, perform true-ups, offsets, or other accounting practices relating to previously reimbursed claims based upon subsequent developments; and (3) evaluate and reconcile the 2% cap on soft costs as the reimbursement program winds down. The Bureau will continue to oversee the RPC's progress with a view towards facilitating the timely conclusion of the C-band transition reimbursement program and wind down

of the RPC's operations, and encourage the RPC to tailor its operations over time as it continues to make progress in bringing this program to a successful resolution.

Federal Communications Commission.

Amy Brett,

Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2023-27244 Filed 12-13-23; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0594; 3060-0601; FR ID 190277]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before February 12, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of

time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0594.
Title: Cost of Service Filing for Regulated Cable Services, FCC Form 1220.

Form Number: FCC Form 1220.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local, or Tribal government.

Number of Respondents and Responses: 20 respondents; 10 responses.

Estimated Hours per Response: 4-80 hours.

Frequency of Response: On occasion and annual reporting requirements; third party disclosure requirement.

Total Annual Burden: 1,220 hours.

Total Annual Cost: \$100,000.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 154(i) and 623 of the Communications Act of 1934, as amended.

Needs and Uses: The Cable Television Consumer Protection and Competition Act of 1992 required the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services and associated equipment.

OMB Control Number: 3060-0601.
Title: Setting Maximum Initiated Permitted Rates for Regulated Cable Services, FCC Form 1200.

Form Number: FCC Form 1200.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local, or Tribal government.

Number of Respondents and Responses: 100 respondents; 50 responses.

Estimated Hours per Response: 2-10 hours.

Frequency of Response: One time and annual reporting requirements; third party disclosure requirement.

Total Annual Burden: 800 hours.

Total Annual Cost: \$62,500.

Obligation To Respond: Required to obtain or retain benefits. The statutory

authority for this collection is contained in section 623 of the Communications Act of 1934, as amended.

Needs and Uses: Cable operators and local franchise authorities file FCC Form 1200 to justify the reasonableness of rates in effect on or after May 15, 1994. The FCC uses the data to evaluate cable rates the first time they are reviewed on or after May 15, 1994, so that maximum permitted rates for regulated cable service can be determined.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023-27470 Filed 12-13-23; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064-0022; -0137; -0148]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064-0022; -0137 and -0148).

DATES: Comments must be submitted on or before February 12, 2024.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- **Agency Website:** <https://www.fdic.gov/resources/regulations/federal-register-publications/>.
- **Email:** comments@fdic.gov. Include the name and number of the collection in the subject line of the message.
- **Mail:** Manny Cabeza (202-898-3767), Regulatory Counsel, MB-3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• **Hand Delivery:** Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory

Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:
Manny Cabeza, Regulatory Counsel,
202–898–3767, mcabeza@fdic.gov, MB–
3128, Federal Deposit Insurance

Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Uniform Application/Uniform Termination for Municipal Securities Principal or Representative.

OMB Number: 3064–0022.

Forms: 6200/54; 6200/55.

Affected Public: Individuals, Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB No. 3064–0022)

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
Uniform Application for Municipal Securities Principal or Representative (Form MSD–4) (Mandatory).	Reporting (On Occasion)	1	1	1:00	1
Uniform Termination Notice for Securities Principal or Representative (Form MSD–5) (Mandatory).	Reporting (On Occasion)	1	1	1:00	1
Total Annual Burden (Hours) .....	.....	.....	.....	.....	2

Source: FDIC.

General Description of Collection: The 1975 Amendments to the Securities Exchange Act of 1934 established a comprehensive framework for the regulation of the activities of municipal securities dealers. Under section 15B(a) of the Securities Exchange Act, municipal securities dealers which are banks, or separately identifiable departments or divisions of banks engaging in municipal securities activities, are required to be registered with the Securities and Exchange Commission in accordance with such rules as the Municipal Securities Rulemaking Board (MSRB), a rulemaking authority established by the 1975 Amendments, may prescribe as necessary or appropriate in the public interest or for the protection of investors. One of the areas in which the Act directed the MSRB to promulgate rules is the qualifications of persons associated with municipal securities dealers as municipal securities

principals and municipal securities representatives. The MSRB Rules require persons who are or seek to be associated with municipal securities dealers as municipal securities principals or municipal securities representatives to provide certain background information and conversely, require the municipal securities dealers to obtain the information from such persons. Generally, the information required to be furnished relates to employment history and professional background including any disciplinary sanctions and any claimed bases for exemption from MSRB examination requirements. The FDIC and the other two Federal bank regulatory agencies, the Comptroller of the Currency, and the Federal Reserve Board, have prescribed Forms MSD–4 to satisfy these requirements and have prescribed Form MSD–5 for notification by a bank municipal securities dealer that a municipal securities principal's or a

municipal securities representative's association with the dealer has terminated and the reason for such termination. State nonmember banks and state savings associations that are municipal security dealers submit these forms, as applicable, to the FDIC as their appropriate regulatory agency for each person associated with the dealer as a municipal securities principal or municipal securities representative. There is no change in the methodology or substance of this information collection. This reduction in estimated annual burden (from 4 hours in 2021 to 2 hours currently) is due to the decrease in the estimated number of respondents.

2. *Title:* Interagency Guidance on Asset Securitization Activities.

OMB Number: 3064–0137.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB No. 3064–0137)

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Documentation of Fair Value, "Valuation and Modeling Processes," pp. 6–7 (Voluntary).	Recordkeeping (On Occasion) ..	19	1	04:00	76
2. Asset Securitization Policies—Implementation, "Independent Risk Management Function," pg. 4 (Voluntary).	Recordkeeping (On Occasion) ..	5	1	32:00	160
3. Asset Securitization Policies—Ongoing, "Independent Risk Management Function," pg. 4 (Voluntary).	Recordkeeping (On Occasion) ..	2	1	03:00	6
4. MIS Improvements—Implementation, "Independent Risk Management Function," pp. 4–6 (Voluntary).	Recordkeeping (On Occasion) ..	5	1	21:00	105

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0137)—Continued

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
5. MIS Improvements—Ongoing, “Independent Risk Management Function,” pp. 4–6, and “Audit Function or Internal Review,” pg. 8 (Voluntary).	Recordkeeping (On Occasion) ..	2	1	05:00	10
Total Annual Burden (Hours) .....	.....	.....	.....	.....	357

Source: FDIC.

General Description of Collection: The Interagency Guidance on Asset Securitization Activities informs bankers and examiners of safe and sound practices regarding asset Securitization. The information collections contained in the Interagency Guidance are needed by institutions to manage their asset Securitization activities in a safe and sound manner. Bank management uses this information

as the basis for the safe and sound operation of their asset securitization activities and to ensure that they minimize operational risk in these activities. There is no change in the method or substance of the information collection. The 94-hour increase in estimated annual burden (from 263 hours in 2021 to 357 hours currently) is the result of economic fluctuation. In particular, the number of respondents

has increased while the reporting frequency and the estimated time per response remain the same.

3. *Title:* Interagency Statement on Sound Practices Concerning Complex Structured Finance Transactions.

OMB Number: 3064–0148.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0148)

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
Complex Structured Finance Transactions (Voluntary).	Reporting (On occasion)	1	1	25:00	25
Total Annual Burden (Hours): ....	.....	.....	.....	.....	25

Source: FDIC.

General Description of Collection: The Interagency Statement on Sound Practices Concerning Complex Structured Finance Transactions describes the types of internal controls and risk management procedures that the Agencies believe are particularly effective in assisting financial institutions to identify, evaluate, assess, document, and control the full range of credit, market, operational, legal and reputational risks. A financial institution that engages in complex structured finance transactions should maintain a set of formal, written, firmwide policies and procedures that are designed to allow the institution to identify and assess these risks. There is no change in the methodology or substance of this information collection. The estimated annual burden is unchanged.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the

burden of the 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; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, December 11, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–27460 Filed 12–13–23; 8:45 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION**Sunshine Act Meetings**

TIME AND DATE: 9:30 a.m. on Monday, December 11, 2023.

PLACE: The meeting was held via video conference on the internet.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Special Review Committee of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's corporate activities within its authority to act on behalf of the Federal Deposit Insurance Corporation. In calling the meeting, the Special Review Committee determined, by the unanimous vote of Director Jonathan P. McKernan and Director Michael J. Hsu (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(4) of the “Government in the Sunshine Act” (5 U.S.C. 552b(c)(2) and (c)(4)).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed

to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated: December 11, 2023.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–27521 Filed 12–12–23; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (www.fmc.gov) or by contacting the Office of Agreements at (202)–523–5793 or tradeanalysis@fmc.gov.

Agreement No.: 011679–016.

Agreement Name: ASA/SPC Agreement.

Parties: COSCO Shipping Lines Company, Ltd.; Evergreen Line Joint Service; HMM Company Limited; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Ocean Network Express Pte. Ltd.; Orient Overseas Container Line Ltd.; Wan Hai Lines Ltd.; and Yang Ming Marine Transport Corporation.

Filing Party: Robert Magovern; Cozen O'Connor.

Synopsis: The Amendment updates the name of the agreement to ASA/SPC Agreement, updates the name of Hyundai Merchant Marine Co., Ltd., and deletes APL Co. Pte Ltd., American President Lines Ltd., and ANL Singapore Pte Ltd. as parties to the agreement. The Amendment also adds Ocean Network Express Pte. Ltd. as a party to the agreement.

Proposed Effective Date: 12/7/2023.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/668>.

Agreement No.: 201413.

Agreement Name: Turkon/Arkas Space Charter and Sailing Agreement.

Parties: Turkon Konteyner Tasimacilik ve Denizcilik A.S. d/b/a

Turkon Container Transportation & Shipping Inc.; Arkas Konteyner Tasimacilik A.S.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to operate a service between the U.S. East Coast on the one hand and Spain, Turkey, Morocco and Egypt on the other hand.

Proposed Effective Date: 12/8/2023.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/84533>.

Dated: December 8, 2023.

Alanna Beck,

Federal Register Alternate Liaison Officer, Federal Maritime Commission.

[FR Doc. 2023–27395 Filed 12–13–23; 8:45 am]

BILLING CODE 6730–02–P

GENERAL SERVICES ADMINISTRATION

[Notice-MG–2023–05; Docket No. 2023–0002; Sequence No. 45]

Office of Federal High-Performance Green Buildings; Notice of GSA's LED and Controls Guidance for Federal Buildings; and Webinar

AGENCY: Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: As required by the Bulb Replacement Improving Government with High-efficiency Technology Act (BRIGHT Act), this notice informs all agencies of guidance that GSA has published for the procurement and use of the most life-cycle cost effective and energy efficient lighting systems to increase the efficiency, effectiveness, and economy of the Federal Government.

DATES:

Applicable: December 14, 2023.

Webinar Date: GSA will be holding a webinar on Thursday, February 8, 2024 at 12:00 p.m. (Eastern Time) to provide more information on the guidance. To register for the webinar, please visit: https://gsa.zoomgov.com/webinar/register/WN_fCgHTJIPTA-_zpEv8xq_6A#/registration.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Stevenson, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, GSA, at bryan.stevenson@gsa.gov or 202–501–6115.

SUPPLEMENTARY INFORMATION: The BRIGHT Act (Pub. L. 117–202) requires

GSA to issue guidance to Federal agencies for the procurement and use of the most life-cycle cost effective and energy efficient lighting systems to increase the efficiency, effectiveness, and economy of the Federal Government. The BRIGHT Act also requires GSA to publish on the internet or otherwise make available to State, local, and Tribal entities information on ways to improve efficiency, effectiveness, and economy by procuring and using the most life-cycle cost effective and energy efficient lighting systems (as determined in accordance with section 3313 of title 40, United States Code).

This guidance offers best practices and outlines different types of light-emitting diode (LED) fixtures and control options, how they can benefit buildings and occupants, and where they are best suited. The guidance covers the different types of LED installations, including tubular LEDs, retrofit kits, and new fixtures, and focuses on interior linear lighting because such systems represent the majority of lighting within the federal real estate portfolio. The guidance also discusses the decisions that need to be made in selecting a control system that complies with applicable code, project objectives, energy savings, and enhanced performance capabilities, and presents lessons learned from evaluations conducted by GSA's Green Proving Ground program and other real-world federal building deployments.

GSA has made this guidance available at <https://www.gsa.gov/climate-action-and-sustainability/center-for-emerging-building-technologies/completed-assessments/lighting/led-lighting-and-controls-guidance>.

GSA will be holding a webinar on Thursday, February 8, 2024 at 12:00 p.m. (Eastern Time) to provide more information on the guidance. To register for the webinar, please visit: https://gsa.zoomgov.com/webinar/register/WN_fCgHTJIPTA-_zpEv8xq_6A#/registration.

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy.

[FR Doc. 2023–27502 Filed 12–13–23; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed updates to the currently approved information collection project: “Medical Expenditures Panel Survey—Household and Medical Provider Components.” This proposed information collection was previously published in the **Federal Register** on September 29, 2023 and allowed 60 days for public comment. AHRQ received two substantive comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 16, 2024.

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.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at doris.lefkowitz@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Expenditures Panel Survey—Household and Medical Provider Components

AHRQ requests that OMB approve a change to AHRQ’s collection of information for the Medical Expenditures Panel Survey—Household and Medical Provider Components: OMB Control number 0935–0118, expiration November 30, 2025. Requested changes are for the Household Component (MEPS–HC) only.

The MEPS was initiated in 1996. Each year a new panel of sample households is selected. Recent annual MEPS–HC sample sizes average about 13,500 households. Data can be analyzed at either the person, family, or event level. The panel design of the survey, which includes 5 rounds of interviews covering 2 full calendar years, provides data for examining person level changes in selected variables such as expenditures, health insurance coverage, and health status.

This research has the following goals:

(1) To produce nationally representative estimates of health care use, expenditures, sources of payment, and health insurance coverage for the U.S. civilian noninstitutionalized population.

(2) To produce nationally representative estimates of respondents’ health status, demographic and socioeconomic characteristics, employment, access to care, and satisfaction with health care.

Proposed Changes for the Fall 2024 MEPS–HC:

- **Core MEPS Interview**—Seven economic burden questions will be added to the Core interview. Five of these questions come from the Preventive Care Services Self-Administered Questionnaire (PSAQ), and two are new to the MEPS. The specific topics of the five questions moving from the PSAQ are partial and late payments for bills, having been contacted by debt collection agencies, and ability to pay for unexpected expenses. The questions were modified to be asked at the household level. These topics are important for understanding the context families face in paying for health care. The new questions asking about medical debt are modified versions of questions used in the Survey of Income and Program Participation (SIPP). The SIPP asks the question at a person level; AHRQ has modified it to be asked at the household level. Collecting medical debt amounts will enable analyses of how medical debt is related to health care access, use, health outcomes, and financial status. In addition, the wording for eight food security questions has been slightly modified to allow for proxy responses; thus, all households will be asked these questions.

- **Preventive Care Services Self-Administered Questionnaire (PSAQ)**—The PSAQ will have the following changes for Fall 2024:

- Removing five economic burden questions, which will be added to the Core interview;
- Combining the Male and Female PSAQ questionnaires into a single

questionnaire and revising the sex-specific questions accordingly;

- Adding Sexual Orientation and Gender Identity (SOGI) questions to the end of the questionnaire;

- Changing the age-specific skips to reflect new recommendations for specific preventive health screening procedures;

- Creating a web-based mode of completion as an alternative option to the traditional pen-and-paper-based survey.

The incorporation of SOGI questions into the PSAQ aligns with the objectives outlined in Executive Order 14075, titled “Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals.” The inclusion of these questions necessitated further adjustments to the questionnaires, including the consolidation of the traditionally segregated male and female questionnaires into a unified form. Optimally incorporating sex-specific preventive care questions (e.g., prostate cancer screening) in surveys in a manner that respects all gender identities requires balancing multiple competing factors. AHRQ consulted with federal agencies fielding surveys with SOGI and preventive care questions, and they have not yet modified their preventive care questions to account for gender minorities. For this initial attempt in the MEPS, AHRQ balanced the following considerations: respect for gender minority respondents, cognitive burden among cisgender respondents, minimizing skip patterns to maintain consistency between pen-and-paper and web-based modes of the PSAQ, and the strong expectation that the number of gender minority respondents in the relevant age ranges will be too small to support estimates of receipt of sex-specific preventive services in this population. AHRQ will continue to monitor best practices and empirical studies by consulting with NCHS and the National Cancer Institute (NCI) to revise the PSAQ when it is fielded again in the future.

- **Cancer Self-Administered Questionnaire (Cancer SAQ)**—The NCI has collaborated in previous years with AHRQ to create the MEPS Experiences with Cancer Supplement, which oversampled households with cancer survivors from the prior year National Health Interview Survey (NHIS) and fielded a special survey about economic burden and access to care in cancer survivors. Due to a change in the NHIS sample design, MEPS will not be able to oversample cancer survivors in the 2024 data collection. The current effort will field an updated version of the MEPS Experiences with Cancer Survey in the

Fall 2024 MEPS–HC. The new version of the survey will include most of the same questions as the earlier survey to allow comparisons of trends and will replace some survey items that are now less critical or available from other data sources with new questions on employment impacts and workplace accommodations; survivorship care; social determinants of health; and social isolation and support.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the cost and use of health care services and with respect to health statistics and surveys. 42 U.S.C. 299a(a)(3) and (8); 42 U.S.C. 299b–2.

Method of Collection

The MEPS–HC uses a combination of computer assisted personal interviewing (CAPI), computer assisted video interviewing (CAVI), and self-administered paper and web questionnaires, to collect information about each household member, and the survey builds on this information from interview to interview. CAVI is a new data collection technology and offers the best of both telephone and in-person interviewing, while offering opportunities for cost savings and more accurate reporting.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the MEPS–HC and the MEPS–MPC.

The MEPS–HC Core Interview will be completed by 11,750 “family level”

respondents. Since the MEPS–HC typically consists of 5 rounds of interviewing covering a full two years of data, the annual average number of responses per respondent is 2.5 responses per year. The MEPS–HC core requires an average response time of 88 minutes to administer. The Adult SAQ is completed once during the 2-year panel, in rounds 2 and 4 during odd numbered years, making the annualized average 0.5 times per year. The Adult SAQ will be completed by 5,688 adults and requires an average of 7 minutes to complete. The PSAQ is completed once during the 2-year panel, in rounds 2 and 4 during even numbered years, making the annualized average 0.5 times per year. The PSAQ will be completed by 5,688 adults and requires an average of 7 minutes to complete. The Diabetes Care Survey will be completed by 1,000 persons each year and requires 3 minutes to complete. The Cancer SAQ will be completed by 1,500 persons each year and requires 20 minutes to complete. Authorization forms for the MEPS–MPC and Pharmacy Survey will be completed by 11,750 respondents. Each respondent will complete an average of 4.66 forms each year, with each form requiring an average of 3 minutes to complete. A validation interview will be conducted with 4,225 respondents each year and requires 5 minutes to complete. The total burden hours for the respondents' time to participate in the MEPS–HC is estimated to be 47,387 hours.

The MEPS–MPC Contact Guide/Screening Call will be conducted with 54,758 providers and pharmacies each year and requires 5 minutes to complete. The Home Care Providers Event Form will be completed by 886

providers, with each provider completing an average of 5.8 forms and each form requiring 3 minutes to complete. The Office-based Providers Event Form will be completed by 14,950 providers. Each provider will complete an average of 4.3 forms and each form requires 3 minutes to complete. The Separately Billing Doctors Event Form will be completed by 12,690 providers, with each provider completing 1.4 forms on average, and each form requiring 3 minutes to complete. The Hospital Event Form will be completed by 8,302 hospitals or HMOs. Each hospital or HMO will complete 7.5 forms on average, with each form requiring 3 minutes to complete. The Institutions (non-hospital) Event Form will be completed by 118 institutions, with each institution completing 1.3 forms on average, and each form requiring 3 minutes to complete. The Pharmacy Event Form will be completed by 9,079 pharmacies. Each pharmacy will complete 37.6 forms on average, with each form requiring 3 minutes to complete. The total burden hours for the respondent's time to participate in the MEPS–MPC is estimated to be 29,111 hours. The total annual burden hours for the MEPS–HC and MPC is estimated to be 76,498 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this information collection. The annual cost burden for the MEPS–HC is estimated to be \$1,410,236; the annual cost burden for the MEPS–MPC is estimated to be \$569,200. The total annual cost burden for the MEPS–HC and MPC is estimated to be \$1,979,436.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
MEPS–HC:				
MEPS–HC Core Interview	11,750	2.5	88/60	43,083
Adult SAQ *	5,688	0.5	7/60	332
Preventive Care SAQ (PSAQ) **	5,688	0.5	7/60	332
Diabetes Care Survey (DCS)	1,000	1	3/60	50
Cancer SAQ	1,500	1	20/60	500
Authorization forms for the MEPS–MPC Provider and Pharmacy Survey	11,750	4.66	3/60	2,738
MEPS Validation Interview	4,225	1	5/60	352
Subtotal for the MEPS–HC	41,600	.....	.....	47,387
MEPS–MPC:				
MPC Contact Guide/Screening Call	54,758	1	5/60	4,563
Home Care Providers Event Form	886	5.8	3/60	257
Office-based Providers Event Form	14,950	4.3	3/60	3,214
Separately Billing Doctors Event Form	12,690	1.4	3/60	888
Hospitals & HMOs (Hospital Event Form)	8,302	7.5	3/60	3,113
Institutions (non-hospital) Event Form	118	1.3	3/60	8

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Pharmacies Event Form	9,079	37.6	3/60	17,068
Subtotal for the MEPS-MPC	100,783	.....	.....	29,111
Grand Total	142,383	.....	.....	76,498

* The Adult SAQ is completed once every two years, on the odd numbered years.

** The PSAQ is completed once every two years, on the even numbered years.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
MEPS-HC:				
MEPS-HC Core Interview	11,750	43,083	\$29.76 *	\$1,282,150
Adult SAQ	5,688	332	29.76 *	9,880
Preventive Care SAQ (PSAQ)	5,688	332	29.76 *	9,880
Diabetes Care Survey (DCS)	1,000	50	29.76 *	1,488
Cancer SAQ	1,500	500	29.76 *	14,880
Authorization forms for the MEPS-MPC Provider and Pharmacy Survey	11,750	2,738	29.76 *	81,483
MEPS Validation Interview	4,225	352	29.76 *	10,475
Subtotal for the MEPS-HC	41,600	47,387	.....	1,410,236
MEPS-MPC:				
MPC Contact Guide/Screening Call	54,758	4,563	19.84 **	90,530
Home care Providers Event Form	886	257	19.84 **	5,099
Office-based Providers Event Form	14,950	3,214	19.84 **	63,766
Separately Billing Doctors (SBD) Event Form	12,690	888	19.84 **	17,618
Hospitals & HMOs (Hospital Event Form	8,302	3,113	19.84 **	61,762
Institutions (non-hospital) Event Form	118	8	19.84 **	159
Pharmacies Event Form	9,079	17,068	19.35 ***	330,266
Subtotal for the MEPS-MPC	100,783	29,111	.....	569,200
Grand Total	142,383	77,067	.....	1,979,436

* Mean hourly wage for All Occupations (00-0000).

** Mean hourly wage for Medical Secretaries (43-6013).

*** Mean hourly wage for Pharmacy Technicians (29-2052).

Occupational Employment Statistics, May 2022 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics.

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501-3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of

automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 11, 2023.

Marquita Cullom,
Associate Director.

[FR Doc. 2023-27462 Filed 12-13-23; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project "TeamSTEPPS® 3.0 Training Assessment." This proposed information collection was previously published in the **Federal Register** on

October 4th, 2023 and allowed 60 days for public comment. AHRQ received no substantive comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 16, 2024.

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.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by email at doris.lefkowitz@ahrq.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

TeamSTEPPS® 3.0 Training Assessment

In 2006 the Agency for Healthcare Research and Quality (AHRQ) and the Department of Defense developed Strategies & Tools to Enhance Performance and Patient Safety, or TeamSTEPPS®, an evidence-based patient safety program. The main objective of the TeamSTEPPS program is to improve patient safety by training health care staff in various teamwork, communication, and patient safety concepts, tools, and techniques and ultimately increase national capacity for supporting teamwork-based patient safety efforts in health care organizations.

The updated TeamSTEPPS training will now be implemented in different settings of various large and small healthcare and healthcare-related organization and institutions around the country. Following implementation of the updated training, an assessment for change in individuals and teams is necessary to examine the degree to which the updated TeamSTEPPS program enhances users experience, improves the teams’ effectiveness, streamlines team communication and overall increases healthcare professionals’ commitment to interdisciplinary teamwork.

This information collection has the following goals:

(1) Assess the overarching short-term (immediately after the training) impact of the TeamSTEPPS program to determine what improvements should be made to the training and how it is delivered, and

(2) Assess the long-term (3–9 months after the training) impact of the TeamSTEPPS program to determine how trained participants use and implement the TeamSTEPPS tools and resources.

This project is being conducted by AHRQ through its contractor, Chatham Communications, pursuant to AHRQ’s statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness, and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following data collections will be implemented via online questionnaires. As such, we are requesting OMB approval to conduct three online

questionnaires to assess the effectiveness of the updated TeamSTEPPS® training.

(1) Baseline Survey (administered prior to training)—Will include the TeamSTEPPS Teamwork Attitudes Questionnaire (T-TAQ), knowledge assessment questions, and self-reported event rates.

(2) Post-training Survey (administered immediately after training completion)—Will include questions to assess participant training reactions and experiences, the TeamSTEPPS Teamwork Attitudes Questionnaire (T-TAQ), and knowledge assessment questions.

(3) Follow-up Survey (administered 3–9 months after training completion)—Will include the TeamSTEPPS Teamwork Perceptions Questionnaire (T-TAP); self-reported behavior/implementation activities; facilitators and barriers to use of TeamSTEPPS concepts, tools, or strategies; self-reported changes in awareness, policies, or processes, and self-reported event rates.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondent’s time to participate in the information collection. Each training participant survey will be completed by up to 30 individuals from each of 115 sites and is estimated to require 20 minutes each (60 minutes total across the surveys) to complete. The total annualized burden is estimated to be 3,450 hours. Exhibit 2 shows the estimated annualized cost burden based on the respondents’ time to participate in the study. The total cost burden is estimated to be \$160,494.

Exhibit 1. Estimated Annualized Burden Hours

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Baseline Survey	3,450	1	20/60	1,150
Post-training Survey	3,450	1	20/60	1,150
Follow-up Survey	3,450	1	20/60	1,150
Total	10,350	N/A	N/A	3,450

Exhibit 2—Estimated Annualized Cost Burden

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Baseline Survey	3,450	1,150	\$46.52	53,498
Post-training Survey	3,450	1,150	46.52	53,498
Follow-up Survey	3,450	1,150	46.52	53,498
Total	10,350	3,450	N/A	160,494

* Based on the mean of the average wages for all health professionals (29-0000): Occupational Wages in the United States, May 2022, U.S. Department of Labor, Bureau of Labor Statistics (https://www.bls.gov/oes/current/oes_nat.htm).

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 11, 2023.

Marquita Cullom,
Associate Director.

[FR Doc. 2023–27465 Filed 12–13–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS 3444–FN]

Medicare Program; Application by The Joint Commission (TJC) for Continued CMS Approval of Its Home Infusion Therapy (HIT) Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This final notice announces our decision to approve The Joint Commission (TJC) for continued recognition as a national accrediting organization that accredits suppliers of home infusion therapy (HIT) services that wish to participate in the Medicare or Medicaid programs.

DATES: The approval announced in this final notice is effective December 15, 2023 through December 15, 2029.

FOR FURTHER INFORMATION CONTACT: Shannon Freeland, (410) 786–4348.

SUPPLEMENTARY INFORMATION:

I. Background

Home infusion therapy (HIT) is a treatment option for Medicare beneficiaries with a wide range of acute and chronic conditions. Section 5012 of the 21st Century Cures Act (Pub. L. 114–255, enacted December 13, 2016) added section 1861(iii) to the Social Security Act (the Act), establishing a new Medicare benefit for HIT services. Section 1861(iii)(1) of the Act defines “home infusion therapy” as professional services, including nursing services; training and education not otherwise covered under the Durable Medical Equipment (DME) benefit; remote monitoring; and other monitoring services. Home infusion therapy must be furnished by a qualified HIT supplier and furnished in the individual's home. Sections 1861(iii)(A) and (B) require that the individual (patient) must:

- Be under the care of an applicable provider (that is, physician, nurse practitioner, or physician assistant); and
- Have a plan of care established and periodically reviewed by a physician in coordination with the furnishing of home infusion drugs under Part B, which prescribes the type, amount, and duration of infusion therapy services that are to be furnished.

Section 1861(iii)(3)(D)(i)(III) of the Act requires that a qualified HIT supplier be accredited by an accrediting organization (AO) designated by the Secretary in accordance with section 1834(u)(5) of the Act.

Section 1834(u)(5)(A) of the Act identifies factors for designating HIT AOs and in reviewing and modifying the list of designated HIT AOs. These statutory factors are as follows:

- The ability of the accrediting organization to conduct timely reviews of HIT accreditation applications.
- The ability of the accrediting organization to take into account the capacities of HIT suppliers located in a rural area (as defined in section 1886(d)(2)(D) of the Act).
- Whether the accrediting organization has established reasonable fees to be charged to HIT suppliers applying for accreditation.

- Such other factors as the Secretary determines appropriate.

Section 1834(u)(5)(B) of the Act requires the Secretary to designate AOs to accredit HIT suppliers furnishing HIT not later than January 1, 2021. Section 1861(iii)(3)(D)(i)(III) of the Act requires a “qualified home infusion therapy supplier” to be accredited by a CMS-approved AO, pursuant to section 1834(u)(5) of the Act.

The Joint Commission's (TJC's) current term of approval for their Home Infusion Therapy accreditation program expires December 15, 2023.

II. Approval of Deeming Organization

Section 1834(u)(5) of the Act and § 488.1010 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data.

Our rules at 42 CFR 488.1020(a) require that we publish, after receipt of an organization's complete application, a notice identifying the national accrediting body making the request,

describing the nature of the request, and providing at least a 30-day public comment period. Pursuant to our rules at 42 CFR 488.1010(d), we have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

III. Provisions of the Proposed Notice

In the July 18, 2023 **Federal Register** (88 FR 45907), we published a proposed notice announcing The Joint Commission's (TJC's) request for continued recognition as a national accrediting organization providing home infusion therapy (HIT) services that wish to participate in the Medicare or Medicaid programs. In that proposed notice, we detailed our evaluation criteria. Under section 1834(u)(5) the Act and in our regulations at § 488.1010, we conducted a review of TJC's Medicare HIT accreditation application in accordance with the criteria specified by our regulations, which included, but are not limited to the following:

- An administrative review of TJC's:
 - ++ Corporate policies;
 - ++ Financial and human resources available to accomplish the proposed surveys;
 - ++ Procedures for training, monitoring, and evaluation of its HIT surveyors;
 - ++ Ability to investigate and respond appropriately to complaints against accredited HITs; and
 - ++ Survey review and decision-making process for accreditation.
- The equivalency of TJC's standards for HIT as compared with CMS' HIT conditions for certification.
- TJC's survey process to determine the following:
 - ++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
 - ++ The comparability of TJC's to CMS standards and processes, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
 - ++ TJC's processes and procedures for monitoring a HIT supplier found out of compliance with TJC's program requirements.
 - ++ TJC's capacity to report deficiencies to the surveyed HIT facilities and respond to the facility's evidence of standards compliance in a timely manner.
 - ++ TJC's capacity to provide CMS with electronic data and reports necessary for effective assessment and interpretation of the organization's survey process.
 - ++ TJC's capacity to adequately fund required surveys.

++ TJC's policies with respect to whether surveys are announced or unannounced, to ensure that surveys are unannounced, and

++ TJC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans or TJC's evidence of standards compliance).

- The adequacy of TJC's staff and other resources, and its financial viability.
- TJC's agreement or policies for voluntary and involuntary termination of suppliers.
- TJC's agreement or policies for voluntary and involuntary termination of the HIT AO program.

IV. Analysis of and Responses to Public Comments on the Proposed Notice

In accordance with section 1834(u)(5) of the Act, the July 18, 2023, proposed notice also solicited public comments regarding whether TJC's requirements met or exceeded the Medicare conditions for participation for HIT. We received one comment in response to our proposed notice. The comment and our response follows:

Comment: The commenter believes that continued approval of home infusion therapy is one that greatly benefits those on Medicare and Medicaid. The commenter stated that it also provides many benefits to all including less travel, less staff needed, comfort of your home, and less exposure to others for the immune compromised.

Response: We thank this commenter for their comment in support of the HIT program.

V. Provisions of the Final Notice

A. Differences Between TJC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared TJC's HIT accreditation requirements and survey process with the Medicare CfCs of 42 CFR part 486, and the survey and certification process requirements of part 488. Our review and evaluation of TJC's HIT application, which were conducted as described in section III. of this final notice, yielded the following areas where, as of the date of this notice, TJC has completed revising its standards and certification processes to meet the conditions at:

- Section 486.520 (b), to address the requirement that the plan of care must be established by a physician prescribing the type, amount, and duration for HIT.
- Section 486.520 (c), to address the requirement that the plan of care must

be periodically reviewed by the physician.

- Section 486.525 (a), to address the requirement that the HIT suppliers to be available 7 days a week, 24 hours a day.

- Section 486.525 (a)(1), to address the requirement of all professional services, including nursing services, to be available to the home infusion patient.

- Section 486.525 (a)(2), to address the requirement for patient education and training to be available for patients on a 7 day a week, 24 hour a day basis in accordance with the plan of care.

- Section 486.525 (a)(3), to address the requirement of remote monitoring for the provision of HIT and home infusion drugs.

B. Term of Approval

Based on the review and observations described in section III. of this final notice, we have determined that TJC's requirements for HITs meet or exceed our requirements. Therefore, we approve TJC as a national accreditation organization for HITs that request participation in the Medicare program, effective December 15, 2023 through December 15, 2029.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the **Federal Register** Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Trenesha Fultz-Mimms,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–27469 Filed 12–13–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Formative Data Collections for ACF Research and Evaluation (OMB #0970–0356)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) proposes to extend data collection under the existing overarching generic clearance for Formative Data Collections for ACF Research and Evaluation (Office of Management and Budget (OMB) #0970–0356). There are no changes proposed to the terms of the overarching generic.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

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. You can also obtain copies of the proposed collection of information by emailing OPREinfocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF programs promote the economic and social well-being of families, children, individuals, and communities. The Office of Planning, Research, and Evaluation (OPRE) studies ACF programs, and the populations they serve, through rigorous research and evaluation projects. These include evaluations of existing programs, evaluations of innovative approaches to helping low-income children and families, research syntheses, and descriptive and exploratory studies. OPRE’s research offers further understanding of current programs and service populations, explores options for program improvement, and assesses alternative policy and program designs. OPRE anticipates undertaking a variety of new research projects related to welfare, employment and self-sufficiency, Head Start, child care, healthy marriage and responsible fatherhood, family and youth services, home visiting, child welfare, trafficking, community services, and other areas of interest to ACF. Some ACF program offices conduct their own research and evaluation projects and may utilize this generic.

Under this generic clearance, ACF engages in a variety of formative data collections with researchers, practitioners, technical assistance providers, service providers, and potential participants throughout the field to fulfill the following goals: (1) inform the development of ACF research, (2) maintain a research agenda that is rigorous and relevant, (3) ensure that research products are as current as possible, and (4) inform the provision of technical assistance and supports around research and evaluation. ACF envisions using a variety of techniques including semi-structured discussions, focus groups, surveys, and telephone or in-person interviews, in order to reach these goals.

Information collected under this overarching generic is meant to inform

ACF research activities and may be incorporated into documents or presentations that are made public. The following are some examples of ways in which we may share information resulting from these data collections: research design documents or reports; research or technical assistance plans; background materials for technical workgroups; concept maps, process maps, or conceptual frameworks; contextualization of research findings from a follow-up data collection that has full PRA approval; informational reports to TA providers; or project specific reports, or other documents relevant to the field, such as federal leadership and staff, grantees, local implementing agencies.

Following standard OMB requirements, ACF has and will continue to submit to OMB information about individual information collection activities proposed under the generic clearance. ACF will provide OMB with a copy of the individual instruments or questionnaires, as well as other materials describing the project. ACF requests OMB’s review within 10 days of submission of individual requests under this generic.

Respondents: Respondents could include key groups involved in ACF projects and programs, state or local government officials, service providers, participants in ACF programs or similar comparison groups, experts in fields pertaining to ACF research and programs, or others involved in conducting ACF research or evaluation projects.

Burden Estimates

Find currently approved information collections here: <https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=0970-0356>. The request to OMB will include an extension request for approved information collections that are planned to continue beyond November 2023.

BURDEN ESTIMATES—ONGOING REQUESTS

Study	Responses	Burden hours
Fatherhood Family-Focused, Interconnected, Resilient, and Essential (Fatherhood FIRE) Grantee Local Evaluation Plan Template * Burden updated from current approval	861	980
Child Welfare Study to Enhance Equity with Data (CW–SEED)	100	100
Culture of Continuous Learning Project: Landscape Survey	546	182
Preliminary Activities to Support Future Data Collection for the National Survey of Child and Adolescent Well-Being (NSCAW)	110	110
Soliciting Input for the Consumer Education and Parental Choice in Early Care and Education Project	428	107
Title IV–E Prevention Services Clearinghouse	71	88
Family Self-Sufficiency Demonstration Development Grants Evaluation Support: Data Collection for Final Report	200	114
Totals	2,316	1,681

BURDEN ESTIMATES—NEW REQUESTS

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)
Semi-Structured Discussions and Focus Groups	3000	1	2	6000
Interviews	1500	1	1	1500
Questionnaires/Surveys	1125	1	.5	563
Total				8,063

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–27431 Filed 12–13–23; 8:45 am]

BILLING CODE 4184–88–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Proposed Collection; Public Comment Request; Prevention and Public Health Fund Evidence-Based Falls Prevention Program Information Collection; OMB Control Number 0985–0039

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice of proposed extension solicits comments on the information collection requirements related to the ACL's Prevention and Public Health Fund Evidence-Based Falls Prevention Program Information Collection.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by February 12, 2024.

ADDRESSES: Submit electronic comments on the collection of information to: Donna Bethge (Donna.Bethge@acl.hhs.gov). Submit written comments on the collection of information to Administration for

Community Living, 330 C Street SW, Washington, DC, 20201, Attention: Donna Bethge.

FOR FURTHER INFORMATION CONTACT:

Donna Bethge, Administration for Community Living, Donna.Bethge@acl.hhs.gov, (202) 795–7659.

SUPPLEMENTARY INFORMATION: Under the PRA, 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 as and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 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, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

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

(4) ways to minimize the burden of the collection of information on respondents; and

The Evidence-Based Falls Prevention Grant Program is financed through the Prevention and Public Health Fund (PPHF). The statutory authority for cooperative agreements under the most

recent program announcement (FY2023) is contained in the Older Americans Act, title IV; and the Patient Protection and Affordable Care Act, 42 U.S.C. 300u–11 (Prevention and Public Health Fund). The Falls Prevention Grant Program awards competitive grants to implement and promote the sustainability of evidence-based Falls Prevention programs that have been proven to provide older adults and adults with disabilities with education and tools to help them reduce falls and/or their risk of falls and fall-related injuries and supports a National Falls Prevention Resource Center that provides technical assistance, education, and resources for the national Falls Prevention network of partners.

OMB approval of the existing set of Falls Prevention data collection tools (OMB Control Number, 0985–0039) expires on 04/30/2024. This data collection continues to be necessary for the monitoring of program operations and outcomes.

ACL currently uses and proposes to continue to use the following tools to collect information for each program:

(1) a Program Information Cover Sheet and an Attendance Log, completed by the program leaders, to record the location of agencies that sponsor programs and will allow mapping of the delivery infrastructure; and

(2) a Participant Information Form and a Participant Post Program Survey to be completed by participants.

ACL intends to continue using an online data entry system for the program and participant survey data.

During the 60-day public comment period, ACL intends to analyze public comments received, conduct focus groups that include a sub-set of current Falls Prevention grantees, as well as consult with subject-matter experts to gather feedback and determine if changes to the data collection tools are warranted.

ACL will adhere to best practices for collection of all demographic information when this information is

collected for the programs listed in accordance with OMB guidance.

This includes, but is not limited to, guidance specific to the collection of sexual orientation and gender identity (SOGI) items that align with Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Executive Order 14075 on

Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, and Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation. Understanding these disparities can and should lead to improved service delivery for ACL's programs and populations served.

The proposed data collection tools may be found on the ACL website for review at: <https://acl.gov/about-acl/public-input>.

Estimated Program Burden

ACL estimates the burden of this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Program leaders (Program Information Cover Sheet, Attendance Log).	436 leaders	Twice a year (one set per program).	.50	436
Data entry staff (Program Information Cover Sheet, Attendance Log, Participant Information Survey, Participant Post Program Survey).	40 data entry staff	Once per program × 872 programs.	.50	436
Program participants (Participant Information Survey)	10,455	1	.10	1,046
Program participants (Participant Post Program Survey).	6,273	1	.10	628
Total Burden Hours .....	.....	.....	.....	2,546

Dated: December 8, 2023.

Alison Barkoff,

Principal Deputy Administrator for the Administration for Community Living, performing the delegable duties of the Administrator and the Assistant Secretary for Aging.

[FR Doc. 2023-27451 Filed 12-13-23; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; of the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) Grantee Annual Performance Reporting (APR) and Final Report Forms OMB Control Number 0985-0050

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-day notice collects comments on the information collection requirements related to the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) Grantee Annual Performance Reporting

(APR) and Final Report Forms OMB Control Number 0985-0050.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by January 16, 2024.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find the information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT:

Myrial Earl, Administration for Community Living, Myrial.Earl@acl.hhs.gov, (202) 795-7341.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, the Administration for Community Living (ACL) has submitted the following proposed collection of information to OMB for review and clearance. The National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) Grantee Annual Performance Reporting (APR) and Final Report Forms collect data from all NIDILRR grantees via a web-based reporting system and addresses specific HHS regulations that shall be met by applicants and grantees. HHS regulations that apply to NIDILRR Grant programs include part 75 of the Uniform Administrative Requirements, Cost

Principles and Audit requirements for HHS Awards.

Specifically, § 75.342, which requires grantees to submit an annual performance report or, for the last year of a project, a final report that evaluates: (a) the grantee's progress in achieving the objectives in its approved application, (b) the effectiveness of the project in meeting the purposes of the program, and (c) the results of research and related activities.

Additionally, GPRA requires all federal agencies to implement performance measurement systems that include: (1) a five-year strategic plan, (2) an annual performance plan, and (3) an annual performance report. Currently, NIDILRR has met these requirements and has established performance indicators to meet the reporting requirements. The NIDILRR APR System currently includes reporting forms for all 10 of NIDILRR's grant programs.

This information collection system covers 10 grant programs funded or administered by NIDILRR/ACL, and each grantee submits its information using a reporting form that is unique to the program mechanism under which it is funded. The 10 forms meet the reporting requirements for the following programs:

1. Rehabilitation Research Training Centers (RRTC)
2. Rehabilitation Engineering Research Centers (RERC)
3. Field Initiated Research Projects (FIP)
4. Advanced Rehabilitation Research Training Projects (ARRT)

5. Model Systems—(includes spinal cord injury, traumatic brain injury, burn centers)
 6. Disability and Rehabilitation Research Projects (DRRP)
 7. Knowledge Translation (KT) Projects
 8. ADA National Network Centers (ADAs)
 9. Small Business Innovation Research Projects (SBIR)
 10. Research Fellowships Program (RFP)
- Reporting forms for all 10 programs are Web-based.

Data collected through these forms: (a) facilitate program planning and management; (b) respond to ACL/HHS Grants Policy Administration Manual (GPAM) requirements; and (c) respond to the reporting requirements of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62). NIDILRR/ACL uses the information gathered annually from these data collection efforts to provide Congress with the information mandated in GPRA, provide OMB information required for assessment of performance on GPRA indicators, and support its evaluation activities. Data collected

from the 10 grant programs will provide a national description of the research activities of approximately 313 NIDILRR grantees. NIDILRR's GPRA plan must collect information to meet the following mandates: (a) implementation of a comprehensive plan that includes goals and objectives; (b) measurement of the program's progress in meeting its objectives; and (c) submission of an annual report on program performance, including plans for program improvement, as appropriate. The data collection system addresses nearly all of the agency's GPRA indicators, either directly or by providing information for the agency's other review processes.

This IC collects demographic data from people receiving programs and services funded by HHS regulations that apply to NIDILRR Grant programs under part 75 of the Uniform Administrative Requirements, Cost Principles and Audit requirements for HHS Awards.

ACL will adhere to best practices for collection of all demographic information when this information is collected for the programs listed in accordance with OMB guidance.

This includes, but is not limited to, guidance specific to the collection of sexual orientation and gender identity (SOGI) items that align with Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Executive Order 14075 on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, and Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation. Understanding these disparities can and should lead to improved service delivery for ACL's programs and populations served.

Comments in Response to the 60-Day Federal Register Notice

A 60-day FRN published in the FR on September 27, 2023, at 88 FR 66454–66456. There were no public comments received during the 60-day FRN public comment period.

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Grantees	* 71	1	52	3,692
Continuations of Major Programs	138	1	22	3,036
Other Continuations	104	1	10	1,040
Total	313	.....	.....	7,768

* Does not include SBIR Phase I grants, which do not use the system.

Dated: December 8, 2023.

Alison Barkoff,

Principal Deputy Administrator for the Administration for Community Living, performing the delegable duties of the Administrator and the Assistant Secretary for Aging.

[FR Doc. 2023–27452 Filed 12–13–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the

National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8W–25A, Rockville, Maryland 20857; 1–800–338–2382, or visit our website at: <http://www.hrsa.gov/vaccinecompensation/index.html>.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered

childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that “[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.” Set forth below is a list of petitions received by HRSA on October 1, 2023, through October 31, 2023. This list provides the name of the petitioner, city, and state of vaccination (if unknown then the city and state of the person or attorney filing the claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master “shall afford all interested persons an opportunity to submit relevant, written information” relating to the following:

1. The existence of evidence “that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,” and
2. Any allegation in a petition that the petitioner either:
 - a. “[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by” one of the vaccines referred to in the Table, or
 - b. “[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine” referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR**

FURTHER INFORMATION CONTACT), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 8W–25A, Rockville, Maryland 20857. The Court’s caption (*Petitioner’s Name v. Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,
Administrator.

List of Petitions Filed

1. Patrick Taylor, Avon, Connecticut, Court of Federal Claims No: 23–1694V
2. Linda Seaborg, Elk Grove Village, Illinois, Court of Federal Claims No: 23–1695V
3. Brian O’Sullivan, Denver, Colorado, Court of Federal Claims No: 23–1696V
4. Cassidy Vibe, Marysville, Washington, Court of Federal Claims No: 23–1697V
5. Susan York, Casco, Maine, Court of Federal Claims No: 23–1698V
6. Mary Stockwell, Lebanon, Oregon, Court of Federal Claims No: 23–1699V
7. Wilbur Schmiesing, Anna, Ohio, Court of Federal Claims No: 23–1700V
8. John Southworth, Mendon, Vermont, Court of Federal Claims No: 23–1702V
9. David Taylor, Queens, New York, Court of Federal Claims No: 23–1703V
10. Kristen Rosati, Flemington, New Jersey, Court of Federal Claims No: 23–1704V
11. Jewel Wren, Phoenix, Arizona, Court of Federal Claims No: 23–1705V
12. Ljubica Nikolic, Beachwood, Ohio, Court of Federal Claims No: 23–1706V
13. Charles Hawkins, Ellicott City, Maryland, Court of Federal Claims No: 23–1707V
14. Rose Uribe, Washington, District of Columbia, Court of Federal Claims No: 23–1708V
15. Pernell Herr, Rehoboth Beach, Delaware, Court of Federal Claims No: 23–1709V
16. Jon-Paul Correia, Raynham, Massachusetts, Court of Federal Claims No: 23–1713V
17. Timothy Brown, Boston, Massachusetts, Court of Federal Claims No: 23–1714V
18. Govind Balladin, Brooklyn, New York, Court of Federal Claims No: 23–1715V
19. Sandra Yadira Camacho Cazarez, San Diego, Colorado, Court of Federal Claims No: 23–1716V
20. Veronica Platt, Largo, Florida, Court of Federal Claims No: 23–1718V
21. David Molter, Woodville, Ohio, Court of Federal Claims No: 23–1719V
22. Guzal Astanova on behalf of G. R., Philadelphia, Pennsylvania, Court of Federal Claims No: 23–1720V
23. Geraldine Reed, Decatur, Georgia, Court of Federal Claims No: 23–1722V
24. Sara Gaddy, San Angelo, Texas, Court of Federal Claims No: 23–1723V
25. Jenna Johnston, Hillsboro, Oregon, Court of Federal Claims No: 23–1724V
26. Brittany Ehlinger, Norwich, New York, Court of Federal Claims No: 23–1726V
27. Robbie Schaefer, Boston, Massachusetts, Court of Federal Claims No: 23–1727V
28. Honorata Lee, Fairbanks, Alaska, Court of Federal Claims No: 23–1730V
29. Doyle Manning, Kennesaw, Georgia, Court of Federal Claims No: 23–1731V
30. Julita Liminski, Belchertown, Massachusetts, Court of Federal Claims No: 23–1733V
31. Debra Rosado-Bohac, Yorktown, Virginia, Court of Federal Claims No: 23–1734V
32. Wafah Musaid, Amherst, New York, Court of Federal Claims No: 23–1735V
33. Susan Davis, Crosby, Texas, Court of Federal Claims No: 23–1736V
34. Nevonía Gurley, Mundelein, Illinois, Court of Federal Claims No: 23–1737V
35. Carina Phillips, Evansville, Indiana, Court of Federal Claims No: 23–1739V
36. April Cirincione, Canton, Georgia, Court of Federal Claims No: 23–1741V
37. Melissa Pike and Nick Kendall on behalf of S. K., Deceased, Phoenix, Arizona, Court of Federal Claims No: 23–1746V
38. William Drew, Englewood, New Jersey, Court of Federal Claims No: 23–1747V
39. Ann Maloney, Shoreview, Minnesota, Court of Federal Claims No: 23–1748V
40. Elizabeth Jackman, Birmingham, Alabama, Court of Federal Claims No: 23–1749V
41. Erica Ramsey, North Branch, Michigan, Court of Federal Claims No: 23–1750V
42. Erik Ossensfort, Rensselaer, New York, Court of Federal Claims No: 23–1751V
43. Susan Wilcox, Redfield, South Dakota, Court of Federal Claims No: 23–1752V
44. Tyler Harvie, Great Falls, Montana, Court of Federal Claims No: 23–1753V
45. Muge Ozhabes, San Mateo, California, Court of Federal Claims No: 23–1755V
46. Emily Napoli, Merced, California, Court of Federal Claims No: 23–1757V
47. Angela Wilder, Englewood, New Jersey, Court of Federal Claims No: 23–1758V
48. Sheila Gonzalez on behalf of E. M., Helotes, Texas, Court of Federal Claims No: 23–1759V
49. Richmond Hicks, Corpus Christi, Texas, Court of Federal Claims No: 23–1761V
50. Richard Thornburg and Renata Thornburg on behalf of K. T., Randolph, New Jersey, Court of Federal Claims No: 23–1762V
51. Rita Lewis, Kansas City, Kansas, Court of Federal Claims No: 23–1763V
52. Christine Harold, Annandale, Virginia, Court of Federal Claims No: 23–1764V
53. Jonathon Lee Jordan, Simpsonville, South Carolina, Court of Federal Claims No: 23–1765V
54. Frances Montgomery on behalf of E. M., Phoenix, Arizona, Court of Federal Claims No: 23–1766V
55. Sandra Maschmeyer, Flossmoor, Illinois, Court of Federal Claims No: 23–1767V
56. Irina Ioffe, Mequon, Wisconsin, Court of Federal Claims No: 23–1768V
57. Michael Francis, Staten Island, New York, Court of Federal Claims No: 23–1769V
58. Michelle Keith, Sarasota, Florida, Court of Federal Claims No: 23–1771V
59. Joy Yang, Durham, North Carolina, Court of Federal Claims No: 23–1772V
60. Carol French, Orange Park, Florida, Court of Federal Claims No: 23–1773V

61. Teresa Hawkins, Richmond, Virginia, Court of Federal Claims No: 23-1776V
62. Travis Halliburton, Salt Lake City, Utah, Court of Federal Claims No: 23-1777V
63. Lisa Kennedy, Columbus, Georgia, Court of Federal Claims No: 23-1778V
64. Megan Peterson, Omaha, Nebraska, Court of Federal Claims No: 23-1779V
65. Toni Ochoa, Mesa, Arizona, Court of Federal Claims No: 23-1780V
66. Iris Tol, Sherman, Texas, Court of Federal Claims No: 23-1781V
67. Ziyad N. Omar on behalf of M. Z. O., Buffalo, New York, Court of Federal Claims No: 23-1782V
68. Raven Lane-Lee on behalf of A. W., Kenner, Louisiana, Court of Federal Claims No: 23-1783V
69. Robert Newell, Cranston, Rhode Island, Court of Federal Claims No: 23-1784V
70. Brooke Young on behalf of L. M., Dewitt, Arkansas, Court of Federal Claims No: 23-1785V
71. Jeremy Myrick, Sedro-Wooley, Washington, Court of Federal Claims No: 23-1786V
72. Ashley Raponi, Ithaca, New York, Court of Federal Claims No: 23-1790V
73. Christie Trahan, Lafayette, Louisiana, Court of Federal Claims No: 23-1791V
74. Christine Lima, Englewood, New Jersey, Court of Federal Claims No: 23-1793V
75. Tracey Johnson Patania, Metairie, Louisiana, Court of Federal Claims No: 23-1794V
76. Kelli A. Dubay, Seattle, Washington, Court of Federal Claims No: 23-1796V
77. Ricardo Bush, Hazel Park, Michigan, Court of Federal Claims No: 23-1798V
78. John S. DeVivi, Franklin, Virginia, Court of Federal Claims No: 23-1799V
79. Duane Torkelson, Schaumburg, Illinois, Court of Federal Claims No: 23-1801V
80. Tala Altaji Alfarouki, Lincoln, Nebraska, Court of Federal Claims No: 23-1803V
81. Daniel Thomas Romo, Pico Rivera, California, Court of Federal Claims No: 23-1804V
82. Garrett Dixon, Las Vegas, Nevada, Court of Federal Claims No: 23-1807V
83. Kendra Graves, Damariscotta, Maine, Court of Federal Claims No: 23-1808V
84. Rebecca Dryer-Minnerly, Philadelphia, Pennsylvania, Court of Federal Claims No: 23-1809V
85. Kristin Matsuda on behalf of M. M., Phoenix, Arizona, Court of Federal Claims No: 23-1810V
86. Lynn White, Cedar City, Utah, Court of Federal Claims No: 23-1812V
87. Stephanie Coles, Leonard, Maryland, Court of Federal Claims No: 23-1813V
88. Ghotai Sayed, Boston, Massachusetts, Court of Federal Claims No: 23-1815V
89. Lynda Cottrell, Roswell, Georgia, Court of Federal Claims No: 23-1816V
90. Enoch Agnew, Boscobel, Wisconsin, Court of Federal Claims No: 23-1818V
91. James Southard, Oviedo, Florida, Court of Federal Claims No: 23-1822V
92. Eric Romo, Boston, Massachusetts, Court of Federal Claims No: 23-1825V
93. Jo Ann Banes, Flowood, Mississippi, Court of Federal Claims No: 23-1828V
94. Carol Amick, Lexington, South Carolina, Court of Federal Claims No: 23-1831V
95. Caroline Horochak, Phoenix, Arizona, Court of Federal Claims No: 23-1832V
96. Armand Regateiro, Boston, Massachusetts, Court of Federal Claims No: 23-1835V
97. Samantha Tersigni, Whitehall, Pennsylvania, Court of Federal Claims No: 23-1836V
98. Vincent Cosey, Boscobel, Wisconsin, Court of Federal Claims No: 23-1837V
99. Ishmael Torres, Pasadena, California, Court of Federal Claims No: 23-1838V
100. Chloe Baisden, Leesburg, Florida, Court of Federal Claims No: 23-1839V
101. David Wapner, Brooklyn, New York, Court of Federal Claims No: 23-1841V
102. Melissa Heffington on behalf of L. A., Tampa, Florida, Court of Federal Claims No: 23-1843V
103. Meshell Miller, Summerville, South Carolina, Court of Federal Claims No: 23-1845V
104. Micah J. Becchio, Santa Barbara, California, Court of Federal Claims No: 23-1846V
105. Sabrina Moore, Houston, Texas, Court of Federal Claims No: 23-1847V
106. Beverly Lefnesky, Eynon, Pennsylvania, Court of Federal Claims No: 23-1850V
107. Katherine L. Wickstrom, Somerville, Massachusetts, Court of Federal Claims No: 23-1851V
108. Joni Boone, Dresher, Pennsylvania, Court of Federal Claims No: 23-1852V
109. Aja Wright, Jupiter, Florida, Court of Federal Claims No: 23-1853V
110. Casey Crowhurst, Monticello, Illinois, Court of Federal Claims No: 23-1856V
111. April Lumpkin, Kingfisher, Oklahoma, Court of Federal Claims No: 23-1857V
112. Mildred Shea, Bay Village, Ohio, Court of Federal Claims No: 23-1858V
113. Scottie Unruh on behalf of S. U., Greensboro, North Carolina, Court of Federal Claims No: 23-1859V
114. Vincent Tuccillo, Manalapan, New Jersey, Court of Federal Claims No: 23-1860V
115. Patricia Lord, Boston, Massachusetts, Court of Federal Claims No: 23-1861V
116. Gigi DelMarcelle, Green Bay, Wisconsin, Court of Federal Claims No: 23-1862V
117. Amira Sabr, Kearny, New Jersey, Court of Federal Claims No: 23-1864V
118. Brenda Cohu, Olathe, Kansas, Court of Federal Claims No: 23-1865V
119. Sandra Rivera, Port Chester, New York, Court of Federal Claims No: 23-1867V
120. Rebecca Diaz, Miami, Florida, Court of Federal Claims No: 23-1868V
121. Keisha L. Stephens, Fort Gordon, Georgia, Court of Federal Claims No: 23-1869V
122. Jigna Panchal, San Francisco, California, Court of Federal Claims No: 23-1870V
123. Patricia Dietrich, Bismarck, North Dakota, Court of Federal Claims No: 23-1871V
124. Carolyn Cummins, Kerrville, Texas, Court of Federal Claims No: 23-1872V
125. Eman Hegazy, St. Paul, Minnesota, Court of Federal Claims No: 23-1873V
126. Roy E. Conrad, Weston, West Virginia, Court of Federal Claims No: 23-1877V
127. Enrique Martinez, Denver, Colorado, Court of Federal Claims No: 23-1878V
128. Jennifer Wagner on behalf of Sean Richard Crecelius, Deceased, Colorado Springs, Colorado, Court of Federal Claims No: 23-1879V
129. Shawna Huhn-Seto, Evanston, Illinois, Court of Federal Claims No: 23-1880V
130. James Novekoff, Elgin, Illinois, Court of Federal Claims No: 23-1881V
131. Raffaella Vacca, Manalapan, New Jersey, Court of Federal Claims No: 23-1883V
132. Camille Ashcraft, Salt Lake City, Utah, Court of Federal Claims No: 23-1885V
133. Kristen Nelson, Los Angeles, California, Court of Federal Claims No: 23-1886V
134. Jeremy Bruce, Issaquah, Washington, Court of Federal Claims No: 23-1887V
135. Wenfei Kang, New York, New York, Court of Federal Claims No: 23-1889V
136. Luis Vega Batista, Yuma, Arizona, Court of Federal Claims No: 23-1890V
137. David Garrison, League City, Texas, Court of Federal Claims No: 23-1893V
138. Jay Fassbender, Mobile, Alabama, Court of Federal Claims No: 23-1894V
139. Kate Borizov on behalf of S. B. Los Angeles, California, Court of Federal Claims No: 23-1895V
140. Regina Parks on behalf of L. S. Plaquemine, Louisiana, Court of Federal Claims No: 23-1899V
141. John Kreger, Dresher, Pennsylvania, Court of Federal Claims No: 23-1902V
142. Nancy Ann Leslie, Fort Myers, Florida, Court of Federal Claims No: 23-1903V
143. Kristina Bokova, Dresher, Pennsylvania, Court of Federal Claims No: 23-1904V
144. Kermit Nelson, New Port Richey, Florida, Court of Federal Claims No: 23-1905V
145. Robert Horne, Miami, Florida, Court of Federal Claims No: 23-1906V
146. Clare Archer, Santa Monica, California, Court of Federal Claims No: 23-1907V
147. Jeffery N. Burkhart, Dover, Tennessee, Court of Federal Claims No: 23-1908V
148. Christina Federline on behalf of J. F., Los Angeles, California, Court of Federal Claims No: 23-1909V
149. Jerry Garland, Florence, Alabama, Court of Federal Claims No: 23-1910V
150. Amir J. Khan, Boscobel, Wisconsin, Court of Federal Claims No: 23-1911V
151. Charlene Rismann, Waterford, Michigan, Court of Federal Claims No: 23-1912V
152. Anam Mulumba, Fort Worth, Texas, Court of Federal Claims No: 23-1913V
153. Beverly Barnhart, Beavercreek, Ohio, Court of Federal Claims No: 23-1916V
154. John J. Schramm, III, Levittown, Pennsylvania, Court of Federal Claims No: 23-1921V
155. Blessing Maduagwu, Whittier, California, Court of Federal Claims No: 23-1923V
156. Phyllis Chang, San Ramon, California, Court of Federal Claims No: 23-1924V
157. Katherine M. Helton, Los Angeles, California, Court of Federal Claims No: 23-1926V
158. Yasmin Hines, Los Angeles, California, Court of Federal Claims No: 23-1927V

[FR Doc. 2023-27392 Filed 12-13-23; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Interdisciplinary, Community-Based Linkages

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL) will hold public meetings for the 2024 calendar year (CY). Information about ACICBL, agendas, and materials for these meetings can be found on the ACICBL website at <https://www.hrsa.gov/advisory-committees/interdisciplinary-community-linkages>.

DATES: ACICBL meetings will be held on

- January 25, 2024, 8:00 a.m.–5:00 p.m. Eastern Time (ET) and January 26, 2024, 8 a.m.–4 p.m. ET
- April 19, 2024, 10 a.m.–5 p.m. ET
- September 6, 2024, 10 a.m.–5 p.m. ET

ADDRESSES: Meetings may be held in person, by teleconference, and/or Zoom. For updates on how the meetings will be held, visit the ACICBL website 30 business days before the date of the meeting, where instructions for joining meetings will be posted. In-person ACICBL meetings will be held at 5600 Fishers Lane, Rockville, Maryland 20857. For meeting information updates, go to the ACICBL website meeting page at <https://www.hrsa.gov/advisory-committees/interdisciplinary-community-linkages/meetings>.

FOR FURTHER INFORMATION CONTACT: Shane Rogers, Designated Federal Officer, Division of Medicine and Dentistry, Bureau of Health Workforce, HRSA, 5600 Fishers Lane, Room 15N142, Rockville, Maryland 20857; 301-443-5260; or SRogers@hrsa.gov.

SUPPLEMENTARY INFORMATION: ACICBL provides advice and recommendations to the Secretary of HHS on policy, program development, and other matters of significance concerning the activities authorized under sections 750–760, Title VII, Part D of the Public Health Service Act. ACICBL submits an annual report to the Secretary of HHS and to Congress describing its activities, including findings and recommendations made by ACICBL concerning the activities under sections 750–760 of the Public Health Service

Act. In addition, ACICBL develops, publishes, and implements performance measures and guidelines for longitudinal evaluations, as well as recommends appropriation levels for programs under Part D of Title VII.

Since priorities dictate meeting times, be advised that start times, end times, and agenda items are subject to change. For CY 2024 meetings, agenda items may include, but are not limited to, policy and program development and other significant matters related to activities authorized under Part D of the Public Health Service Act, positioning the public health system to anticipate future needs, reversing the negative trend in health care recruitment and retention, and identifying ways for incentivizing for health equity. Refer to the ACICBL website listed above for all current and updated information concerning CY 2024 ACICBL meetings, including agendas and meeting materials that will be posted 30 calendar days before the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting(s). Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to ACICBL should be sent to Shane Rogers using the contact information above at least 5 business days before the meeting date(s).

Individuals who need special assistance or another reasonable accommodation should notify Shane Rogers using the contact information listed above at least 10 business days before the meeting(s) they wish to attend. Since all in person meetings will occur in a federal government building, attendees must go through a security check to enter the building. Non-U.S. Citizen attendees must notify HRSA of their planned attendance at least 20 business days prior to the meeting in order to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023-27499 Filed 12-13-23; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Aging Special Emphasis Panel; Alzheimer's Disease Drug Development.

Date: January 18, 2024.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, RM: 2E400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mariel Jais, Ph.D., M.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 2E400, Bethesda, MD 20892, (301) 594-2614, mariel.jais@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 8, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-27424 Filed 12-13-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topic: Pain Therapeutics.

Date: January 5, 2024.

Time: 12:00 p.m. to 1:00 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: Lai Yee Leung, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011D, Bethesda, MD 20892, (301) 827-8106, leungl2@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: December 8, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-27421 Filed 12-13-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel; NIGMS Review of Applications for Innovative Programs to Enhance Research Training (IPERT) (R25), MOSAIC (UE5), and Conference (R13) Applications.

Date: March 6-7, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, Maryland 20892, 301-594-4859, latarsha.carithers@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 8, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-27422 Filed 12-13-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Aging Initial Review Group; Career Development Facilitating The Transition to Independence Study Section.

Date: February 15-16, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue RM: 2W200, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Joshua Park, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue RM: 2W200, Bethesda, MD 20892, (301) 496-6208, joshua.park4@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 8, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-27423 Filed 12-13-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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: Neurological Sciences Training Initial Review Group; NST-1 Study Section.

Date: January 29-30, 2024.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Rockville, MD 20892, 301-496-0660, benzingw@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: December 8, 2023.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-27448 Filed 12-13-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Aging Initial Review Group; Career Development for Clinicians/Health Professionals Study Section Career development awards for clinicians and health professionals.

Date: February 5–6, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, RM: 2W200, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maurizio Grimaldi, Ph.D., M.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 2W200, Bethesda, MD 20892, 301–496–9374, maurizio.grimaldi@nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 8, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–27426 Filed 12–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Aging Special Emphasis Panel TREAT–AD.

Date: January 29, 2024.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue Suite: 2W200, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg, Suite 2W200, Bethesda, MD 20892, 301–496–3562, neuhuber@ninds.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 8, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–27425 Filed 12–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, December 13, 2023, 09:00 a.m. to December 14, 2023, 02:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on November 06, 2023, FR Doc. 2023–24811, 88 FR 77325.

“This notice is being amended to change the dates of this two-day meeting to January 4, 2024, and January 5, 2024. Change the meeting time to 9:00 a.m. to 5:00 p.m.” The meeting is closed to the public.

Dated: December 8, 2023.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–27447 Filed 12–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0330]

Removal of Smith Point Traffic Separation Scheme From Nautical Charts

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Smith Point Traffic Separation Scheme (TSS) is a vessel traffic routing measure which lies on inland waters, at the mouth of the Potomac River. The Coast Guard announces its intention to have the TSS removed from the nautical charts, and from the U.S. Coast Pilot. We will also change the buoy which identifies the TSS from a special purpose lighted yellow buoy to a red and white striped lighted mid-channel buoy.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email Matthew Creelman, Marine Planner at Fifth Coast Guard District, telephone (757) 398–6230, email, Matthew.K.Creelman2@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

FR Federal Register
DHS Department of Homeland Security
NOAA National Oceanic and Atmospheric Administration
TSS Traffic Separation Scheme
USCG United States Coast Guard,
Department of Homeland Security

II. Background and Purpose

The Smith Point TSS, a vessel traffic routing measure, lies in inland waters, as defined in 33 CFR 2.26, in the Chesapeake Bay, at the mouth of the Potomac River, just south of the Maryland/Virginia border. It was never formally established by rule, and exists only as a notation on NOAA nautical charts. On August 21, 2023 (88 FR 56850), we issued a notice of inquiry, requesting comments on whether the TSS should be removed from the NOAA charts and the U.S. Coast Pilot. (Issued by NOAA, the U.S. Coast Pilot is a series of nautical books that cover a variety of information important to navigators of coastal and intracoastal waters and the Great Lakes.) There was 90-day comment period.

During the comment period, USCG received one comment. The comment, from the Association of Maryland Pilots, supported the decision to remove the TSS, noting that conditions have changed since the TSS was first listed on the nautical charts in 1969, and that

today, the TSS is an impediment to safe navigation in the area. The TSS identifies separate northbound and southbound travel lanes which accommodated both lanes of vessel traffic in 1969, given the size of vessels operating in the area then. Today, however, vessels with deeper drafts, which are limited to operating in the waters the TSS covers, travel in the area, and they must travel in opposing lanes to avoid the risk of grounding.

The comment, and supporting documents, are available in the public docket and can be viewed at <https://www.regulation.gov>. To view documents, in the "Search" box insert "USCG-2023-0330" and click "Search." Then select "Supporting & Related Material" in the Document Type column.

The Smith Point TSS no longer serves a useful purpose, and the notice of inquiry USCG published in August confirms that there are no concerns from the public about removing it and therefore the USCG has decided to move forward with the removal of the vessel traffic routing measure.

III. Authority and Action To Be Taken

Under 46 U.S.C. 70001(a)(4), as delegated, USCG may control vessel traffic in areas subject to the jurisdiction of the United States that it determines to be hazardous by, among other means, establishing vessel traffic routing schemes. Based on the analysis of historical vessel traffic patterns and the comment received, the Coast Guard will:

1. Request NOAA remove the Smith Point TSS chart feature from all applicable charts and update the U.S. Coast Pilot to remove the TSS and reflect changes to the on-scene navigational buoy the USCG will deploy.

2. Change the Smith Point Fairway Lighted Buoy SP (LLNR 7490) to Smith Point Lighted Buoy SP, a white and red striped Safe Water Buoy and the light will be changed from a yellow to white with a Morse Code "A" flash characteristic.

Dated: December 8, 2023.

Shannon N. Gilreath,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2023-27440 Filed 12-13-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2760-23; DHS Docket No. USCIS-2023-0013]

RIN 1615-ZC06

Extension of Re-Registration Periods for Extensions of the Temporary Protected Status Designations of El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan

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

ACTION: Notice of extension of re-registration periods for extensions of the Temporary Protected Status designations of El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the re-registration periods for the extensions of the Temporary Protected Status (TPS) designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan from 60 days to the full 18-month designation extension period of each country. Beneficiaries must re-register to receive TPS benefits under the most recent designation extensions for these countries.

DATES: The re-registration period for individuals to submit TPS applications under the designation of:

- El Salvador is July 12, 2023, through March 9, 2025;
- Haiti is January 26, 2023, through August 3, 2024;
- Honduras is November 6, 2023, through July 5, 2025;
- Nepal is October 24, 2023, through June 24, 2025;
- Nicaragua is November 6, 2023, through July 5, 2025; and
- Sudan is August 21, 2023, through April 19, 2025.

FOR FURTHER INFORMATION CONTACT:

• You may contact Rená Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800-375-5283.

• For further information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS

web page at <https://uscis.gov/tps>. You can find specific information about each country's TPS designation by selecting the name of the country from the menu on the left side of the TPS web page.

- If you have additional questions about TPS, please visit <https://uscis.gov/tools>. Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at uscis.gov, or visit the USCIS Contact Center at <https://uscis.gov/contactcenter>.

- Further information will also be available at local USCIS offices upon publication of this notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

DHS	U.S. Department of Homeland Security
EAD	Employment Authorization Document
Form I-765	Application for Employment Authorization
Form I-821	Application for Temporary Protected Status
FR	Federal Register
INA	Immigration and Nationality Act
Secretary	Secretary of Homeland Security
TPS	Temporary Protected Status
TTY	Text Telephone
USCIS	U.S. Citizenship and Immigration Services

Purpose of This Action (TPS)

The re-registration period extensions apply to the following **Federal Register** notices:

Reconsideration and Rescission of Termination of the Designation of El Salvador for Temporary Protected Status; Extension of the Temporary Protected Status Designation for El Salvador, 88 FR 40282 (June 21, 2023). The 18-month re-registration period now runs from July 12, 2023, through March 9, 2025.

Extension and Redesignation of Haiti for Temporary Protected Status, 88 FR 5022 (January 26, 2023). The re-registration period now runs from January 26, 2023, through August 3, 2024.

Reconsideration and Rescission of Termination of the Designation of Honduras for Temporary Protected Status; Extension of the Temporary Protected Status Designation for Honduras, 88 FR 40304 (June 21, 2023). The 18-month re-registration period now runs from November 6, 2023, through July 5, 2025.

Reconsideration and Rescission of Termination of the Designation of Nepal for Temporary Protected Status; Extension of the Temporary Protected Status Designation for Nepal, 88 FR 40317 (June 21, 2023). The 18-month re-registration period now runs from October 24, 2023, through June 24, 2025.

Reconsideration and Rescission of Termination of the Designation of Nicaragua for Temporary Protected Status; Extension of the Temporary Protected Status Designation for Nicaragua, 88 FR 40294 (June 21, 2023). The 18-month re-registration period now runs from November 6, 2023, through July 5, 2025.

Extension and Redesignation of Sudan for Temporary Protected Status, 88 FR 56864 (August 21, 2023). The re-registration period now runs from August 21, 2023, through April 19, 2025.

Through this notice, DHS sets forth updated re-registration periods from 60 days to 18 months for the extensions of the TPS designations for El Salvador,¹ Haiti,² Honduras,³ Nepal,⁴ Nicaragua,⁵ and Sudan⁶ as specified in this notice. See section 244 of the Immigration and Nationality Act (INA), 8 U.S.C. 1254a; 8 CFR 244.17. This will allow individuals to submit a re-registration application for TPS and an application for employment authorization documentation (if desired), during the full length of the relevant country's TPS designation extension.

DHS is extending the re-registration periods for a number of reasons, including that certain beneficiaries have not been required to re-register for TPS for several years due to pending litigation and related continuation of their documentation, confusion within

the beneficiary population, and operational considerations for USCIS. Historically, the length of the re-registration period has typically been 60 days.⁷ Beneficiaries of TPS have typically re-registered for TPS within a 60-day period on a recurring basis at the end of their country's designation approximately every 12 to 18 months as announced by **Federal Register** notices that extended the designation. However, certain beneficiaries under these TPS designations have not been required to re-register for TPS for several years due to a series of DHS-issued **Federal Register** notices that continued the documentation for beneficiaries of TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal pursuant to ongoing litigation.⁸ Those beneficiaries must re-register to receive TPS benefits under the most recent extensions.

After reevaluating the initial 60-day re-registration periods announced for TPS under the designation extensions for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal, DHS has determined that it will provide the full designation extension periods for applicants to file their re-registration

Form I-821 and Form I-765 to obtain an EAD, if desired. Limiting the re-registration period to 60 days for these particular beneficiaries may place a burden on applicants who are unable to timely file but would otherwise be eligible to re-register for TPS, particularly in light of the ongoing litigation and the resulting overlapping periods of TPS validity announced in several **Federal Register** notices, which may be confusing to some current beneficiaries. This notice allows beneficiaries of these countries who have not been required to re-register for TPS since their last extension to re-register over the full TPS designation period.⁹ Prior to the currently required re-registration, beneficiaries under these designations¹⁰ were last required to re-register from July 8, 2016, through September 6, 2016, under El Salvador's designation,¹¹ from May 16, 2016, through July 15, 2016, under Nicaragua's and Honduras's designations,¹² and from October 26, 2016, through December 27, 2016, under Nepal's designation.¹³

As discussed previously, due to unique circumstances, including protracted litigation, these TPS

⁷ DHS has previously provided a re-registration period for longer than 60 days. See, e.g., *Extension and Redesignation of Haiti for Temporary Protected Status*, 76 FR 29000 (May 19, 2011) (providing a 90-day re-registration period for Haiti TPS). Additionally, DHS has previously extended a re-registration period. See, e.g., *Extension of the Re-Registration Period for Haiti Temporary Protected Status*, 79 FR 25141 (May 2, 2014) (providing an extension of the re-registration period for Haiti TPS in order to maximize re-registration opportunities for eligible beneficiaries. At the time, USCIS had received a low proportion of the expected number of re-registration applications, and stakeholders reported that the low number of re-registration applications may have been due to confusion about the re-registration deadline). Similarly, DHS is providing applicants under these designations extended re-registration periods to address the several year gap in the typical re-registration requirements.

⁸ TPS termination decisions were announced for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal in 2017–2018. Lawsuits challenging the terminations were filed in the U.S. District Court for the Northern District of California in *Ramos v. Nielsen*, 326 F. Supp. 3d 1075 (N.D. Cal. 2018), and *Bhattarai v. Nielsen*, No. 19–cv–00731 (N.D. Cal. Mar. 12, 2019), and in the U.S. District Court for the Eastern District of New York in *Saget v. Trump*, 375 F. Supp. 3d 280 (E.D.N.Y. 2019). DHS has taken actions to ensure its continued compliance with the court orders in *Ramos* and *Bhattarai*. DHS has published periodic notices to continue TPS and extend the validity of TPS-related documentation previously issued to beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal. See 83 FR 54764 (Oct. 31, 2018); 84 FR 7103 (Mar. 1, 2019); 84 FR 20647 (May 10, 2019) (correction notice issued at 84 FR 23578 (May 22, 2019)); 84 FR 59403 (Nov. 4, 2019); 85 FR 79208 (Dec. 9, 2020); 86 FR 50725 (Sept. 10, 2021) (correction notice issued at 86 FR 52694 (Sept. 22, 2021)); 87 FR 68717 (Nov. 16, 2022).

⁹ Re-registrants under TPS Haiti and Sudan, including beneficiaries who initially obtained TPS under the 2021 and 2022 designations of TPS for Haiti and Sudan, may file during the entire designation re-registration period as noted in this notice.

¹⁰ Haiti and Sudan were newly designated for TPS in 2021 and 2022, respectively. Prior to the new designation of TPS for Haiti on August 3, 2021, beneficiaries under the Haiti designation were last required to re-register from May 24, 2017, through July 24, 2017. See *Extension and Redesignation of Haiti for Temporary Protected Status*, 82 FR 23830 (July 23, 2017). Prior to the new designation of TPS for Sudan on April 19, 2022, beneficiaries under the Sudan designation were last required to re-register from January 25, 2016, through March 25, 2016. See *Extension and Redesignation of Sudan for Temporary Protected Status*, 81 FR 4045 (January 25, 2016).

¹¹ *Extension of the Designation of El Salvador for Temporary Protected Status*, 81 FR 44645 (July 8, 2016).

¹² *Extension of the Designation of Nicaragua for Temporary Protected Status*, 81 FR 30325 (May 16, 2016). *Extension of the Designation of Honduras for Temporary Protected Status*, 81 FR 30331 (May 16, 2016). Following the last extension of TPS for Honduras, former Acting Secretary Elaine Duke did not make a decision on extending or terminating Honduras's TPS designation by the statutory deadline, resulting in an automatic 6-month extension of the designation, through July 5, 2018. See *Extension of the Designation of Honduras for Temporary Protected Status*, 82 FR 59630 (Dec. 15, 2017). If the Secretary makes no decision on extension or termination of a country's TPS designation by at least 60 days before the expiration of the existing TPS designation, then INA sec. 244(b)(3)(C) requires that the designation be extended an additional six months (or 12 or 18 months in the Secretary's discretion).

¹³ *Extension of the Designation of Nepal for Temporary Protected Status*, 81 FR 74470 (October 26, 2016).

¹ *Reconsideration and Rescission of Termination of the Designation of El Salvador for Temporary Protected Status; Extension of the Temporary Protected Status Designation for El Salvador*, 88 FR 40282 (June 21, 2023).

² *Extension and Redesignation of Haiti for Temporary Protected Status*, 88 FR 5022 (Jan. 26, 2023).

³ *Reconsideration and Rescission of Termination of the Designation of Honduras for Temporary Protected Status; Extension of the Temporary Protected Status Designation for Honduras*, 88 FR 40304 (June 21, 2023).

⁴ *Reconsideration and Rescission of Termination of the Designation of Nepal for Temporary Protected Status; Extension of the Temporary Protected Status Designation for Nepal*, 88 FR 40317 (June 21, 2023).

⁵ *Reconsideration and Rescission of Termination of the Designation of Nicaragua for Temporary Protected Status; Extension of the Temporary Protected Status Designation for Nicaragua*, 88 FR 40294 (June 21, 2023).

⁶ *Extension and Redesignation of Sudan for Temporary Protected Status*, 88 FR 56864 (Aug. 21, 2023).

beneficiaries have been subject to multiple, overlapping periods of potential TPS validity due to the ongoing litigation. They also have not been required to re-register for several years. Therefore, this extended re-registration period allows this population of beneficiaries to more easily comply with the re-registration requirement, which could avoid placing additional burdens on these re-registrants. In addition, permitting re-registration throughout the entirety of the designation extension period could reduce the operational burden on USCIS; reviewing and adjudicating late-filed re-registration applications that may occur as a result of the 60-day period due to lack of awareness of the re-registration requirement that these particular beneficiaries are more likely to experience because of the protracted litigation and subsequent TPS actions to continue documentation, would require additional resources.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2023-27342 Filed 12-13-23; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7076-N-19]

60-Day Notice of Proposed Information Collection: Public Housing Agency (PHA) 5-Year and Annual Plan; OMB Control No.: 2577-0226

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 12, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted 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. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Management Analyst, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; email Colette.Pollard@hud.gov, telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Agency (PHA) 5-Year and Annual Plan.

OMB Approval Number: 2577-0226.

Type of Request: Revision of currently approved collection.

Form Number(s): HUD-50075-5Y, HUD-50075-HCV, HUD-50075-HP, HUD-50075-MTW, HUD-50075-SM, HUD-50075-ST, HUD-50077-CR, HUD-50077-CRT-SM HUD-50077-ST-HCV-HP and HUD-50077-SL.

Description of the need for the information and proposed use: The Public Housing Agency (PHA) Plan was created by section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c-1). There are two different PHA Plans: The Five-Year Plan and the Annual Plan. The Five-Year Plan describes the agency’s mission, long-range goals, and objectives for achieving its mission over a five-year period. The Annual PHA Plan is a comprehensive guide to PHA policies, programs, operations, and strategies for meeting local housing needs and goals. This revision addresses updates to the HUD-

50075-HCV form and the automation of all the PHA Plan forms including the Moving to Work (MTW) Supplement for PHAs that joined the MTW Demonstration under the 2016 Appropriations Act (*i.e.*, MTW Expansion).

PHA Plans are needed to inform the Department of Housing and Urban Development (HUD), residents, and the public of the PHA’s mission and strategy for serving the needs of low income, very low-income, and extremely low-income families in the PHA’s jurisdiction. This information helps provide accountability to the local community for how PHAs spend their funding and implement their policies. The PHA Plan submission also includes various certifications to confirm that PHAs will abide by all Federal civil rights laws and that the PHA Plan is consistent with the applicable Consolidated Plan.

PHA plans also allow HUD to monitor the performance of programs and the performance of the public housing agencies that administer them. Since 2000, HUD has taken several steps to reduce the administrative burden of the PHA Plan submission including the use of streamlined plan submissions for certain PHA based on size and performance. Most recently, the Housing and Economic Reform Act (HERA) removed the requirement for qualified PHAs to submit an annual PHA Plan and to only submit the 5-year Plan. A “qualified PHA” is one that manages 550 or fewer public housing units and vouchers and is not labeled as a troubled public housing agency. Currently, qualified PHA must only submit an annual certification to confirm that they will abide by all Federal civil rights laws.

In January 2021 HUD requested from OMB that the PHA Plan collection be reinstated with change. These changes included a new section to accommodate the new requirements of the Affirmatively Furthering Fair Housing (AFFH) Rule and the introduction of the MTW Supplement. OMB approved the changes, reinstated the collections and HUD made the new templates available to PHAs on the HUD website as individual word processing files. After publication, HUD made subsequent minor changes to the forms and certifications to remove unnecessary sections, make minor edits and to account for updated or removed regulatory citations. Additionally, HUD took steps to automate the MTW supplement in the Housing Information Portal (HIP).

With this current proposed information collection, HUD intends to

automate all PHA Plan templates and certifications in the web based Public Housing Portal (formerly known as the Operating Fund Web Portal). While the templates will be automated, the content and required elements will be with same with minor modifications as needed. Modifications to the collection include the following:

(1) HUD is adding an additional element to the HUD-50075-HCV form. The revised HUD-50075-HCV form will include an additional element requiring Section 8 only PHAs to report on their Project Based Voucher (PBV) activities. This template will be used by HCV-only PHA's that administer the Housing Choice Voucher (HCV) program which may also include PBV developments.

(2) HUD is adding an optional feature for PHA's to attach their written Admission and Continued Occupancy Policy (ACOP) or Administrative Plan documents to their Five-Year Plan and Annual Plan submissions. This will create a centralized database of all local PHA policies which currently can only be found at each individual PHA or on their websites.

(3) HUD will now require complete electronic submission from all PHAs. Currently, PHA Plan templates are

downloaded, edited, and submitted as email attachments which must then be individually uploaded, analyzed and organized by HUD. Automating the PHA Plan forms will make the PHA Plan review process more efficient by streamlining the submission and reducing the administrative burden on both HUD and the PHA. HUD estimated that automating the PHA Plan form will reduce both the PHA and HUD administrative burden by approximately 25% each. Electronic submission and collection of this information will also make future data and policy analysis feasible.

Overall, the burden hours associated with the collection is expected to decrease by 2,024 hours due to the automation of the PHA Plan templates. Additional time may be required in the first year to train PHAs on the system, however, because the Public Housing Portal is an existing HUD system that PHAs use and are familiar with, this burden is expected to go down in subsequent years. Accordingly, the additional burden of the one-time training is not expected to exceed the time savings created by the system.

Finally, revisions were made to this collection to reflect adjustments in

calculations based on the total number of current, active public housing agencies (PHAs) to date. Since the last approved information collection, the number of active public housing agencies has changed from approximately 3,780 to 3,763. The number of PHAs can fluctuate due to many factors, including but not limited to performance scoring, the merging of two or more PHAs or the termination of the public housing and/or voucher programs due to the Rental Assistance Demonstration (RAD).

Respondents: Local, Regional and State Body Corporate Politic Public Housing Agencies (PHAs) Governments.

Estimated Number of Respondents: 3,763.

Estimated Number of Responses: 4,570 (Certifications: 2,321 [Qualified PHAs], Annual Plans: 1,496 and 5-Year Plans: 753 [3,763/5]).

Frequency of Response: Once every five years for all PHAs (5-Year Plan), annually for all PHAs except HERA Qualified PHAs (Annual Plans), and annually for all PHAs (certifications).

Average Hours per Response: 5.07 hours.

Total Estimated Burdens: 12,590 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Form HUD-50075-ST	796	1	796	5.64	4,489.44	*\$26.62	\$119,508.89
Form HUD-50075-SM	202	1	202	2.67	539.74	26.62	14,367.99
Form HUD-50075-HP	152	1	152	5.26	799.52	26.62	21,283.22
Form HUD-50075-HCV	246	1	246	4.52	1,111.92	26.62	29,599.31
Form HUD-50075-MTW	100	1	100	6.50	650	26.62	17,303.00
Form HUD-50077-CR (Qualified PHAs)	2,321	1	2,321	0.16	371.36	26.62	9,885.60
Form HUD-50075-5Y	3,763	1	3,763/5	1.23 (6.15/5)	4,628.49 (23,142.45/5)	26.62	123,210.40
Total	3,763	1	3,763	25.98	12,590.47	26.62	335,158

* Hourly cost for response assuming a GS-9, Step 5 (\$55,564), Executive Assistant, hourly rate is \$26.62.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of

information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Nicholas J. Bilka,

Chief, Office of Policy, Programs, and Legislative Initiatives.

[FR Doc. 2023-27466 Filed 12-13-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7077-N-27]

Privacy Act of 1974; System of Records

AGENCY: Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity (FHEO) is modifying a system of records, "HUD Enforcement Management System" (HEMS). The modification makes updates to: System

Location, System Manager, Purpose, Categories of Individuals, Record Source Categories, Routine Uses and Supplementary information. The modifications do not change the scope of the system.

DATES: Comments will be accepted on or before January 16, 2024. This SORN becomes effective immediately, while the routine uses become effective after the comment period immediately upon publication except for the routine uses, which will become effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number or by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions provided on that site to submit comments electronically.

Fax: 202-619-8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; Mr. LaDonne White, Chief Privacy Officer; Office of the Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410-0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov> including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

LaDonne White, 451 Seventh Street SW, Room 10139, Washington, DC 20410; 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: The purpose of HUD Enforcement Management System (HEMS) is to serve as a source for case data on housing discrimination complaints and case files during the investigation process. HEMS automates the enforcement lines of business for FHEO using a web-based platform. The purpose of HEMS has been streamlined and updated since the original SORN published in 2019. The

modifications to HEMS SORN include these changes:—"Security Classification" is updated to Unclassified to reflect the correct Security Classification. The "System Manager" has been updated and brings the information current. The "Categories of Records in the System" is updated to include the collection of Personal Identifiable Information (PII) provided by the individual to contact people involved in a particular case. The "Categories of Individuals Covered by the System" is updated to include the collection of PII from primary individuals whose information is contained in HEMS which includes Complainants, Respondents and Witnesses. The "Routine Uses of Records Maintained in the System, Including Categories of Uses and Purpose of Such Uses" is updated to include the applicable routine uses listed below:

Research and Statistical Analysis Disclosure Routine Use: Allows for HUD to review and/or perform statistical analysis as it operates the Department's programs needed to meet its mission. This is appropriate and necessary for the efficient conduct of government and in the best interest of both the individual and the public.

Data Testing for Technology Implementation Disclosure Routine Use: Allows for HUD to provide system access to HUD contractors to develop, maintain and troubleshoot application issues to support the Department's programs needed to meet its mission. Upgrades and migrations to this system are needed to meet the changes in technology and improve system performance. This is appropriate and necessary for the efficient conduct of government and in the best interest of both the individual and the public.

Disclosures for Law Enforcement Investigations Routine Uses: Allows for HUD to disclose records maintained as part of this system to appropriate Federal, State or governmental agencies when HUD determines that using those records is relevant and necessary for law enforcement. This is appropriate and necessary for the efficient conduct of government and in the best interest of both the individual and the public.

Court or Law Enforcement Proceedings Disclosure Routine Uses: Allows for HUD to disclose records maintained as part of this system of records to assist with court and law enforcement proceedings by providing access to records. This is appropriate and necessary for the efficient conduct of government and in the best interest of both the individual and the public.

Department of Justice for Litigation Disclosure Routine Use: To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

SYSTEM NAME AND NUMBER:

HUD Enforcement Management System (HEMS), HUD/FHEO-02.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at NCCIPS Building 9325 Stennis Space Center, MS 39529-6000. The Paper Records are located at the FHEO Regional office.

SYSTEM MANAGER(S):

Patrina Munson, Director, Office of Information Services and Communications, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW, Room 5118, Washington, DC 20410-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988 (42 U.S.C. 3601 *et seq.*); title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-7). Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Section 109 of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5309); title II of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681-1688), and the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*); title 2, Code of Federal Regulations (CFR), parts 180 and 2424. Title 31 U.S.C 6101; title 41 U.S.C.; title 42 U.S.C. 3533 and 3535; and Executive Orders 12549 and 12689. Violence Against Women Act (VAWA), 34 U.S.C. 1294(c) & 1295(d).

PURPOSE(S) OF THE SYSTEM:

To serve as a repository for case data on housing discrimination complaints and case files during the investigation process and to automate the enforcement lines of business for FHEO. The Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity (FHEO) maintains the HUD Enforcement Management System (HEMS) system of records. HEMS is the system where case data on housing discrimination complaint inquiries and case files are documented during the investigation process. Personal information is collected on a case-by-case basis to contact the people involved or if relevant to the particular case. The public may submit a housing discrimination complaint through the online HUD Form 903 on HUD's website, or by contacting FHEO by mail, phone, email, or in person. Data from the online HUD Form 903, including some contact information supplied by the complainant, goes directly into HEMS. Complaints made through other forms of submission are entered into HEMS by FHEO staff or staff from partner state and local government agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Complainants and their Representatives, Respondents and their Representatives, witnesses who were interviewed during the investigation, and case investigators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Respondents and/or Complainants and/or Witnesses and/or Contacts Full Name, Email Address, Fax Number, Phone Number(s), Mailing Address.

RECORD SOURCE CATEGORIES:

Individuals, including from the Housing Discrimination Complaint Form 903, publicly available data sets (e.g., property ownership records) and the following Federal, State, and local entities; United States Department of Agriculture (USDA), Federal Financial Institutions Examination Council (FFIEC) which includes five banking regulators—the Federal Reserve Board of Governors (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB), and State and Local Government Fair Housing Agencies that partner with FHEO.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) (a) To individuals under contract to HUD or under contract to another agency with funds provided by HUD, for the purpose of conducting oversight and monitoring of program operations to determine compliance with applicable laws and regulations, and FHEO reporting requirements (information disclosed under this routine use is subject to Privacy Act requirements and limitations on disclosures are applicable to HUD officials and employees).

(b) To State and local agencies certified by HUD to investigate and adjudicate title VIII housing discrimination complaints; State and local agencies also use HEMS to record investigation information.

(c) To a party (complainant or respondent) to an investigation once the investigation is closed, upon the party's request, information derived from an investigation and any final investigative report relating to that investigation, including the names of witnesses, except when requesting anonymity pursuant to 24 CFR 103.230(a)(1).

(2) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, or cooperative agreement, when necessary to accomplish an agency function, related to a system of records, for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

(3) To contractors, experts, and consultants with whom HUD has a contract, service agreement, or other assignment of the Department, when necessary to utilize relevant data for the purpose of testing new technology and systems designed to enhance program operations and performance.

(4) To appropriate agencies, entities, and persons when: (1) HUD suspects or has confirmed that there has been a breach of the system of records; (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD, 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 HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(5) To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to 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.

(6) To appropriate Federal, State, local, Tribal, or governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

(7) To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations, or in connection with criminal law proceedings; when HUD determines that use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(8) To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2)

any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(9) To the USDA for sharing information on investigations involving the same title VI and title VIII Federal funding recipients.

(10) To the FFIEC for investigating banks that are respondents in title VIII investigations.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Inquiry Number, Case Number, Fair Housing Assistance Program (FHAP) Case Number, Case Name, Address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Permanent. The retention period for the information in HEMS is maintained for the life of the case to support the activity and other enforcement activities that may become related to the case.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

A User ID and password are required for authentication. Users must sign a Rules of Behavior form prior to being granted system access. These rules emphasize privacy protection of personally identifiable information in HEMS. Manual records are stored in lockable file cabinets; computer facilities are secured and accessible only by authorized personnel, and all files are stored in a secured area. Technical restraints are employed regarding accessing the computer and data files.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development, 451 7th Street SW, Washington, DC 20410-0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410-0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The housing discrimination related records in HEMS are maintained for use in civil rather than criminal actions and are prohibited from disclosure pursuant to exemption 5 U.S.C. 552a(d)(5) of the Privacy Act. Pursuant to 5 U.S.C. 552a(k)(2), all investigatory materials, including conciliation files, in records contained in this system which meet the criteria of this subsection, are exempt from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f)) as promulgated in 24 CFR 16.15(a)(1).

HISTORY:

Docket No. FR-5763-N-12, 79 FR 62658, October 20, 2014.

LaDonne L. White,
Chief Privacy Officer, Office of
Administration.

[FR Doc. 2023-27443 Filed 12-13-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7077-C-03]

Privacy Act of 1974; System of Records

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD), Office of Policy Development and Research (PD&R), gives notice of a proposed revision of an existing Privacy Act system of records. The system of records is being updated in support of a follow-up information collection with the participants of the Homeless Families Impact Study (now called the Family Options Study). The overall goal of the Family Options Study is to determine which housing and service intervention works best to promote housing stability, family

preservation, and family well-being, and self-sufficiency for homeless families with children. The new information collected will be added to the existing Homeless Families Impact Study Data Files. The Department proposes to expand the data collected under the previous study to capture additional data to determine the effects that housing and service interventions have had on the young children who are part of the sample. Refer to the "Categories of Records" section to identify new record types. Additionally, this Notice updates the routine uses of the data collected. This notice supersedes the previously published notice (February 26, 2014; FR-5763-N-02).

DATES: Comments will be accepted on or before January 16, 2024. This proposed action will be effective immediately upon publication. Routine uses will become effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number by one of these methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions provided on that site to submit comments electronically.

Fax: 202-619-8365.

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street SW, Room 10139 Washington, DC 20410-0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

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: HUD launched the Family Options Study in 2008 with the intent of generating

evidence about the relative effectiveness of various housing and services interventions designed to address family homelessness. HUD awarded the contract for the Family Options Study to Abt Associates and their partner, Vanderbilt University, who have conducted prior phases of the study and will conduct this next phase of the evaluation. Specific changes to the SORN include:

a. Changes to categories of records in the system and sources categories. The upcoming follow-up information collection with the participants of the Family Options Study will include additional categories of records which will be stored as part of the Homeless Families Impact Study Data Files.

b. Updated routine uses. The routine uses have been updated to remove those which are no longer relevant to this data collection (including the Congressional Inquiries Routine Use, the Department of Justice for Litigation Disclosure Routine Use, the Court or Law Enforcement Proceeding Routine Use, and the Law Enforcement Investigation Routine Use) and to add a new Research and Statistical Analysis Disclosure Routine Use.

c. Updated the System Location to reflect current addresses of contractors. The contractor has moved offices since the publication of the original SORN in 2014, and thus the System Location has been updated to reflect the current address.

d. Updated the Purpose to reflect the additional phase of the study. The original SORN was published in 2014 and did not forecast this new follow up information collection, thus the SORN is being revised to refer to this additional phase of the study.

e. Updated record retention and disposal and safeguards sections to reflect current retention requirements and current safeguard procedures. This section has been updated to reflect current record retention requirements and current safeguard procedures.

SYSTEM NAME AND NUMBER:

Family Options Study HUD/PD&R-04.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Data Files are maintained by Abt Associates which has principal offices at the following locations: Abt Associates Inc., 10 Fawcett Street, Suite 5, Cambridge, MA; Abt Associates Inc., 6130 Executive Blvd., Rockville, MD 20852; and the U.S. Department of Housing and Urban Development, 451

7th Street SW, Washington, DC 20410-0001. The Abt Associates system is hosted inside Amazon Web Services US East Cloud Region.

SYSTEM MANAGER(S):

Carol Star, Director, Division of Program Evaluation, Department of Housing and Urban Development, Office of Policy Development and Research, 451 Seventh Street SW, Room 8120, Washington, DC 20410-0001. Phone: (202) 402-6139.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 501 and 502 of the Housing and Urban Development Act of 1970 (Pub. L. 91-609) (12 U.S.C. 1701z-1; 1701z-2(d) and (g)).

PURPOSE(S) OF THE SYSTEM:

The purpose of the Family Options Study will be to store the information that is needed to measure the long-term outcomes of the Family Options Study. The information to be maintained in this records system is necessary to identify and track the participating families over the course of the study and determine the effectiveness of the interventions. The data in this system will be analyzed using statistical methods and any results shared with the public or published in anyway will be reported only in the aggregate. Resulting reports will not disclose or identify any individuals or sensitive personal information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families enrolled in Family Options Study and children in these families who have aged into adulthood and enrolled in the study.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data sets will contain the following categories of records.

Responses to surveys: Includes participant's full name; social security number; study identifier; birth date; contact information (home address, telephone numbers, email address); demographic characteristics of the family head and children; income and employment history; health information; housing history; program service participation and experiences; and child well-being.

Administrative data: Includes data on tenant's full name, date of birth, age, gender, race/ethnicity, disability status, income/salary, geolocation information, home address, unique household identifier; employment status, earned income, name of employer, email address, phone number.

Locational data: Includes data such as the address and location of participating household.

RECORD SOURCE CATEGORIES:

Families enrolled in the Family Options Study, HUD's PIH Inventory Management System/PIH Information Center (IMS/PIC), National Director of New Hires (NDNH), National Student Clearinghouse, Research Data Assistance Center, National Center for Health Statistics, National Change of Address (NCOA), and Accurint.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or other agreement for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

(2) To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, cooperative agreement, or other agreement with HUD, or its contractor Abt Associates, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function.

(3) (a) To appropriate agencies, entities, and persons when: (1) HUD suspects or has confirmed there has breached the system of records; (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (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 with HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(4) To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to 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.

(5) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or employees or contractors, and other entities and their agents for the conduct of HUD-approved ancillary studies relevant to the Family Options Study. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. Research reports resulting from any such ancillary studies would be required to report all results in the aggregate and to ensure that no individual was identifiable.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Name, Social Security Number, Date of Birth and Unique Study ID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Destroy upon verification of successful creation of the final document or file, or when no longer needed for business use, whichever is later.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

For Electronic Records: All personal data will be maintained on a secure virtual server that is protected by a firewall and complex passwords in a directory that can only be accessed by the system administrators and the analysts actively working on the data; access rights to the data are granted to limited researchers on a need-to-know basis, and the level of access provided to each researcher is based on the minimal level required that individual to fulfill his research role; all systems used to process or store data have Federal security controls applied to them; the data will be backed up on a regular basis to safeguard against system failures or disasters; and, unencrypted

data will not be stored on a laptop or on removable media such as CDs, diskettes, or USB flash drives.

For Paper Records: Any paper records with personal identifiers will be securely stored until they are shipped to the evaluation contractor via commercial mail services; all hard copy forms with personal identifying data (informed consent forms) will be stored securely in a locked cabinet that can only be accessed by authorized individuals working on the data. The locked cabinet will be stored in a locked office in a limited-access building. Additionally, permissions will be defined for each authorized user based on the user's role on the project. Study data will be aggregated or de-identified at the highest level possible for each required, authorized use.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development, 451 7th Street, SW, Washington, DC 20410-0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th street SW, Washington, DC 20410-0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This is a revision to the previously published notice published in the

Federal Register on February 26, 2014, at 79 FR 10823.

LaDonne White,
Chief Privacy Officer, Office of Administration.

[FR Doc. 2023-27445 Filed 12-13-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_UT_FRN_MO4500169719; UTU-75392]

Notice of Proposed Withdrawal Extension, Public Meetings and Correction for Segments of the Colorado, Dolores, and Green River Corridors; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: At the request of the Bureau of Land Management (BLM), the Secretary of the Interior proposes to extend Public Land Order (PLO) No. 7618, which withdrew public lands from location and entry under the United States mining laws, subject to valid existing rights, to protect the recreational, scenic, cultural, riparian, and fish and wildlife values of the Colorado, Dolores, and Green River Corridors, for an additional 20-year term. Lands included in PLO No. 7618 have been surveyed or resurveyed and corrected. Their official land description has been changed, requiring that the land descriptions be modified and corrected to include lands that were inadvertently not listed in the original PLO. The acreage has been changed from 111,895 acres to 109,287 acres to reflect the updated land description. The land would remain closed to location and entry under the U.S. mining laws. This notice provides a 90-day public comment period and announces that the BLM will host one in-person public meeting in Moab and one virtual meeting regarding this proposal.

DATES: All comments must be received by March 13, 2024. The BLM will hold an in-person public meeting in connection with the proposed withdrawal extension on January 16, 2024, at the BLM Moab Field Office, 82 Dogwood Ave., Moab, Utah, from 5 to 6 p.m. Mountain Time (MT). The BLM will also hold a virtual public meeting in connection with the proposed withdrawal extension on January 18, 2024, at 6 to 7 p.m. Mountain Time (MT). The BLM will publish the date and instructions for access to the online

public meeting in a local newspaper and any other additional information about the public meetings a minimum of 30 days prior to the meetings.

ADDRESSES: All comments should be sent to the BLM Utah State Office, Attn: Mary Higgins, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101–1345 or by email at mhiggins@blm.gov.

FOR FURTHER INFORMATION CONTACT:

David Pals, Field Manager, Moab Field Office by phone at 435–259–2100 or email at BLM_UT_MB_Comments@blm.gov, or at the address noted above. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The BLM submitted a petition/application to the Secretary of the Interior to extend the withdrawal of PLO No. 7618 (69 FR 59953) for an additional 20-year term, subject to valid existing rights. Some lands included in PLO No. 7618 have since been officially surveyed or resurveyed, and their official land descriptions have been changed, requiring that the land descriptions in the withdrawal extension application be modified. During the review it was also found that three lots were inadvertently left out of the original withdrawal. Lands that have been officially surveyed, resurveyed, or corrected are as follows:

(a) Colorado River

- (1) T. 26 S, R. 20 E,
Sec. 13, lot 4.
- (2) T. 26 S, R. 21 E,
Sec. 10;
Sec. 15, lot 4;
Sec. 16.

(b) Dolores River

- (1) T. 23 S, R. 24 E,
Sec. 16, lot 1.

(c) Green River

- (1) T. 22 S, R. 16 E,
Sec. 28.
- (2) T. 13 S, R. 17 E,
Sec. 12 (B).
- (3) T. 25 S, R. 17½ E,
Secs. 3, 4, 9, 10, 13 thru 16, 20 thru 25,
28, and 29.

The Secretary approved the BLM's petition; therefore, the request has become a Secretarial proposal for withdrawal extension. The updated legal description for the public lands proposed for the withdrawal extension are described as follows:

(a) Colorado River

Salt Lake Meridian, Utah

- T. 26 S, R. 20 E,
Sec. 1, lot 1, lots 8 thru 14, SW¼NE¼,
S½NW¼, and N½SW¼;
Sec. 12, lots 1, 2, and 3, SW¼NE¼,
E½SE¼, and SW¼SE¼;
Sec. 13, lots 1, 2, and 4, and N½NE¼.
- T. 25 S, R. 21 E,
Sec. 31, lots 4, 5, and 6, SE¼SW¼, and
NW¼SE¼;
Sec. 33, NE¼NE¼;
Sec. 34, lots 6 thru 9, and SE¼SW¼.
- T. 26 S., R. 21 E.,
Sec. 3, lot 2, lots 7 thru 12, and SW¼SE¼;
Sec. 5, lots 3 thru 6, lots 9 thru 12,
SW¼NE¼, SE¼NW¼, and E½SW¼;
Secs. 6 and 7;
Sec. 8, lots 1 thru 8, E½NW¼, and
E½SW¼;
Sec. 9, SE¼SE¼;
Sec. 10, lots 13 thru 22, NE¼SE¼, and
SW¼SE¼;
Sec. 11, lots 4 and 5;
Sec. 15, lot 4, E½NW¼, E½SW¼, and
SW¼SW¼;
Sec. 16, lot 8;
Sec. 17, lots 1 thru 9, E½NW¼, and
SE¼SE¼;
Sec. 18, lots 1 thru 8, E½NE¼, SW¼NE¼,
and E½SE¼;
Sec. 19, lots 1, 2, 3, and 5;
Sec. 20, lots 1 thru 6, and SE¼NW¼;
Sec. 21, lots 1 thru 8, SE¼NE¼, and
NW¼NW¼.
- T. 24 S, R. 22 E,
Sec. 25, lots 1 thru 4, NE¼, S½NW¼, and
N½SW¼;
Sec. 26, lots 1 thru 6;
Sec. 27, lots 1 thru 8, and N½SW¼;
Sec. 28, lots 1 and 2, and SW¼SE¼;
Sec. 33, lots 1 thru 11, N½NW¼, and
SE¼SW¼;
Sec. 34, N½NE¼ and N½NW¼;
Sec. 35, S½SW¼SW¼NE¼,
S½SE¼SW¼NE¼, S½SW¼SE¼NE¼,
S½SE¼SE¼NE¼, N½NW¼,
SE¼NW¼, NE¼SW¼, and SE¼;
- T. 25 S, R. 22 E,
Sec. 3, S½SW¼ and W½SE¼;
Sec. 4, lots 4 and 5, W½SW¼, SE¼SW¼,
and S½SE¼;
Sec. 5, lots 1, 2, and 3;
Sec. 8, lots 1 and 2;
Sec. 9, lots 1 thru 4, and N½NW¼;
Sec. 10, lots 1 thru 7, W½NE¼, and
W½SE¼;
Sec. 15, lot 1, W½NE¼, NE¼NW¼, and
S½NW¼;
Sec. 16, lots 1 thru 4, and N½SE¼;
Sec. 17, lots 1 thru 4;
Sec. 19, lots 1 thru 4, SE¼SW¼, and
NE¼SE¼;
Sec. 20, lot 1, N½NE¼, NE¼NW¼, and
SW¼NW¼;
Sec. 21, NW¼NW¼;
Sec. 30, lots 1 and 2.
- T. 23 S, R. 23 E,
Sec. 12, SE¼SW¼ and S½SE¼;
Sec. 13;
Sec. 14, lots 1 thru 7, N½NE¼,
SE¼NW¼, E½SW¼, and SE¼SE¼;
Sec. 23, lots 1 thru 6, SW¼NE¼,
E½NW¼, and NW¼SE¼;

- Sec. 24, lots 1 thru 9, S½NE¼, S½NW¼,
and E½SW¼;
- Sec. 25, lots 1 thru 10, SW¼NE¼,
NE¼NW¼, W½SW¼, and E½SE¼;
- Sec. 26, E½NE¼ and NE¼SE¼;
- Sec. 34, SE¼NE¼, S½SW¼, and SE¼;
- Sec. 35, lots 1, 2, and 3, S½NE¼,
S½NW¼, SW¼, and N½SE¼;
- Sec. 36, lots 1 thru 10, E½NE¼,
NE¼NW¼, SW¼NW¼, N½SE¼, and
SW¼SE¼.
- T. 24 S., R. 23 E.,
Sec. 1;
Sec. 2, lots 2 thru 5, and lots 8 and 9;
Sec. 3;
Sec. 4, lots 1, 2, 6, and 7, S½NE¼,
E½SW¼, and SE¼;
Sec. 5, lots 6 and 7, and W½SE¼;
Sec. 8, lots 1 thru 4, W½NE¼, E½SW¼,
and W½SE¼;
Sec. 9;
Sec. 10, lots 1, 3, 4 and 8, SE¼NE¼,
NW¼NW¼, and S½SE¼;
Sec. 11, N½, NE¼SW¼, S½SW¼, and
SE¼;
Sec. 12, NW¼NE¼ and W½;
Sec. 13, N½NW¼, SW¼NW¼, and
NW¼SW¼;
Sec. 14, N½, N½SW¼, and N½SE¼;
Sec. 15, NE¼, NE¼NW¼, S½NW¼, and
S½;
Sec. 17, lots 1 thru 6, W½NE¼, E½NW¼,
SW¼NW¼, and SW¼;
Sec. 18, lots 2, 3, and 4, S½NE¼,
SE¼NW¼, E½SW¼, and SE¼.
- Sec. 19;
Sec. 20, lots 1 thru 8, lots 12, 13, and 14,
and N½NW¼;
Sec. 21, NW¼NE¼, W½, and W½SE¼;
Secs. 28 and 29;
Sec. 30, lots 1 thru 9, lots 11 and 12,
SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 31, lots 1, 2 and 3, N½NE¼,
SW¼NE¼, E½NW¼, NE¼SW¼, and
NW¼SE¼.
- T. 21 S., R. 24 E,
Sec. 22, lots 3, 9, and 10, SW¼NW¼,
and NW¼SW¼;
Sec. 23, lots 8 thru 12, and N½NE¼NW¼;
Sec. 26, lots 10 thru 15, and SW¼NE¼;
Sec. 27, lot 6 and SE¼NW¼;
Sec. 35, lots 9 thru 14.
- T. 22 S., R. 24 E,
Sec. 2, lots 2 thru 6, and SE¼NW¼;
Sec. 3, lots 1, 2, and 3, and lots 5 thru 11;
Sec. 10, lots 1 thru 5, SE¼NW¼, and
NE¼SE¼;
Sec. 11, lot 1 thru 9, and NW¼SW¼;
Sec. 14, lot 1, NW¼NE¼, and NE¼NW¼;
Sec. 15, lots 1 thru 11;
Sec. 16, lot 1 and NE¼SE¼;
Sec. 21, lots 1 thru 9, and NE¼SW¼;
Sec. 22, lots 1 and 2;
Sec. 33, SW¼SW¼.
- T. 23 S., R. 24 E,
Sec. 5, lots 1 thru 4, lots 6 thru 11,
SE¼NE¼, E½SW¼, and NE¼SE¼;
Sec. 8, lots 1, 2, 4, 5, and 10;
Sec. 17, lots 1 thru 4, S½NE¼, S½NW¼,
N½SW¼, and SE¼;
Sec. 18;
Sec. 19, lots 1 and 2, NE¼, and E½NW¼;
Sec. 20, N½NE¼ and SE¼NE¼;
Sec. 30, lot 4;
Sec. 31, lots 1 thru 4, E½NW¼, and
E½SW¼.

The areas described aggregate approximately 28,330 acres.

(b) Dolores River (including the half (1/2) of the river bottom adjacent to the Federal uplands to the middle thread of the river)

Salt Lake Meridian, Utah

- T. 23 S., R. 24 E.,
 Sec. 1, S¹/₂SW¹/₄ and S¹/₂SE¹/₄;
 Sec. 2, lots 5 and 6, SW¹/₄SW¹/₄, and SE¹/₄SE¹/₄;
 Sec. 9, lots 1 thru 12, S¹/₂NE¹/₄, and NE¹/₄NW¹/₄;
 Sec. 10, lots 1 thru 11, NE¹/₄NE¹/₄, SW¹/₄NE¹/₄, NE¹/₄SW¹/₄, and SE¹/₄SE¹/₄;
 Secs. 11 and 12;
 Sec. 13, lots 1 thru 5, W¹/₂NE¹/₄, N¹/₂NW¹/₄, and W¹/₂SE¹/₄;
 Sec. 14, N¹/₂;
 Sec. 15, lots 1 and 2, NE¹/₄, E¹/₂NW¹/₄, SW¹/₄, and NW¹/₄SE¹/₄;
 Sec. 16, lots 1, 5, 6, 10, 11 and 12, NW¹/₄SW¹/₄, and S¹/₂SE¹/₄;
 Sec. 21, NW¹/₄NE¹/₄, N¹/₂NW¹/₄, SW¹/₄NW¹/₄, and NW¹/₄SW¹/₄;
 Sec. 22, W¹/₂NE¹/₄, NW¹/₄, and NE¹/₄SW¹/₄.
 T. 23 S., R. 25 E.,
 Sec. 7, lots 3 and 4, E¹/₂SW¹/₄, and SW¹/₄SE¹/₄;
 Sec. 16, SW¹/₄;
 Sec. 17, lots 1 thru 5, and lot 9;
 Sec. 18, lots 3 thru 9, NW¹/₄NE¹/₄, S¹/₂NE¹/₄, E¹/₂NW¹/₄, NE¹/₄SW¹/₄, N¹/₂SE¹/₄, and SE¹/₄SE¹/₄;
 Sec. 19, lot 1;
 Sec. 20, lots 1, 2, and 6, and SE¹/₄NE¹/₄;
 Sec. 21;
 Sec. 22, lots 1 thru 7, and E¹/₂SE¹/₄;
 Sec. 26, W¹/₂;
 Sec. 27;
 Sec. 28, NE¹/₄, NE¹/₄NW¹/₄, and E¹/₂SE¹/₄;
 Sec. 33, E¹/₂;
 Sec. 34.
 T. 24 S., R. 25 E.,
 Sec. 1, lots 6, 7, and 8, and NW¹/₄SW¹/₄;
 Sec. 2, lots 3 thru 12, S¹/₂SW¹/₄, and SW¹/₄SE¹/₄;
 Sec. 3, lots 1 thru 5, SW¹/₄NE¹/₄, SE¹/₄NW¹/₄, and SE¹/₄;
 Sec. 9, NE¹/₄SE¹/₄ and S¹/₂SE¹/₄;
 Sec. 10, NE¹/₄, SE¹/₄NW¹/₄, and S¹/₂;
 Sec. 11, lot 1, NW¹/₄NE¹/₄, S¹/₂NE¹/₄, N¹/₂NW¹/₄, SW¹/₄SW¹/₄, N¹/₂SE¹/₄, and SE¹/₄SE¹/₄;
 Sec. 12;
 Sec. 14, W¹/₂NW¹/₄;
 Sec. 15, NE¹/₄ and E¹/₂NW¹/₄.
 T. 23 S., R. 26 E.,
 Sec. 31, SE¹/₄;
 Sec. 32, S¹/₂NE¹/₄, S¹/₂NW¹/₄, and S¹/₂;
 Sec. 33, lots 3 and 4, and W¹/₂SW¹/₄.
 T. 24 S., R. 26 E.,
 Sec. 4;
 Sec. 5, lots 1 thru 4, S¹/₂NE¹/₄, S¹/₂NW¹/₄, NE¹/₄SW¹/₄, and SE¹/₄;
 Sec. 6, lots 1, 2, and 3, S¹/₂NE¹/₄, S¹/₂NW¹/₄, SW¹/₄, N¹/₂SE¹/₄, and SW¹/₄SE¹/₄;
 Sec. 7, W¹/₂NE¹/₄, SE¹/₄NE¹/₄, NW¹/₄, and SE¹/₄;
 Sec. 8, SW¹/₄NW¹/₄ and W¹/₂SW¹/₄;
 Sec. 17, W¹/₂NW¹/₄ and W¹/₂SW¹/₄;
 Sec. 18, E¹/₂NE¹/₄ and E¹/₂SE¹/₄;
 Sec. 19, E¹/₂NE¹/₄;
 Sec. 20, W¹/₂;
 Sec. 29, W¹/₂NE¹/₄, E¹/₂NW¹/₄, E¹/₂SW¹/₄, and W¹/₂SE¹/₄.

The areas described aggregate approximately 15,980 acres.

(c) Green River (including the half (1/2) of the river bottom adjacent to the Federal uplands to the middle thread of the river, in non-navigable sections)

Salt Lake Meridian, Utah

- T. 15 S., R. 16 E.,
 Sec. 1, E¹/₂, unsurveyed.
 T. 17 S., R. 16 E.,
 Sec. 21, SE¹/₄;
 Sec. 22, SW¹/₄;
 Sec. 26, N¹/₂SW¹/₄ and SE¹/₄;
 Sec. 27, N¹/₂, SW¹/₄, N¹/₂SE¹/₄, and SW¹/₄SE¹/₄;
 Sec. 28, E¹/₂;
 Sec. 34, N¹/₂NE¹/₄ and N¹/₂NW¹/₄;
 Sec. 35, E¹/₂, E¹/₂NW¹/₄, and E¹/₂SW¹/₄;
 Sec. 36, SE¹/₄.
 T. 18 S., R. 16 E.,
 Sec. 1, lots 1, 2, and 3, S¹/₂NE¹/₄, SE¹/₄NW¹/₄, E¹/₂SW¹/₄, and SE¹/₄;
 Sec. 12, lots 1, 2, and 3, W¹/₂NE¹/₄, E¹/₂NW¹/₄, NE¹/₄SW¹/₄, NW¹/₄SE¹/₄, and S¹/₂SE¹/₄;
 Sec. 25, lots 1, 2, and 3, S¹/₂NE¹/₄, E¹/₂SW¹/₄, and W¹/₂SE¹/₄;
 Sec. 36, lots 1 thru 4, W¹/₂NE¹/₄, E¹/₂NW¹/₄, E¹/₂SW¹/₄, W¹/₂SE¹/₄, and SE¹/₄SE¹/₄.
 T. 19 S., R. 16 E.,
 Sec. 1;
 Sec. 2, lots 9 thru 15, N¹/₂SW¹/₄, SW¹/₄SW¹/₄, and N¹/₂SE¹/₄;
 Sec. 3, SE¹/₄SE¹/₄, unsurveyed;
 Sec. 10;
 Sec. 11, lots 1 thru 4, N¹/₂NE¹/₄, SW¹/₄NE¹/₄, SE¹/₄NW¹/₄, and W¹/₂SW¹/₄;
 Sec. 12, N¹/₂NW¹/₄;
 Sec. 14, lots 1 thru 6, E¹/₂NW¹/₄, E¹/₂SW¹/₄, and N¹/₂SE¹/₄;
 Sec. 15, lots 1 thru 5, W¹/₂NE¹/₄, S¹/₂SW¹/₄, NE¹/₄SE¹/₄, and W¹/₂SE¹/₄;
 Sec. 21, NE¹/₄ and S¹/₂;
 Sec. 22;
 Sec. 23, N¹/₂NW¹/₄;
 Sec. 26, lots 1 thru 5, NW¹/₄NW¹/₄, SE¹/₄NW¹/₄, and E¹/₂SW¹/₄;
 Sec. 27, lots 1 thru 9, NE¹/₄NE¹/₄, NW¹/₄NW¹/₄, S¹/₂NW¹/₄, NE¹/₄SW¹/₄, S¹/₂SW¹/₄, and NW¹/₄SE¹/₄;
 Sec. 28, NE¹/₄ and N¹/₂NW¹/₄;
 Sec. 34;
 Sec. 35, NW¹/₄ and S¹/₂.
 T. 20 S., R. 16 E.,
 Sec. 3, lots 1 thru 5, and lots 8, 9, 10, and 12, SE¹/₄NE¹/₄, SW¹/₄NW¹/₄, NW¹/₄SW¹/₄, and E¹/₂SE¹/₄;
 Sec. 4, SE¹/₄SW¹/₄ and S¹/₂SE¹/₄;
 Sec. 10, lots 1, 6, and 8, E¹/₂NE¹/₄, SW¹/₄NE¹/₄, and E¹/₂SW¹/₄;
 Sec. 17, lots 1, 2, and 3.
 T. 21 S., R. 16 E.,
 Sec. 27, lots 5, 6, and 8, NE¹/₄NW¹/₄, S¹/₂NW¹/₄, and SW¹/₄SE¹/₄;
 Sec. 28, lot 2;
 Sec. 33, lot 1, SE¹/₄NE¹/₄, and NE¹/₄SE¹/₄;
 Sec. 34, lots 5 and 6, SW¹/₄NW¹/₄, N¹/₂SW¹/₄, and SW¹/₄SE¹/₄;
 Sec. 35, W¹/₂SW¹/₄.
 T. 22 S., R. 16 E.,
 Sec. 3, lots 13, 18, 22, and 23;
 Sec. 5, lots 13 and 18;
 Sec. 9, SW¹/₄SW¹/₄;
 Sec. 16, lots 1, 5, 8, 9, and 10;
 Sec. 17, lots 1, 2, and 3, and S¹/₂NE¹/₄;
 Sec. 21, lots 1, 4, 5, 8, and 9, E¹/₂NE¹/₄, SW¹/₄SW¹/₄, and E¹/₂SE¹/₄;
 Sec. 25, W¹/₂SW¹/₄;
 Sec. 26, S¹/₂;
 Sec. 27, lots 1 thru 10, lot 13, and SW¹/₄NW¹/₄;
 Sec. 28, lots 1, 2, 5, 12, 13, and 14, E¹/₂NE¹/₄, W¹/₂NW¹/₄, W¹/₂SW¹/₄, and NE¹/₄SE¹/₄;
 Sec. 33, lots 1 and 2, N¹/₂NW¹/₄;
 Sec. 34, lots 1, 5, 6, 7, and 10, and SE¹/₄SE¹/₄;
 Sec. 35, W¹/₂NW¹/₄.
 T. 23 S., R. 16 E.,
 Sec. 3, lots 2, 4, 5, and 6, lots 8 thru 12, lot 14, SW¹/₄NW¹/₄, W¹/₂SW¹/₄, SE¹/₄SW¹/₄, and NE¹/₄SE¹/₄;
 Sec. 10, N¹/₂NE¹/₄, N¹/₂NW¹/₄;
 Sec. 11, lots 1, 3, 6, 8, 9, 10, 11 and 14, and NW¹/₄NW¹/₄;
 Sec. 12, NW¹/₄SW¹/₄ and SE¹/₄SW¹/₄;
 Sec. 13, lots 6, 7, and 10, NW¹/₄NE¹/₄, and E¹/₂SE¹/₄;
 Sec. 14, N¹/₂NE¹/₄ and NE¹/₄NW¹/₄;
 Sec. 23, lots 1, 2, and 3, NE¹/₄NE¹/₄, SW¹/₄NE¹/₄, SE¹/₄NW¹/₄, and E¹/₂SW¹/₄;
 Sec. 24, lots 1, 5, and 6, E¹/₂NE¹/₄, NE¹/₄SW¹/₄, and NW¹/₄SE¹/₄;
 Sec. 25, lot 8;
 Sec. 26, SW¹/₄NE¹/₄.
 T. 24 S., R. 16 E.,
 Sec. 1, lots 5 thru 8, and SE¹/₄NE¹/₄;
 Sec. 11, SE¹/₄SE¹/₄;
 Sec. 12, lots 1 thru 8, SE¹/₄NE¹/₄, SW¹/₄NW¹/₄, and NW¹/₄SE¹/₄;
 Sec. 13, lots 1 thru 8, NW¹/₄SE¹/₄, and SE¹/₄SE¹/₄;
 Sec. 14, E¹/₂NE¹/₄;
 Sec. 23, lots 1 thru 6, NW¹/₄NE¹/₄, SE¹/₄NW¹/₄, E¹/₂SW¹/₄, and SW¹/₄SE¹/₄;
 Sec. 24, lots 1 thru 10, and NW¹/₄SE¹/₄;
 Sec. 25, lots 1 thru 7.
 T. 25 S., R. 16 E.,
 Sec. 1, lots 1, 2, and 3, lots 5 thru 9, SE¹/₄NW¹/₄, and NE¹/₄SW¹/₄.
 T. 26 S., R. 16 E.,
 Sec. 23, S¹/₂SE¹/₄, unsurveyed;
 Sec. 24, S¹/₂, unsurveyed;
 Sec. 25, N¹/₂NE¹/₄ and NW¹/₄, unsurveyed;
 Sec. 26, NE¹/₄, S¹/₂NW¹/₄, SW¹/₄, and W¹/₂SE¹/₄, unsurveyed;
 Sec. 27, S¹/₂SE¹/₄, unsurveyed;
 Sec. 33, SE¹/₄, unsurveyed;
 Sec. 34, unsurveyed.
 T. 12 S., R. 17 E.,
 Sec. 24, SE¹/₄;
 Sec. 25 (A), unsurveyed;
 Sec. 26 (A), unsurveyed;
 Sec. 27 (A), excluding W¹/₂NW¹/₄ and W¹/₂SW¹/₄, unsurveyed;
 Sec. 34 (A), excluding W¹/₂NW¹/₄ and W¹/₂SW¹/₄, unsurveyed;
 Sec. 35 (B), unsurveyed;
 Sec. 36 (B), unsurveyed.
 T. 13 S., R. 17 E.,
 Sec. 1 (B), unsurveyed;
 Sec. 2 (A), unsurveyed;
 Sec. 3, excluding W¹/₂NW¹/₄ and W¹/₂SW¹/₄, unsurveyed;
 Sec. 10 (A), excluding N¹/₂NE¹/₄, NW¹/₄, and W¹/₂SW¹/₄, unsurveyed;
 Sec. 11 (A), excluding NW¹/₄NW¹/₄, unsurveyed;
 Sec. 15 (A), excluding NW¹/₄NW¹/₄, unsurveyed;
 Sec. 16, E¹/₂SE¹/₄;

- Sec. 21, E $\frac{1}{2}$ NE $\frac{1}{4}$, unsurveyed;
 Sec. 22 (A), excluding SW $\frac{1}{4}$ SW $\frac{1}{4}$, unsurveyed;
 Sec. 23 (B), unsurveyed;
 Sec. 26 (B), unsurveyed;
 Sec. 27, E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$, unsurveyed;
 Sec. 33 (A), excluding W $\frac{1}{2}$, unsurveyed;
 Sec. 34 (A), unsurveyed;
 Sec. 35 (B), unsurveyed.
- T. 14 S., R. 17 E.,
 Sec. 3 (B), unsurveyed;
 Sec. 4 (A), excluding W $\frac{1}{2}$, unsurveyed;
 Sec. 9 (A), excluding NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$, unsurveyed;
 Sec. 10 (B), unsurveyed;
 Sec. 16 (A), unsurveyed;
 Sec. 17 (A), excluding N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and W $\frac{1}{2}$, unsurveyed;
 Sec. 20 (A), excluding W $\frac{1}{2}$, unsurveyed;
 Sec. 21 (B), unsurveyed;
 Sec. 28 (B), unsurveyed;
 Sec. 29 (A), excluding N $\frac{1}{2}$ NW $\frac{1}{4}$, unsurveyed;
 Sec. 32 (A), unsurveyed.
- T. 15 S., R. 17 E.,
 Sec. 5 (A), unsurveyed;
 Sec. 6, unsurveyed;
 Sec. 7, lot 4, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 8, lot 5 and N $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 16 (B), unsurveyed;
 Sec. 17 (A), unsurveyed;
 Sec. 18, N $\frac{1}{2}$, unsurveyed;
 Sec. 20, E $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$, unsurveyed;
 Sec. 21 (A), unsurveyed;
 Sec. 28 (A), excluding SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$, unsurveyed;
 Sec. 33 (A), unsurveyed.
- T. 16 S., R. 17 E.,
 Sec. 3 (B), unsurveyed;
 Sec. 4 (A), unsurveyed;
 Sec. 5, SE $\frac{1}{4}$, unsurveyed;
 Sec. 8, NE $\frac{1}{4}$, unsurveyed;
 Sec. 9 (A), excluding SW $\frac{1}{4}$, unsurveyed;
 Sec. 10 (B), unsurveyed;
 Sec. 16, lots 1 thru 4, W $\frac{1}{2}$ NE $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 21 (A), excluding W $\frac{1}{2}$, unsurveyed;
 Sec. 22 (B), unsurveyed;
 Sec. 27 (A), unsurveyed;
 Sec. 28, E $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$, unsurveyed;
 Sec. 33 (A), excluding W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$, unsurveyed;
 Sec. 34 (B), unsurveyed;
 Sec. 34 (C), unsurveyed.
- T. 17 S., R. 17 E.,
 Sec. 3, lot 5;
 Sec. 4, lots 1, 2, 5, 6, 9, 10, and 11;
 Sec. 9, lots 1, 2, 4, and 5, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 16, lots 2 thru 5, lots 10 and 11, and NW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 17, SE $\frac{1}{4}$;
 Sec. 19, lots 3 and 6, S $\frac{1}{2}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 20, lots 1, 2, 3, 6, 7, 8, 11, and 12, NW $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$;
 Sec. 21, lot 3;
 Sec. 29, lots 2 and 5;
 Sec. 30, lots 1, 4, and 7, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 31, lot 2, and lots 4 thru 8, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;
- Sec. 32, lots 3, 4, 7, 8, and 9.
- T. 18 S., R. 17 E.,
 Sec. 6, lots 3 thru 6, and lots 9 and 10;
 Sec. 7, lots 5, 6, and 7;
 Sec. 18, lots 2, 3, 4, 6, 9, 12, and 13, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 19;
 Sec. 20, lots 1 and 2, W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$, excluding Uintah Reservation as per P.L. 80–440; Secs. 29, 30, and 31;
 Sec. 32, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 24 S., R. 17 E.,
 Sec. 6;
 Sec. 18, lot 4 and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 19, lots 1 thru 9, lots 11, 12, and 13, E $\frac{1}{2}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 30, lots 1 thru 5, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 31, lots 1 thru 13.
- T. 25 S., R. 17 E.,
 Sec. 5, unsurveyed;
 Sec. 6, excluding S $\frac{1}{2}$ SW $\frac{1}{4}$, unsurveyed;
 Sec. 7, NE $\frac{1}{4}$, unsurveyed; Secs. 8, 9, 16, and 17, unsurveyed;
 Sec. 19, E $\frac{1}{2}$, unsurveyed; Secs. 20 thru 23, and secs. 26 and 27, unsurveyed;
 Sec. 28, excluding SW $\frac{1}{4}$ SW $\frac{1}{4}$, unsurveyed;
 Sec. 29, excluding S $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$, unsurveyed;
 Sec. 30, NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$, unsurveyed;
 Sec. 31, SE $\frac{1}{4}$, unsurveyed;
 Sec. 32, lots 1, 2, and 3, S $\frac{1}{2}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$; Secs. 33, 34, and 35, unsurveyed.
- T. 26 S., R. 17 E., Secs. 2, 3, and 4, unsurveyed;
 Sec. 5, E $\frac{1}{2}$, unsurveyed;
 Sec. 10, unsurveyed;
 Sec. 11, excluding SW $\frac{1}{4}$, unsurveyed;
 Sec. 12, unsurveyed;
 Sec. 13, excluding N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, and W $\frac{1}{2}$ SW $\frac{1}{4}$, unsurveyed;
 Sec. 15, W $\frac{1}{2}$, unsurveyed;
 Sec. 16, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 17, S $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$, unsurveyed;
 Sec. 18, S $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$, unsurveyed; Secs. 19 and 20, unsurveyed;
 Sec. 21, N $\frac{1}{2}$, unsurveyed;
 Sec. 23, E $\frac{1}{2}$ SE $\frac{1}{4}$, unsurveyed;
 Sec. 24, excluding W $\frac{1}{2}$ NW $\frac{1}{4}$, unsurveyed;
 Sec. 25, unsurveyed;
 Sec. 26, excluding NW $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$, unsurveyed;
 Sec. 27, excluding N $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$, unsurveyed; Secs. 34 and 35, unsurveyed.
- T. 25 S., R. 17 $\frac{1}{2}$ E.,
 Sec. 3, lots 11 thru 16 and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 4, lots 4 and 5, and lots 9 thru 21; Secs. 5 and 6, unsurveyed;
 Sec. 9;
 Sec. 10, lots 1, 2, and 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$;
 Sec. 13, SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 14, lots 1, 2, and 3, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 15, W $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Secs. 16, 20, and 21;
- Sec. 22, lots 1 thru 6, E $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 23;
 Sec. 24, lots 1 thru 4, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 25;
 Sec. 27, unsurveyed;
 Sec. 28, lots 1, 2, and 3;
 Sec. 28 (B), unsurveyed;
 Sec. 29;
 Secs. 33 and 34, unsurveyed;
 Sec. 35, excluding SE $\frac{1}{4}$ SE $\frac{1}{4}$, unsurveyed;
 Sec. 36, lots 1, 2, and 3, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and N $\frac{1}{2}$ SW $\frac{1}{4}$.
- T. 26 S., R. 17 $\frac{1}{2}$ E.,
 Sec. 1, excluding N $\frac{1}{2}$ NE $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$, unsurveyed;
 Sec. 2, excluding E $\frac{1}{2}$ NE $\frac{1}{4}$, unsurveyed;
 Secs. 3, 4, 11, 12, 13, 23, and 24, unsurveyed;
 Sec. 25, NW $\frac{1}{4}$, unsurveyed;
 Secs. 26, 27, and 28, unsurveyed;
 Sec. 34, excluding Canyonlands National Park, unsurveyed;
 Sec. 35, excluding Canyonlands National Park, unsurveyed.

The areas described aggregate approximately 64,977 acres.

Aliquot parts of unsurveyed sections are only approximate until such time as the section containing them is officially surveyed and marked on the ground in accordance with the Manual of Surveying Instructions, at which point they will become fixed.

The total areas described in (a), (b), and (c) aggregate approximately 109,287 acres.

For a period until March 13, 2024, all persons who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal extension may present their views in writing to the BLM Utah State Director at the address indicated above.

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

The withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2300.

(Authority: 43 U.S.C. 1714)

Gregory Sheehan,

Utah State Director.

[FR Doc. 2023–27468 Filed 12–13–23; 8:45 am]

BILLING CODE 4331–25–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–699–702 and 731–TA–1659–1660 (Preliminary)]

Frozen Warmwater Shrimp From Ecuador, India, Indonesia, and Vietnam

Determinations

On the basis of the record¹ 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 frozen warmwater shrimp from Ecuador and Indonesia provided for in subheadings 0306.17.00, 1605.21.10, and 1605.29.10 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 imports of the subject merchandise from Ecuador, India, Indonesia, and Vietnam that are alleged to be subsidized by the governments of Ecuador, India, Indonesia, and Vietnam.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. Any other party may file an entry of appearance for the final phase of the investigations after publication of the final phase notice of scheduling. 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. As provided in section 207.20 of the Commission’s rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>), for comment.

Background

On October 25, 2023, the American Shrimp Processors Association, Port Arthur, Texas, filed 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 frozen warmwater shrimp from Ecuador, India, Indonesia, and Vietnam and LTFV imports of frozen warmwater shrimp from Ecuador and Indonesia. Accordingly, effective October 25, 2023, the Commission instituted countervailing duty investigation Nos. 701–TA–699–702 and antidumping duty investigation Nos. 731–TA–1659–1660 (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 October 31, 2023 (88 FR 74511). The Commission conducted its conference on November 15, 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 December 11, 2023. The views of the Commission are contained in USITC Publication 5482 (December 2023), entitled *Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam: Investigation Nos. 701–TA–699–702 and 731–TA–1659–1660 (Preliminary)*.

By order of the Commission.

Issued: December 11, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–27480 Filed 12–13–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rates for Non-Range Occupations in 2024

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is issuing this notice to announce the 2024 Adverse Effect Wage Rates (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H–2A workers) to perform agricultural labor or services other than the herding or production of livestock on the range. AEWRs are the minimum wage rates the DOL has determined must be offered, advertised in recruitment, and paid by employers to H–2A workers and workers in corresponding employment so that the wages and working conditions of workers in the United States (U.S.) similarly employed will not be adversely affected. The AEWRs established in this notice are applicable to H–2A job opportunities that are both: classified in one (or more) of the six Standard Occupational Classification (SOC) codes comprising the field and livestock workers (combined) category, and located in States or regions, or equivalent districts or territories, in which the United States Department of Agriculture’s (USDA) Farm Labor Report (better known as the Farm Labor Survey, or FLS) reports wages. In this notice, DOL also announces an update to the average AEWR, which is used to calculate adjustments to required bond amounts for H–2A Labor Contractors.

DATES: These rates are effective January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, telephone: (202) 693–8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889–5627.

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security

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 81043 and 88 FR 81053 (November 21, 2023).

will not approve an employer's petition for the admission of H-2A nonimmigrant temporary and seasonal agricultural workers into the U.S. unless the petitioner has received an H-2A labor certification from DOL. The labor certification provides that: (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services for which the employer desires to hire temporary foreign workers; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

FLS-Based AEW Updates

DOL's H-2A regulations at 20 CFR 655.122(l) provide that employers must pay their H-2A workers and workers in corresponding employment at least the highest of: (i) the AEW; (ii) a prevailing wage rate if the Office of Foreign Labor Certification (OFLC) Administrator has approved a prevailing wage survey for the applicable crop or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity; (iii) the agreed-upon collective bargaining wage rate; (iv) the Federal minimum wage rate; or (v) the State minimum wage rate, for every hour or portion thereof worked during a pay period. Further, when the AEW is adjusted during a work contract and is higher than the highest of the previous AEW, a prevailing rate for the crop or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity and geographic area, the agreed-upon collective bargaining wage, the Federal minimum wage rate, or the State minimum wage rate, the employer must pay at least that adjusted AEW upon the effective date of the new rate, as provided in the applicable **Federal Register** Notice. *See* 20 CFR 655.120(b)(3). When the AEW is adjusted during a work contract and is lower than the wage rate that is guaranteed on the job order, the employer must continue to pay at least the wage rate guaranteed on the job order. *See* 20 CFR 655.120(b)(4).

On February 28, 2023, DOL published a final rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, 88 FR 12760 (Feb. 28, 2023), to establish a new methodology for setting hourly AEWs, effective March 30,

2023. Pursuant to this new rule, while most AEWs will continue to be based, as they have been since 1987, on the USDA FLS, AEWs based on DOL's Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics (OEWS) survey will apply to H-2A job opportunities that are: (1) classified in SOC codes other than the six SOC codes comprising the field and livestock workers (combined) category, and/or (2) located in States or regions, or equivalent districts or territories, for which the USDA FLS does not report a wage.¹

The new final rule requires the OFLC Administrator to publish a **Federal Register** Notice at least once in each calendar year to establish each AEW. *See* 20 CFR 655.120(b)(2). The OFLC Administrator provides this notice by publishing two separate announcements in the **Federal Register**, one to update the non-range AEWs based on the wage data reported by the USDA's FLS, effective on or about January 1, and a second to update the non-range AEWs based on data reported by the BLS OEWS survey, effective on or about July 1.²

The 2024 AEWs for all non-range agricultural employment classified in the field and livestock workers (combined) category are the annual average hourly gross wage rates for field and livestock workers (combined) in the State or region as published by the USDA in the November 2023 FLS.³ Accordingly, the 2024 AEWs to be offered, advertised in recruitment, and paid for agricultural work performed by H-2A and workers in corresponding employment on and after the effective date of this notice are set forth in the table below:

TABLE—2024 ADVERSE EFFECT WAGE RATES

State 2024 AEWs	
Alabama	\$14.68
Arizona	16.32

¹ In the event an employer's job opportunity requires the performance of agricultural labor or services that are not encompassed in a single SOC code's description and tasks, the applicable AEW will be the highest AEW for all applicable SOC codes. *See* 20 CFR 655.120(b)(5).

² *See* 88 FR at 12775; *see also* *Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rate Updates for Non-Range Occupations*, 88 FR 39482 (Jun. 16, 2023).

³ *See* U.S. Dep't of Agriculture, Nat'l Agricultural Statistics Service, Farm Labor: Annual Average Gross Wage Rates by Type of Worker—Regions and United States: 2022 and 2023 (Nov. 22, 2023), pp. 25–26, available at <https://downloads.usda.library.cornell.edu/usda-esmis/files/x920fw89s/v405tw18s/dn39zk84n/fmla1123.pdf>.

TABLE—2024 ADVERSE EFFECT WAGE RATES—Continued

State 2024 AEWs	
Arkansas	14.53
California	19.75
Colorado	16.63
Connecticut	17.80
Delaware	17.20
Florida	14.77
Georgia	14.68
Hawaii	18.74
Idaho	16.54
Illinois	18.18
Indiana	18.18
Iowa	17.79
Kansas	18.32
Kentucky	15.14
Louisiana	14.53
Maine	17.80
Maryland	17.20
Massachusetts	17.80
Michigan	18.50
Minnesota	18.50
Mississippi	14.53
Missouri	17.79
Montana	16.54
Nebraska	18.32
Nevada	16.63
New Hampshire	17.80
New Jersey	17.20
New Mexico	16.32
New York	17.80
North Carolina	15.81
North Dakota	18.32
Ohio	18.18
Oklahoma	15.55
Oregon	19.25
Pennsylvania	17.20
Rhode Island	17.80
South Carolina	14.68
South Dakota	18.32
Tennessee	15.14
Texas	15.55
Utah	16.63
Vermont	17.80
Virginia	15.81
Washington	19.25
West Virginia	15.14
Wisconsin	18.50
Wyoming	16.54

The AEWs set forth in the table above are the AEWs applicable to the following SOC titles and codes: Farmworkers and Laborers, Crop, Nursery, and Greenhouse (45–2092), Farmworkers, Farm, Ranch, and Aquacultural Animals (45–2093); Agricultural Equipment Operators (45–2091); Packers and Packagers, Hand (53–7064); Graders and Sorters, Agricultural Products (45–2041); and All Other Agricultural Workers (45–2099). Accordingly, the simple average of these AEWs constitutes the average AEW, which is used to calculate the bond amounts required for H-2A Labor Contractors. *See* 20 CFR 655.103(b) (definition of average AEW), 655.132(c)(2)(ii) (use of average AEW in calculating bond requirements). The

simple average is calculated by finding the sum of the AEWRs listed in the table above, then dividing by the total number of AEWRs, which is currently 49 (\$831.98/49 = \$16.98). On and after the effective date of this notice, the average AEWR to be used to calculate the bond amounts required under 20 CFR 655.132(c)(2) is \$16.98.

Authority: 20 CFR 655.120(b)(2); 20 CFR 655.103(b).

Lenita Jacobs-Simmons,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–27435 Filed 12–13–23; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rate for Range Occupations in 2024

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is issuing this notice to announce the 2024 Adverse Effect Wage Rate (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H–2A workers) to perform herding or production of livestock on the range. AEWRs are the minimum wage rates DOL has determined must be offered, advertised in recruitment, and paid by employers to H–2A workers and workers in corresponding employment so that the wages and working conditions of workers in the United States (U.S.) similarly employed will not be adversely affected. In this notice, DOL announces the annual update of the AEWR for workers engaged in the herding or production of livestock on the range, as required by the methodology previously established in 2015.

DATES: The rate is effective January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, N–5311, 200 Constitution Ave. NW, Washington, DC 20210, Telephone: (202) 693–8200 (this is not a toll-free number). Individuals with hearing or

speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1 (877) 889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A nonimmigrant temporary and seasonal agricultural workers in the U.S. unless the petitioner has received an H–2A labor certification from DOL. The H–2A labor certification provides that (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services for which the employer desires to hire temporary foreign workers; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

Adverse Effect Wage Rate for 2024

DOL's H–2A regulations covering the herding or production of livestock on the range, published in the **Federal Register** as the *Temporary Agricultural Employment of H–2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States*, 80 FR 62958 (Oct. 16, 2015), as amended by *Adjudication of Temporary and Seasonal Need for Herding and Production of Livestock on the Range Applications Under the H–2A Program*, 86 FR 71373 (Dec. 16, 2021), provide that employers must offer, advertise in recruitment, and pay each worker employed under 20 CFR 655.200 through 655.235 a wage that is at least the highest of (1) the monthly AEWR, (2) the agreed-upon collective bargaining wage, or (3) the applicable minimum wage imposed by Federal or State law or judicial action. *See* 20 CFR 655.210(g); 655.211(a)(1). Further, when the monthly AEWR is adjusted during a work contract and is higher than both the agreed-upon collective bargaining wage and the applicable minimum wage imposed by Federal or State law or judicial action in effect at the time the work is performed, the employer must pay that adjusted monthly AEWR upon the effective date published by DOL in the **Federal Register**. *See* 20 CFR 655.211(a)(2).

As provided in 20 CFR 655.211(c)(2), the monthly AEWR for range occupations in all States for a calendar

year is based on the monthly AEWR for the previous calendar year (\$1,901.21 in 2023), adjusted by the Employment Cost Index (ECI) for wages and salaries published by the Bureau of Labor Statistics for the preceding October—October period. The 12-month change in the ECI for wages and salaries of private industry workers between September 2022 and September 2023 was 4.5 percent, resulting in a monthly AEWR for range occupations in calendar year 2024 of \$1,986.76.¹ The national monthly AEWR rate for all range occupations in the H–2A program in 2024 is calculated by multiplying the monthly AEWR for calendar year 2023 by the October 2023 ECI adjustment (\$1,901.21 × 1.045 = \$1,986.76) or \$1,986.76. Accordingly, any employer certified or seeking certification for range workers must offer, advertise in recruitment, and pay each worker a wage that is at least the highest of the monthly AEWR of \$1,986.76, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action at the time work is performed on or after the effective date of this notice.

Authority: 20 CFR 655.211(b).

Lenita Jacobs-Simmons,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–27434 Filed 12–13–23; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Pre-Hearing Statement (LS–18)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for

¹ The regulation at 20 CFR 655.211(c)(2) states that the monthly AEWR is calculated based on the ECI for wages and salaries "for the preceding October—October period." This regulatory language was intended to identify the Bureau of Labor Statistics' (BLS) October publication of ECI for wages and salaries, which presents data for the September-to-September period. Accordingly, the most recent 12-month change in the ECI for private sector workers published on October 31, 2023, by BLS was used for establishing the monthly AEWR under the regulations. *See* https://www.bls.gov/news.release/archives/eci_10312023.pdf. The ECI for private sector workers was used rather than the ECI for all civilian workers given the characteristics of the H–2A herder workforce.

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 January 16, 2024.

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) if the information will be processed and used in a timely manner; (3) 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; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) 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: Michelle Neary by telephone at 202–693–6312, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Form LS–18 is used to refer cases to the Office of Administrative Law Judges for formal hearing under the Longshore and Harbor Workers' Compensation Act. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 5, 2023 (88 FR 60712).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that

information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Pre-Hearing Statement (LS–18).

OMB Control Number: 1240–0036.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 8,422.

Total Estimated Number of Responses: 8,422.

Total Estimated Annual Time Burden: 1,432 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior PRA Analyst.

[FR Doc. 2023–27436 Filed 12–13–23; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Ethylene Oxide Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-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 January 16, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3)

ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The standard requires employers to monitor worker exposure to Ethylene Oxide (EtO), to provide medical surveillance, and to establish and maintain accurate records of worker exposure to EtO. These records will be used by employers, workers, physicians, and the Government to ensure that workers are not harmed by exposure to EtO. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 3, 2023 (88 FR 68153).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Ethylene Oxide Standard.

OMB Control Number: 1218–0108.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 2,026.

Total Estimated Number of Responses: 109,708.

Total Estimated Annual Time Burden: 30,252 hours.

Total Estimated Annual Other Costs Burden: \$5,129,858.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Certifying Official.

[FR Doc. 2023–27437 Filed 12–13–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR**Bureau of Labor Statistics****Information Collection Activities;
Comment Request**

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of “Cognitive and Psychological Research.” A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before February 12, 2024.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room G225, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to BLS_PRA_Public@bls.gov.

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, telephone number 202-691-7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:**I. Background**

The Bureau of Labor Statistics' Behavioral Science Research Center (BSRC) conducts theoretical, applied, and evaluative research aimed at improving the quality of data collected and published by the Bureau. Since its creation in 1988, the BSRC has advanced the study of survey methods research, approaching issues of non-sampling error within a framework that draws heavily on the theories and

methods of the cognitive, statistical, and social sciences. The BSRC research focuses primarily on the assessment of survey instrument design and survey administration, as well as on issues related to interviewer training, the interaction between interviewer and respondent in the interview process, and the usability of data-collection instruments by both interviewers and respondents. Improvements in these areas result in greater accuracy and response rates of BLS surveys, frequently reduce costs in training and survey administration, and further ensure the effectiveness of the Bureau's overall mission.

II. Current Action

Office of Management and Budget clearance is being sought for “Cognitive and Psychological Research.” The purpose of this request for clearance by the BSRC is to conduct cognitive and psychological research designed to enhance the quality of the Bureau's data collection procedures and overall data management. The BLS is committed to producing the most accurate and complete data within the highest quality assurance guidelines. The BSRC was created to aid in this effort and it has demonstrated the effectiveness and value of its approach. Over the next few years, demand for BSRC consultation is expected to remain high as approaches are explored and tested to address increasing nonresponse in key Bureau surveys. Moreover, as the use of web-based surveys continues to grow, so too will the need for careful tests of instrument design and usability, human-computer interactions, and the impact of multiple modes on data quality. The BSRC is uniquely equipped with both the skills and facilities to accommodate these demands.

The extension of the accompanying clearance package reflects an attempt to accommodate the increasing interest by BLS program offices and other agencies in the methods used, and the results obtained, by the BSRC. This package reflects planned research and development activities for FY2024 through FY2026, and its approval will enable the continued productivity of a state-of-the-art, multi-disciplinary program of behavioral science research to improve BLS survey methodology.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title of Collection: Cognitive and Psychological Research.

OMB Number: 1220-0141.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, private sector.

Total Estimated Annual Number of Respondents: 10,450.

Frequency: One time.

Total Estimated Annual Number of Responses: 10,450.

Average Time per Response: 21.72 minutes.

Total Estimated Annual Time Burden: 3,783 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 8th day of December 2023.

Eric Molina,

*Chief, Division of Management Systems,
Branch of Policy Analysis.*

[FR Doc. 2023-27432 Filed 12-13-23; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR**Bureau of Labor Statistics****Information Collection Activities;
Comment Request**

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed

and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the “Annual Refiling Survey.” A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before February 12, 2024.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room G225, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to BLS_PRA_Public@bls.gov.

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Quarterly Census of Employment and Wages (QCEW) program is a federal/state cooperative effort which compiles monthly employment data, quarterly wages data, and business identification information from employers subject to state Unemployment Insurance (UI) laws. These data are collected from state Quarterly Contribution Reports (QCRs) submitted to State Workforce Agencies (SWAs). The states send micro-level employment and wages data, supplemented with the names, addresses, and business identification information of these employers, to the BLS. The state data are used to create the BLS sampling frame, known as the longitudinal QCEW data.

To ensure the continued accuracy of these data, the information supplied by employers must be periodically verified and updated. For this purpose, the Annual Refiling Survey (ARS) is used in

conjunction with the UI tax reporting system in each state. The information collected by the ARS is used to review the existing industry code assigned to each establishment as well as the physical location of the business establishment. As a result, changes in the industrial and geographical compositions of our economy are captured in a timely manner and reflected in the BLS statistical programs.

The ARS also asks employers to identify new locations in the state. If these employers meet QCEW program reporting criteria, then a Multiple Worksite Report (MWR) is sent to the employer requesting employment and wages for each worksite each quarter. Thus, the ARS is also used to identify new potential MWR-eligible employers.

II. Current Action

Office of Management and Budget clearance is being sought for a revision of the ARS. Once every three years, the SWAs survey employers that are covered by the state’s UI laws to ensure that state records correctly reflect the business activities and locations of those employers. States survey approximately one-third of businesses with employment greater than three each year and largely take care of the entire universe of covered businesses over a three-year cycle. The selection criterion for surveying establishments is based on the nine-digit Federal Employer Identification Number of the respondent. BLS constantly pursues a growing number of automated reporting options to reduce employer burden and costs and to take advantage of more efficient methods and procedures. Even given such actions, mailing remains an important part of the survey. The BLS developed a one-page letter rather than mailing forms for ARS solicitation. This letter explains the purpose of the ARS and provides respondents with a unique Web ID and password. Respondents are directed to the BLS online web collection system to verify or to update their geographic and industry information.

Additionally, BLS staff review selected, large multi-worksite national employers rather than surveying these employers with traditional ARS letters. This central review reduces postage costs incurred by the states in sending letters.

BLS continues to use a private contractor to handle various administrative aspects of the survey to reduce the costs associated with the ARS. This initiative is called the Centralized Annual Refiling Survey (CARS). Under CARS, BLS effectively utilizes the commercial advantages related to printing and mailing large volumes of survey letters.

Finally, BLS continues to make use of email addresses collected from the ARS and from the state UI agencies for solicitation purposes. Use of email for solicitation reduces the overall cost of data collection. BLS will also continue to make use of email solicitation of small establishments that had been excluded from the ARS for budgetary reasons. Since collection costs for email solicitation are minimal, these respondents can continue to be added back to the ARS at little cost to the government.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title of Collection: Annual Refiling Survey.

OMB Number: 1220–0032.

Type of Review: Revision of a currently approved.

Affected Public: Business or other for-profit, not-for-profit institutions, and farms.

ARS collection instrument	Number of respondents	Frequency	Total responses	Estimated average burden (hours)	Estimated total burden (hours)
BLS NVS Non-mandatory	277,900	once	277,900	0.083	23,066
BLS NVS Mandatory	310,800	once	310,800	0.083	25,797

ARS collection instrument	Number of respondents	Frequency	Total responses	Estimated average burden (hours)	Estimated total burden (hours)
BLS NVM Non-mandatory	15,400	once	15,400	0.25	3,850
BLS NVM Mandatory	16,800	once	16,800	0.25	4,200
BLS NCA Non-mandatory	22,750	once	22,750	0.167	3,800
BLS NCA Mandatory	30,000	once	30,000	0.167	5,010
Small Units Non-Mandatory	43,000	once	43,000	0.083	3,569
Small Units Mandatory	57,000	once	57,000	0.083	4,731
Totals:	773,650	.....	773,650	.....	74,023

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on December 8, 2023.

Eric Molina,

*Chief, Division of Management Systems,
Branch of Policy Analysis.*

[FR Doc. 2023-27433 Filed 12-13-23; 8:45 am]

BILLING CODE 4510-24-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-23-0014; NARA-2024-007]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on [regulations.gov](https://www.regulations.gov) for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by January 29, 2024.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: <https://www.regulations.gov/docket/NARA-23-0014/document>. This is a direct link to the schedules posted in the docket for this notice on [regulations.gov](https://www.regulations.gov). You may submit comments by the following method:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. On the

website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on [regulations.gov](https://www.regulations.gov) and on submitting comments, see their FAQs at <https://www.regulations.gov/faq>.

If you are unable to comment via [regulations.gov](https://www.regulations.gov), you may email us at request.schedule@nara.gov for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT:

Eddie Germino, Strategy and Performance Division, by email at regulation_comments@nara.gov or at 301-837-3758. For information about records schedules, contact Records Management Operations by email at request.schedule@nara.gov or by phone at 301-837-1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the [regulations.gov](https://www.regulations.gov)

docket for this notice as "other" documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the [regulations.gov](https://www.regulations.gov) portal, you may contact request.schedule@nara.gov for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on [regulations.gov](https://www.regulations.gov) a "Consolidated Reply" summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at [regulations.gov](https://www.regulations.gov) to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The

RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of the Treasury, Internal Revenue Service, Modified Employee Plans Exempt Organization Determinations System (DAA-0058-2022-0004).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2023-27464 Filed 12-13-23; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received

to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 16, 2024. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or ACApermits@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703-292-4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2024-019

1. **Applicant:** Brandon Harvey, EYOS Expeditions Ltd. PO Box 2535, Vashon Island, WA 98070

Activity for Which Permit is Requested: Waste Management. Waste Management. The applicant proposes to operate small, battery-operated remotely piloted aircraft systems (RPAS) consisting, in part, of a quadcopter equipped with cameras to collect commercial and educational footage of the Antarctic. The quadcopter would not be flown over concentrations of birds or mammals, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by pilots with extensive experience, who are pre-approved by the Expedition Leader. Several mitigation measures to reduce environmental impacts and prevent against loss of the quadcopter include only flying when the wind is less than 25 knots; flying for only 20 minutes at a time to preserve battery life; and an "auto go home" feature in case of loss

of control link or low battery; having an observer on the lookout for wildlife, people, and other hazards; ensuring that the aircraft remains within visual line of sight; and implementing biosecurity measures by using disinfecting agents before and after each flight. The applicant is seeking a Waste Permit to cover any accidental releases that may result from operating the RPAS.

Location: Antarctic Peninsula Region.

Dates of Permitted Activities: December 8, 2023–March 30, 2024.

Permit Application: 2024-020

2. **Applicant:** Karl Muhlberger, ROW Management Ltd, 1551 Sawgrass Corporate Parkway, Fort Lauderdale, FL 33323.

Activity for Which Permit is Requested: Waste Management. Waste Management. The applicant proposes to operate small, battery-operated remotely piloted aircraft systems (RPAS) consisting, in part, of a quadcopter equipped with cameras to collect commercial and educational footage of the Antarctic. The quadcopter would not be flown over concentrations of birds or mammals, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by pilots with extensive experience, who are pre-approved by the Expedition Leader. Several mitigation measures to reduce environmental impacts and prevent against loss of the quadcopter include only flying when the wind is less than 25 knots; flying for only 20 minutes at a time to preserve battery life; and an "auto go home" feature in case of loss of control link or low battery; having an observer on the lookout for wildlife, people, and other hazards; ensuring that the aircraft remains within visual line of sight; and implementing biosecurity measures by using disinfecting agents before and after each flight. The applicant is seeking a Waste Permit to cover any accidental releases that may result from operating the RPAS.

Location: Antarctic Peninsula Region.

Dates of Permitted Activities: December 8, 2023–March 30, 2024.

Kimiko S. Bowens-Knox,

Program Analyst, Office of Polar Programs.

[FR Doc. 2023-27442 Filed 12-13-23; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0055]

Information Collection: DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, “DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing.”

DATES: Submit comments by January 16, 2024. 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 on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0055 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–2023–0055.
- *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. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- *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.

- *NRC’s Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC’s Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment

submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, “DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing.” The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 28, 2023, (88 FR 48922).

1. *The title of the information collection:* DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing.
2. *OMB approval number:* 3150–0057, 3150–0003, 3150–0004, and 3150–0058.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* DOE/NRC Form 740M, DOE/NRC Form 741, DOE/NRC Form 742, DOE/NRC Form 742C.
5. *How often the collection is required or requested:* DOE/NRC Form 741, Nuclear Material Transaction Report, will be collected whenever nuclear material is shipped or received into the Material Balance Area; DOE/NRC Form 742, Material Balance Report, will be collected on an annual basis; DOE/NRC Form 742C, Physical Inventory Listing, will be collected on an annual basis; DOE/NRC Form 740M, Concise Note, are used when needed.

6. *Who will be required or asked to respond:* Persons licensed to possess specified quantities of nuclear material and entities subject to the U.S.-IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366) are required to respond as follows: any licensee who ships, receives, or otherwise undergoes an inventory change of nuclear material is required to submit a DOE/NRC Form 741 to document the change. Additional information regarding these transactions shall be submitted through Form 740M, with Safeguards Information identified and handled in accordance with section 73.21 of title 10 of the *Code of Federal Regulations*, “Protection of Safeguards Information: Performance

requirements.” Any licensee who had possessed in the previous reporting period, at any one time and location, nuclear material in a quantity totaling one gram or more shall complete DOE/NRC Form 742. In addition, each licensee, Federal or State, who is authorized to possess, at any one time of location, one kilogram of foreign obligated source material, is required to file with the NRC an annual statement of source material inventory which is foreign obligated. Any licensee, who had possessed in the previous reporting period, at any one time and location, special nuclear material in a quantity totaling one gram or more shall complete DOE/NRC Form 742C.

7. The estimated number of annual responses:

DOE/NRC Form 740M: 67.
DOE/NRC Form 741: 28,031.

DOE/NRC Form 742: 327.
DOE/NRC Form 742C: 327.
8. The estimated number of annual respondents:

DOE/NRC Form 740M: 17.
DOE/NRC Form 741: 327.
DOE/NRC Form 742: 327.
DOE/NRC Form 742C: 327.

9. The estimated number of hours needed annually to comply with the information collection requirement or request:

DOE/NRC Form 740M: 50.
DOE/NRC Form 741: 35,039.
DOE/NRC Form 742: 1,145.
DOE/NRC Form 742C: 1,308.

10. Abstract: Persons licensed to possess specified quantities of nuclear material currently report inventory and transaction of material to the Nuclear Materials Management and Safeguards System via the DOE/NRC Forms: DOE/NRC Form 740M, Concise Note; DOE/

NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing. These forms provide data that is required under domestic and international safeguards regulations. This collection is being renewed to allow the U.S. to continue fulfilling its responsibilities as a participant in the U.S.-IAEA Safeguards Agreements and to satisfy various bilateral agreements for nuclear cooperation with other countries, and its domestic safeguards responsibilities.

III. Availability of Documents

The supplemental documents relate to each information collections are identified in the following table and are available to interested persons in ADAMS.

Document description	ADAMS accession No.
Supporting statement and DOE/NRC Form 740M, “Concise Note” (3150–0057)	ML23271A173 and ML23139A259.
Supporting statement and DOE/NRC Form 741, “Nuclear Material Transaction Report” (3150–0003)	ML23271A174 and ML23139A261.
Supporting statement and DOE/NRC Form 742, “Material Balance Report” (3150–0004)	ML23271A175 and ML23139A262.
Supporting statement and DOE/NRC Form 742C, “Physical Inventory Listing” (3150–0058)	ML23271A176 and ML23139A263.
NUREG/BR–0006, Revision 9, Instructions for Completing Nuclear Material Transaction Reports (DOE/NRC Forms 741 and 740M).	ML20240A155.
NUREG/BR–0007, Revision 8, Instructions for the Preparation and Distribution of Material Status Reports, (DOE/NRC Forms 742 and 742C).	ML20240A181.

Dated: December 11, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–27508 Filed 12–13–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule’s Competitive Products List.

DATES: *Date of required notice:* December 14, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 8, 2023, it filed with the Postal Regulatory

Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 135 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–102, CP2024–106.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–27413 Filed 12–13–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule’s Competitive Products List.

DATES: *Date of required notice:* December 14, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 8, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 31 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–107, CP2024–111.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–27419 Filed 12–13–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule’s Competitive Products List.

DATES: *Date of required notice:*
December 14, 2023.

FOR FURTHER INFORMATION CONTACT:
Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 8, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 136 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–104, CP2024–108.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2023–27414 Filed 12–13–23; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
December 14, 2023.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 5, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 28 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–96, CP2024–98.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2023–27416 Filed 12–13–23; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
December 14, 2023.

FOR FURTHER INFORMATION CONTACT:
Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 4, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 129 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–94, CP2024–96.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2023–27407 Filed 12–13–23; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
December 14, 2023.

FOR FURTHER INFORMATION CONTACT:
Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 8, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 133 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–100, CP2024–104.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2023–27411 Filed 12–13–23; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
December 14, 2023.

FOR FURTHER INFORMATION CONTACT:
Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 8, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 137 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–105, CP2024–109.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2023–27415 Filed 12–13–23; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
December 14, 2023.

FOR FURTHER INFORMATION CONTACT:
Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 8, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Ground Advantage® Contract 9 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2024–103, CP2024–107.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–27406 Filed 12–13–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 14, 2023.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 6, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 131 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–98, CP2024–101.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–27409 Filed 12–13–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 14, 2023.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C.

3642 and 3632(b)(3), on December 8, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 134 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–101, CP2024–105.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–27412 Filed 12–13–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 14, 2023.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 8, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 30 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–106, CP2024–110.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–27418 Filed 12–13–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 14, 2023.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 7, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 132 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–99, CP2024–102.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–27410 Filed 12–13–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 14, 2023.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 4, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 130 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–95, CP2024–97.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–27408 Filed 12–13–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 14, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 5, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 29 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-97, CP2024-99.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023-27417 Filed 12-13-23; 8:45 am]

BILLING CODE 7710-12-P

SCIENCE AND TECHNOLOGY POLICY OFFICE

Notice of Request for Information; National Plan for Civil Earth Observations

AGENCY: White House Office of Science and Technology Policy (OSTP).

ACTION: Request for Information (RFI); extension of comment period.

SUMMARY: On November 23, 2023, the Office of Science and Technology Policy (OSTP) published in the **Federal Register** a document entitled “Request for Information (RFI); National Plan for Civil Earth Observations.” This RFI, issued by OSTP, which includes a draft of the 2023 National Plan, seeks information to achieve a future vision for continued United States global leadership in enabling and leveraging civil Earth Observations to increase access to Earth data, and address global changes. OSTP is specifically interested in public input to inform the development and release of the 2023 National Plan to better leverage Earth Observations for addressing key societal challenges and trends of the coming decade. In response to requests by prospective commenters that they would benefit from additional time to adequately consider and respond to the RFI, OSTP has determined that an extension of the comment period until January 16, 2024 is appropriate.

DATES: The end of the comment period for the document entitled “Request for

Information (RFI); National Plan for Civil Earth Observations,” published on November 23, 2023 (88 FR 81448), is extended from December 31, 2023 to January 16, 2024.

ADDRESSES: Comments submitted in response to 88 FR 81448 should be submitted via [regulations.gov](https://www.regulations.gov) (Docket #: OSTP-FRDOC-0001-0013 or https://www.regulations.gov/document/OSTP-FRDOC_0001-0013). Due to time constraints, mailed paper submissions will not be accepted, and electronic submissions received after the deadline cannot be ensured to be incorporated or taken into consideration.

Instructions: Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on how to use [Regulations.gov](https://www.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.

Information obtained from this RFI may be used by the Government on a non-attribution basis for planning and strategy development. OSTP will not respond to individual submissions. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed. This RFI is not accepting applications for financial assistance or financial incentives.

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 from minors, or responses containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

Comments submitted in response to this notice are subject to the Freedom of Information Act (FOIA). Responses to this RFI may be posted without change online. Please note that the United States Government will not pay for response preparation, or for the use of any information contained in a response.

FOR FURTHER INFORMATION CONTACT: Ezinne Uzo-Okoro; tel: 202-456-4010 or usgeo@ostp.eop.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 42 U.S.C. 6617, OSTP is soliciting public input through an RFI to obtain feedback from a wide variety of stakeholders, including individuals, industry, academia, research laboratories, nonprofits, and think tanks. OSTP is specifically interested in public input to inform the development and release of the 2023 National Plan to better leverage Earth Observations for addressing key societal challenges and trends of the coming decade. The first draft of the 2023 National Plan is included in the *Regulations.gov* notice (Docket #: OSTP-FRDOC-0001-0013 or https://www.regulations.gov/document/OSTP-FRDOC_0001-0013) for public input. The document stated that the comment period would close on December 31, 2023. OSTP has received requests to extend the comment period. An extension of the comment period will provide additional opportunity for the public to consider the RFI and prepare comments to address the topics listed therein. Therefore, OSTP is extending the end of the comment period for the RFI from December 31, 2023 to January 16, 2024.

Submitted by the White House Office of Science and Technology Policy on December 7, 2023.

Dated: December 11, 2023.

Stacy Murphy,

Deputy Chief Operations Officer/Security Officer.

[FR Doc. 2023-27461 Filed 12-13-23; 8:45 am]

BILLING CODE 3270-F1-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99127; File No. SR-NYSE-2023-28]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Rules 10.9261 and 10.9830

December 8, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on November 27, 2023, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a

³ 17 CFR 240.19b-4.

proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to harmonize Rules 10.9261 and 10.9830 with recent changes by the Financial Industry Regulatory Authority, Inc. ("FINRA") that allow for video conference hearings under specified conditions. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) with recent changes by FINRA to its Rules 9261 and 9830 that allow for video conference hearings under specified conditions.

Background

In 2018, NYSE National adopted disciplinary rules modeled on the disciplinary rules of its affiliate NYSE American LLC and the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.⁴

In adopting disciplinary rules modeled on FINRA's rules, NYSE National adopted the hearing and evidentiary processes set forth in Rule

10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 10.9261 is identical to the counterpart FINRA rule. Rule 10.9830 is also identical to FINRA's counterpart rule, except for conforming and technical amendments.⁵

In 2020, given the spread of COVID-19 and its effect on FINRA's adjudicatory functions nationwide, FINRA filed a temporary rule change to grant FINRA's Office of Hearing Officers ("OHO") and the National Adjudicatory Council ("NAC") the authority to conduct certain hearings by video conference if warranted by the current COVID-19-related public health risks posed by in-person hearings. Among the rules FINRA amended were FINRA Rules 9261 and 9830.⁶

In its filing, FINRA represented that its protocol for conducting hearings by video conference would ensure that such hearings maintain a fair process for the parties by, among other things, FINRA's use of a high quality, secure and user-friendly video conferencing service and provision of thorough instructions, training and technical support to all hearing participants.⁷ According to FINRA, the changes were a reasonable interim solution to allow FINRA's critical adjudicatory processes to continue to function while protecting the health and safety of hearing participants.⁸

Given that FINRA and OHO administer disciplinary hearings on the Exchange's behalf pursuant to a regulatory services agreement ("RSA"),⁹

⁵ See *id.*

⁶ See Securities Exchange Act Release Nos. 83289 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR-FINRA-2020-027). FINRA also proposed to temporarily amend FINRA Rules 1015 and 9524. FINRA Rule 1015 governs the process by which an applicant for new or continuing membership can appeal a decision rendered by FINRA's Department of Member Supervision under FINRA Rule 1014 or 1017 and request a hearing which would be conducted by a subcommittee of the NAC. See *id.* The Exchange has not adopted FINRA Rule 1015. FINRA Rule 9524 governs the process by which a statutorily disqualified member firm or associated person can appeal the Department's recommendation to deny a firm or sponsoring firm's application to the NAC. See *id.* Under the Exchange's version of Rule 9524, if the Chief Regulatory Officer rejects the application, the member organization or applicant may request a review by the Exchange Board of Directors. This differs from FINRA's process, which provides for a hearing before the NAC and further consideration by the FINRA Board of Directors.

⁷ See 85 FR at 55713.

⁸ See *id.*

⁹ FINRA's OHO administers all aspects of Exchange adjudications, including assigning hearing officers to serve as NYSE National hearing officers. A hearing officer from OHO will, among other things, preside over the disciplinary hearing,

and that the public health concerns addressed by FINRA's amendments applied equally to the Exchange's disciplinary hearings, in 2020 the Exchange also temporarily amended its disciplinary rules to allow virtual hearings.¹⁰ Both FINRA¹¹ and the Exchange¹² extended the temporary relief several times due to the continuing public health risks and logistical challenges related to COVID-19, including whether hearing participants could safely travel and abide by state or local quarantine requirements. The Exchange's temporary amendments to Rules 10.9261 and 10.9830 expired on April 30, 2023.¹³

select and chair the hearing panel, and prepare and issue written decisions. The Chief or Deputy Hearing Officer for all Exchange disciplinary hearings are currently drawn from OHO and are all FINRA employees. The Exchange believes that OHO will utilize the same video conference protocol and processes for Exchange matters under the RSA as it proposes for FINRA matters.

¹⁰ See Securities Exchange Act Release No. 90137 (October 8, 2020), 85 FR 65087 (October 14, 2020) (SR-NYSE-2020-31).

¹¹ See Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR-FINRA-2020-042); Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR-FINRA-2021-006); Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR-FINRA-2021-019); Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR-FINRA-2021-31); Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR-FINRA-2022-004); Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR-FINRA-2022-018); Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR-FINRA-2022-029); and Securities Exchange Act Release No. 96746 (January 25, 2023), 88 FR 6346 (January 31, 2023) (SR-FINRA-2023-001).

¹² See Securities Exchange Act Release No. 90822 (December 30, 2020), 86 FR 627 (January 6, 2021) (SR-NYSE-2020-39); Securities Exchange Act Release No. 91634 (April 22, 2021), 86 FR 22477 (April 28, 2021) (SR-NYSE-2021-11); Securities Exchange Act Release No. 92908 (September 9, 2021), 86 FR 51424 (September 15, 2021) (SR-NYSE-2021-16); Securities Exchange Act Release No. 93919 (January 6, 2022), 87 FR 1804 (January 12, 2022) (SR-NYSE-2021-25); Securities Exchange Act Release No. 94662 (April 11, 2022), 87 FR 22601 (April 15, 2022) (SR-NYSE-2022-03); Securities Exchange Act Release No. 95476 (August 11, 2022), 87 FR 50668 (August 17, 2022) (SR-NYSE-2022-14); Securities Exchange Act Release No. 96262 (November 8, 2022), 87 FR 68540 (November 15, 2022) (SR-NYSE-2022-24); and Securities Exchange Act Release No. 96868 (February 9, 2023), 88 FR 9930 (February 15, 2023) (SR-NYSE-2023-006).

¹³ See Securities Exchange Act Release No. 96868 (February 9, 2023), 88 FR 9930 (February 15, 2023) (SR-NYSE-2023-006) (extending the expiration date of the temporary rule amendments to, among other rules, FINRA Rules 9261 and 9830 from January 31, 2023 to April 30, 2023). The temporary amendments expired on April 30, 2023, because the Exchange did not file another proposed rule change again extending the temporary amendments beyond that date. See *id.* at 9931.

⁴ See Securities Exchange Act Release Nos. 83289 (May 17, 2018), 83 FR 23968, 23976 (May 23, 2018) (SR-NYSE-2018-02) ("2018 Approval Order").

Recently, the Commission approved FINRA's proposal to make the temporary amendments regarding video conference hearings permanent, with some modifications, to permit the use of video conferences for reasons beyond COVID-19.¹⁴ Specifically, FINRA amended, among other rules, FINRA Rules 9261 and 9830 to extend OHO's authority to order hearings by video conference to other similar situations in which proceeding in person could endanger the health or safety of the participant or alternatively would be impracticable (e.g., an uncommon situation or extraordinary circumstances such as a natural disaster or terrorist attack that caused travel to be cancelled for an extended period of time).¹⁵ As approved, OHO has discretion to determine whether the circumstances for a video hearing have been met and can act quickly if a future unexpected event impairs their ability to conduct in-person hearings safely.¹⁶ In addition, OHO has authority to order hearings to occur by video conference based on a motion, which was not permitted under the previous temporary amendments to FINRA Rules 9261 and 9830.¹⁷

As the FINRA Approval Order noted, FINRA represented that it will utilize the same protocols for conducting video conference hearings as those employed under the temporary amendments, including using a high quality, secure, user-friendly video conferencing service and providing thorough instructions, training, and technical support to all hearing participants.¹⁸ In addition, the FINRA Approval Order noted that, according to FINRA, the parties could file a joint motion requesting the hearing to occur, in whole or in part, by video conference based on a showing of good cause. In-person hearings, however, would remain the default method for conducting hearings.¹⁹

Further, as noted in the FINRA Approval Order, given the nature of evidentiary hearings,²⁰ which often occur over multiple days and generally include numerous documents in evidence and witness testimony,

motions for a hearing by video conference would need to be joined by all parties, and even joint motions could be denied if the adjudicator determines that good cause has not been shown.²¹ According to FINRA, OHO would have reasonable discretion based on a joint motion of the parties to exercise its authority to determine whether a hearing should occur by video conference under the proposed rule change.²² Moreover, in deciding whether to schedule a hearing by video conference, OHO could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing. Additionally, as noted above, OHO may consider whether a situation is uncommon or there are extraordinary circumstances.²³

Finally, the FINRA Approval Order noted that for approximately two and a half years, while the temporary amendments were in effect, OHO successfully conducted numerous hearings by video conference using Zoom, a system which was vetted by FINRA's information technology staff.²⁴ FINRA stated that this use of video conference technology has been an effective and efficient alternative to in-person hearings.²⁵

As discussed below, the Exchange proposes to delete the temporary rule text in Rule 10.9261 and Rule 10.9830 permitting video conferences that expired earlier this year and replace it with rule text based on FINRA's recently approved amendments to its Rules 9261 and 9830 permitting video conference hearings under specified conditions.

Proposed Rule Change

NYSE National Rule 10.9261(b) provides that if a disciplinary hearing is held, a party shall be entitled to be heard in-person, by counsel, or by the party's representative. Similarly, NYSE National Rule 10.9830 outlines the requirements for hearings for temporary and permanent cease and desist orders. NYSE National Rule 10.9830(a), however, does not specify that a party shall be entitled to be heard in-person, by counsel, or by the party's representative. Consistent with FINRA's temporary amendment to FINRA Rules 9261 and 9830 that expired earlier this

year, both NYSE National rules temporarily granted the Chief or Deputy Chief Hearing Officer temporary authority to order, upon consideration of COVID-19-related public health risks presented by an in-person hearing, that a hearing under those rules be conducted by video conference.

The Exchange proposes to delete the temporary amendments to Rules 10.9261 and 10.9830 and conform these rules to FINRA Rules 9261 and 9830 as recently amended. The Exchange would add text to the rules permitting the Chief or Deputy Chief Hearing Officer to order the hearing to be conducted in whole or in part by video conference consistent with the FINRA Approval Order either based upon an assessment that proceeding in person may endanger the health or safety of the participants or would be impracticable or upon consideration of a joint motion of the parties for good cause shown. As noted, FINRA has adopted a detailed and thorough protocol to ensure that hearings conducted by video conference will maintain a fair process for the parties.²⁶ Moreover, the proposed rule change would modernize existing procedures and allow parties who jointly prefer video conference to potentially save travel costs and time. As proposed, the use of video conferences would be limited and controlled, and in-person hearings would continue to be the default method for conducting hearings.²⁷ Furthermore, the proposed rule includes procedural safeguards to ensure fairness, such as the requirement for evidentiary hearings that any motions be joined by all parties and show good cause.²⁸ The Exchange believes that this is a reasonable procedure to follow in hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.

To effectuate these changes, the Exchange proposes to add the following deletions (bracketed) and additions (italicized) to Rule 10.9261(b):

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative. [Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.]*Upon a determination that proceeding in person may endanger the health or safety of the participants or would be impracticable, or upon consideration of a joint motion of the Parties for good cause shown, the Chief Hearing Officer or Deputy Chief Hearing*

¹⁴ See Securities Exchange Act Release Nos. 98029 (August 4, 2023), 88 FR 51879 (August 4, 2023) (SR-FINRA-2023-008) (Order Approving a Proposed Rule Change To Amend FINRA Rules 1015, 9261, 9341, 9524, 9830 and Funding Portal Rule 900 (Code of Procedure) To Permit Hearings Under Those Rules To Be Conducted by Video Conference) ("FINRA Approval Order").

¹⁵ See FINRA Approval Order, 88 FR at 51880.

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ As used herein, "evidentiary hearings" refers to hearings conducted before OHO under Rules 10.9261 and 10.9830. See *id.*, 88 FR at 51880, n. 25.

²¹ See *id.* at 51881.

²² See *id.*

²³ See text accompanying note 15, *supra*.

²⁴ See FINRA Approval Order, 88 FR at 51880.

²⁵ See *id.*

²⁶ See text accompanying notes 7 & 18, *supra*.

²⁷ See FINRA Approval Order, 88 FR at 51882.

²⁸ See *id.*

Officer may, in the exercise of reasonable discretion, order the hearing to be conducted, in whole or in part, by video conference.

The proposed text is identical to the language adopted by FINRA.²⁹

Similarly, the Exchange proposes the following deletions and additions to Rule 10.9830(a):

The hearing shall be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed. [Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.] *Upon a determination that proceeding in person may endanger the health or safety of the participants or would be impracticable, or upon consideration of a joint motion of the Parties for good cause shown, the Chief Hearing Officer or Deputy Chief Hearing Officer may, in the exercise of reasonable discretion, order the hearing to be conducted, in whole or in part, by video conference.*

Once again, the proposed language is identical to the language adopted by FINRA.³⁰

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,³¹ in general, and furthers the objectives of Section 6(b)(5),³² in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with

members, consistent with Sections 6(b)(7) and 6(d) of the Act.³³

The Exchange believes that the proposed rule changes support the objectives of the Act by harmonizing Exchange rules modeled on FINRA's rules, resulting in less burdensome and more efficient regulatory compliance. As previously noted, the additional text proposed for Rule 10.9261 and Rule 10.9830 is identical to the text in the counterpart FINRA rules. As such, the proposed rule change would facilitate rule harmonization among self-regulatory organizations with respect to the conduct of video conference hearings, thereby fostering cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change protects investors and the public interest by permitting the use of broadly available technology to allow hearings to proceed by video conference under certain circumstances. The Exchange's disciplinary proceedings serve a critical role in providing investor protection and maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm by members and associated persons. The proposed rule change would encourage the prompt resolution of these cases while preserving fair process. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to proceed without delay, thereby enabling the Exchange to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

The proposed rule change promotes efficiency by permitting hearings to occur by video conference in situations where the hearings would otherwise be postponed for an uncertain period of time. Moreover, as noted, FINRA will utilize the same protocols for conducting video conference hearings as those employed under the temporary amendments, including using a high quality, secure, user-friendly video conferencing service and providing thorough instructions, training, and technical support to all hearing participants.³⁴ Moreover, the Chief or Deputy Chief Hearing Officer may take into consideration, among other things,

a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.³⁵

For the same reasons, the Exchange believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.³⁶ The Exchange believes that the proposed rule change provides a fair procedure by allowing hearings to proceed by video conference not only due to public health or safety reasons, but also at a party or the parties' request for reasons particular to them. The Chief or Deputy Chief Hearing Officer could allow a hearing to proceed by video conference in the exercise of reasonable discretion and subject to procedural safeguards that ensure fairness, including the requirement that any motions be joined by all parties and show good cause. Overall, the proposed rule change represents a significant step toward modernizing disciplinary process procedures in a manner that preserves in-person hearings but allows for the use of video conference technology under certain circumstances.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to create permanent rules that would allow video conference hearings if OHO determines that proceeding in person may endanger the health or safety of the participants or would be impracticable, or where both parties prefer doing so and show good cause, thereby providing greater harmonization with approved FINRA rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section

²⁹ See Exchange Act Release No. 97403 (May 4, 2023), 88 FR 28645 (May 4, 2023) (File No. SR-FINRA-2023-008) (Notice of Filing of a Proposed Rule Change To Amend FINRA Rules 1015, 9261, 9341, 9524, 9830 and Funding Portal Rule 900 (Code of Procedure) To Permit Hearings Under Those Rules To Be Conducted by Video Conference).

³⁰ See *id.*

³¹ 15 U.S.C. 78f(b).

³² 15 U.S.C. 78f(b)(5).

³³ 15 U.S.C. 78f(b)(7) & 78f(d).

³⁴ See FINRA Approval Order, 88 FR at 51880.

³⁵ See *id.* at 51881 & n. 36.

³⁶ 15 U.S.C. 78f(b)(7) and 78f(d).

19(b)(3)(A)(iii) of the Act³⁷ and Rule 19b-4(f)(6) thereunder.³⁸ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.³⁹

A proposed rule change filed under Rule 19b-4(f)(6)⁴⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁴¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁴² of the Act 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-NYSENAT-2023-28 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-NYSENAT-2023-28. 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-NYSENAT-2023-28 and should be submitted on or before January 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-27404 Filed 12-13-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99122; File No. SR-NYSEARCA-2023-82]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Rules 10.9261 and 10.9830

December 8, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 27, 2023, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to harmonize Rules 10.9261 and 10.9830 with recent changes by the Financial Industry Regulatory Authority, Inc. ("FINRA") that allow for video conference hearings under specified conditions. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

³⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁸ 17 CFR 240.19b-4(f)(6).

³⁹ 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.

⁴⁰ 17 CFR 240.19b-4(f)(6).

⁴¹ 17 CFR 240.19b-4(f)(6)(iii).

⁴² 15 U.S.C. 78s(b)(2)(B).

⁴³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) with recent changes by FINRA to its Rules 9261 and 9830 that allow for video conference hearings under specified conditions.

Background

In 2019, NYSE Arca adopted disciplinary rules modeled on the text of the Rule 8000 and Rule 9000 Series of its affiliate NYSE American LLC ("NYSE American") and the Rule 8000 Series and Rule 9000 Series of FINRA and the New York Stock Exchange LLC.⁴ The NYSE Arca disciplinary rules were implemented on May 27, 2019.⁵

In adopting disciplinary rules modeled on FINRA's rules, NYSE Arca adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 10.9800 Series. As adopted, the text of Rule 10.9261 is identical to the counterpart FINRA rule. Rule 10.9830 is also identical to FINRA's counterpart rule, except for conforming and technical amendments.⁶

In 2020, given the spread of COVID-19 and its effect on FINRA's adjudicatory functions nationwide, FINRA filed a temporary rule change to grant FINRA's Office of Hearing Officers ("OHO") and the National Adjudicatory Council ("NAC") the authority to conduct certain hearings by video conference if warranted by the current COVID-19-related public health risks posed by in-person hearings. Among the rules FINRA amended were FINRA Rules 9261 and 9830.⁷

In its filing, FINRA represented that its protocol for conducting hearings by video conference would ensure that such hearings maintain a fair process for the parties by, among other things, FINRA's use of a high quality, secure and user-friendly video conferencing service and provision of thorough instructions, training and technical support to all hearing participants.⁸ According to FINRA, the changes were a reasonable interim solution to allow FINRA's critical adjudicatory processes to continue to function while protecting the health and safety of hearing participants.⁹

Given that FINRA and OHO administer disciplinary hearings on the Exchange's behalf pursuant to a regulatory services agreement ("RSA"),¹⁰ and that the public health concerns addressed by FINRA's amendments applied equally to the Exchange's disciplinary hearings, in 2020 the Exchange also temporarily amended its disciplinary rules to allow virtual hearings.¹¹ Both FINRA¹² and

FINRA Rule 9524 governs the process by which a statutorily disqualified member firm or associated person can appeal the Department's recommendation to deny a firm or sponsoring firm's application to the NAC. *See id.* Under the Exchange's version of Rule 9524, if the Chief Regulatory Officer rejects the application, the member organization or applicant may request a review by the Exchange Board of Directors. This differs from FINRA's process, which provides for a hearing before the NAC and further consideration by the FINRA Board of Directors.

⁸ *See* 85 FR at 55713.

⁹ *See id.*

¹⁰ FINRA's OHO administers all aspects of Exchange adjudications, including assigning hearing officers to serve as NYSE Arca hearing officers. A hearing officer from OHO will, among other things, preside over the disciplinary hearing, select and chair the hearing panel, and prepare and issue written decisions. The Chief or Deputy Hearing Officer for all Exchange disciplinary hearings are currently drawn from OHO and are all FINRA employees. The Exchange believes that OHO will utilize the same video conference protocol and processes for Exchange matters under the RSA as it proposes for FINRA matters.

¹¹ *See* Securities Exchange Act Release No. 90088 (October 5, 2020), 85 FR 64186 (October 9, 2020) (SR-NYSEArca-2020-85).

¹² *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR-FINRA-2020-042); Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR-FINRA-2021-006); Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR-FINRA-2021-019); Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR-FINRA-2021-31); Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR-FINRA-2022-004); Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR-FINRA-2022-018); Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR-FINRA-2022-029); and Securities Exchange Act Release No. 96746 (January 25, 2023), 88 FR 6346 (January 31, 2023) (SR-FINRA-2023-001).

the Exchange¹³ extended the temporary relief several times due to the continuing public health risks and logistical challenges related to COVID-19, including whether hearing participants could safely travel and abide by state or local quarantine requirements. The Exchange's temporary amendments to Rules 10.9261 and 10.9830 expired on April 30, 2023.¹⁴

Recently, the Commission approved FINRA's proposal to make the temporary amendments regarding video conference hearings permanent, with some modifications, to permit the use of video conferences for reasons beyond COVID-19.¹⁵ Specifically, FINRA amended, among other rules, FINRA Rules 9261 and 9830 to extend OHO's authority to order hearings by video conference to other similar situations in which proceeding in person could endanger the health or safety of the participant or alternatively would be impracticable (*e.g.*, an uncommon situation or extraordinary circumstances such as a natural disaster or terrorist attack that caused travel to be cancelled for an extended period of time).¹⁶ As approved, OHO has discretion to determine whether the circumstances for a video hearing have been met and can act quickly if a future unexpected event impairs their ability to conduct in-

¹³ *See* Securities Exchange Act Release No. 90820 (December 30, 2020), 86 FR 647 (January 6, 2021) (SR-NYSEArca-2020-116); Securities Exchange Act Release No. 91633 (April 22, 2021), 86 FR 22474 (April 28, 2021) (SR-NYSEArca-2021-27); Securities Exchange Act Release No. 92909 (September 9, 2021), 86 FR 51415 (September 15, 2021) (SR-NYSEArca-2021-76); Securities Exchange Act Release No. 93918 (January 6, 2022), 87 FR 1810 (January 12, 2022) (SR-NYSEArca-2021-107); Securities Exchange Act Release No. 94663 (April 11, 2022), 87 FR 22587 (April 15, 2022) (SR-NYSEArca-2022-18); Securities Exchange Act Release No. 95475 (August 11, 2022), 87 FR 50673 (August 17, 2022) (SR-NYSEArca-2022-44); Securities Exchange Act Release No. 96259 (November 8, 2022), 87 FR 68536 (November 15, 2022) (SR-NYSEArca-2022-73); and Securities Exchange Act Release No. 96871 (February 9, 2023), 88 FR 9915 (February 15, 2023) (SR-NYSEArca-2023-10).

¹⁴ *See* Securities Exchange Act Release No. 96871 (February 9, 2023), 88 FR 9915 (February 15, 2023) (SR-NYSEArca-2023-10) (extending the expiration date of the temporary rule amendments to, among other rules, FINRA Rules 9261 and 9830 from January 31, 2023 to April 30, 2023). The temporary amendments expired on April 30, 2023, because the Exchange did not file another proposed rule change again extending the temporary amendments beyond that date. *See id.* at 9916.

¹⁵ *See* Securities Exchange Act Release Nos. 98029 (August 4, 2023), 88 FR 51879 (August 4, 2023) (SR-FINRA-2023-008) (Order Approving a Proposed Rule Change To Amend FINRA Rules 1015, 9261, 9341, 9524, 9830 and Funding Portal Rule 900 (Code of Procedure) To Permit Hearings Under Those Rules To Be Conducted by Video Conference) ("FINRA Approval Order").

¹⁶ *See* FINRA Approval Order, 88 FR at 51880.

⁴ *See* Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEArca-2019-15) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the Exchange's Affiliate NYSE American LLC) ("2019 Notice").

⁵ *See* NYSE Arca Equities RB-19-060 & NYSE Arca Options RB-19-02 (April 26, 2019).

⁶ *See* 2019 Notice, 84 FR at 16365 & 16373-4.

⁷ *See* Securities Exchange Act Release Nos. 83289 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR-FINRA-2020-027). FINRA also proposed to temporarily amend FINRA Rules 1015 and 9524. FINRA Rule 1015 governs the process by which an applicant for new or continuing membership can appeal a decision rendered by FINRA's Department of Member Supervision under FINRA Rule 1014 or 1017 and request a hearing which would be conducted by a subcommittee of the NAC. *See id.* The Exchange has not adopted FINRA Rule 1015.

person hearings safely.¹⁷ In addition, OHO also has authority to order hearings to occur by video conference based on a motion, which was not permitted under the previous temporary amendments to FINRA Rules 9261 and 9830.¹⁸

As the FINRA Approval Order noted, FINRA represented that it will utilize the same protocols for conducting video conference hearings as those employed under the temporary amendments, including using a high quality, secure, user-friendly video conferencing service and providing thorough instructions, training, and technical support to all hearing participants.¹⁹ In addition, the FINRA Approval Order noted that, according to FINRA, the parties could file a joint motion requesting the hearing to occur, in whole or in part, by video conference based on a showing of good cause. In-person hearings, however, would remain the default method for conducting hearings.²⁰

Further, as noted in the FINRA Approval Order, given the nature of evidentiary hearings,²¹ which often occur over multiple days and generally include numerous documents in evidence and witness testimony, motions for a hearing by video conference would need to be joined by all parties, and even joint motions could be denied if the adjudicator determines that good cause has not been shown.²² According to FINRA, OHO would have reasonable discretion based on a joint motion of the parties to exercise its authority to determine whether a hearing should occur by video conference under the proposed rule change.²³ Moreover, in deciding whether to schedule a hearing by video conference, OHO could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing. Additionally, as noted above, OHO may consider whether a situation is uncommon or there are extraordinary circumstances.²⁴

Finally, the FINRA Approval Order noted that for approximately two and a half years, while the temporary amendments were in effect, OHO

successfully conducted numerous hearings by video conference using Zoom, a system which was vetted by FINRA's information technology staff.²⁵ FINRA stated that this use of video conference technology has been an effective and efficient alternative to in-person hearings.²⁶

As discussed below, the Exchange proposes to delete the temporary rule text in Rule 10.9261 and Rule 10.9830 permitting video conferences that expired earlier this year and replace it with rule text based on FINRA's recently approved amendments to its Rules 9261 and 9830 permitting video conference hearings under specified conditions.

Proposed Rule Change

NYSE Arca Rule 10.9261(b) provides that if a disciplinary hearing is held, a party shall be entitled to be heard in-person, by counsel, or by the party's representative. Similarly, NYSE Arca Rule 10.9830 outlines the requirements for hearings for temporary and permanent cease and desist orders. NYSE Arca Rule 10.9830(a), however, does not specify that a party shall be entitled to be heard in-person, by counsel, or by the party's representative. Consistent with FINRA's temporary amendment to FINRA Rules 9261 and 9830 that expired earlier this year, both NYSE Arca rules temporarily granted the Chief or Deputy Chief Hearing Officer temporary authority to order, upon consideration of COVID-19-related public health risks presented by an in-person hearing, that a hearing under those rules be conducted by video conference.

The Exchange proposes to delete the temporary amendments to Rules 10.9261 and 10.9830 and conform these rules to FINRA Rules 9261 and 9830 as recently amended. The Exchange would add text to the rules permitting the Chief or Deputy Chief Hearing Officer to order the hearing to be conducted in whole or in part by video conference consistent with the FINRA Approval Order either based upon an assessment that proceeding in person may endanger the health or safety of the participants or would be impracticable or upon consideration of a joint motion of the parties for good cause shown. As noted, FINRA has adopted a detailed and thorough protocol to ensure that hearings conducted by video conference will maintain a fair process for the parties.²⁷ Moreover, the proposed rule change would modernize existing

procedures and allow parties who jointly prefer video conference to potentially save travel costs and time. As proposed, the use of video conferences would be limited and controlled, and in-person hearings would continue to be the default method for conducting hearings.²⁸ Furthermore, the proposed rule includes procedural safeguards to ensure fairness, such as the requirement for evidentiary hearings that any motions be joined by all parties and show good cause.²⁹ The Exchange believes that this is a reasonable procedure to follow in hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.

To effectuate these changes, the Exchange proposes to add the following deletions (bracketed) and additions (italicized) to Rule 10.9261(b):

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative. [Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.] *Upon a determination that proceeding in person may endanger the health or safety of the participants or would be impracticable, or upon consideration of a joint motion of the Parties for good cause shown, the Chief Hearing Officer or Deputy Chief Hearing Officer may, in the exercise of reasonable discretion, order the hearing to be conducted, in whole or in part, by video conference.*

The proposed text is identical to the language adopted by FINRA.³⁰

Similarly, the Exchange proposes the following deletions and additions to Rule 10.9830(a):

The hearing shall be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed. [Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.] *Upon a determination that proceeding in person may endanger the*

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See *id.*

²¹ As used herein, "evidentiary hearings" refers to hearings conducted before OHO under Rules 10.9261 and 10.9830. See *id.*, 88 FR at 51880, n. 25.

²² See *id.* at 51881.

²³ See *id.*

²⁴ See text accompanying note 16, *supra*.

²⁵ See FINRA Approval Order, 88 FR at 51880.

²⁶ See *id.*

²⁷ See text accompanying notes 8 & 19, *supra*.

²⁸ See FINRA Approval Order, 88 FR at 51882.

²⁹ See *id.*

³⁰ See Exchange Act Release No. 97403 (May 4, 2023), 88 FR 28645 (May 4, 2023) (File No. SR-FINRA-2023-008) (Notice of Filing of a Proposed Rule Change To Amend FINRA Rules 1015, 9261, 9341, 9524, 9830 and Funding Portal Rule 900 (Code of Procedure) To Permit Hearings Under Those Rules To Be Conducted by Video Conference).

health or safety of the participants or would be impracticable, or upon consideration of a joint motion of the Parties for good cause shown, the Chief Hearing Officer or Deputy Chief Hearing Officer may, in the exercise of reasonable discretion, order the hearing to be conducted, in whole or in part, by video conference.

Once again, the proposed language is identical to the language adopted by FINRA.³¹

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,³² in general, and furthers the objectives of Section 6(b)(5),³³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.³⁴

The Exchange believes that the proposed rule changes support the objectives of the Act by harmonizing Exchange rules modeled on FINRA's rules, resulting in less burdensome and more efficient regulatory compliance. As previously noted, the additional text proposed for Rule 10.9261 and Rule 10.9830 is identical to the text in the counterpart FINRA rules. As such, the proposed rule change would facilitate rule harmonization among self-regulatory organizations with respect to the conduct of video conference hearings, thereby fostering cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change protects investors and the public interest by permitting the use of broadly available technology to allow hearings to proceed by video conference under certain circumstances. The Exchange's disciplinary proceedings serve a critical role in providing investor protection and

maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm by members and associated persons. The proposed rule change would encourage the prompt resolution of these cases while preserving fair process. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to proceed without delay, thereby enabling the Exchange to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

The proposed rule change promotes efficiency by permitting hearings to occur by video conference in situations where the hearings would otherwise be postponed for an uncertain period of time. Moreover, as noted, FINRA will utilize the same protocols for conducting video conference hearings as those employed under the temporary amendments, including using a high quality, secure, user-friendly video conferencing service and providing thorough instructions, training, and technical support to all hearing participants.³⁵ In addition, the Chief or Deputy Chief Hearing Officer may take into consideration, among other things, a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.³⁶

For the same reasons, the Exchange believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.³⁷ The Exchange believes that the proposed rule change provides a fair procedure by allowing hearings to proceed by video conference not only due to public health or safety reasons, but also at a party or the parties' request for reasons particular to them. The Chief or Deputy Chief Hearing Officer could allow a hearing to proceed by video conference in the exercise of reasonable discretion and subject to procedural safeguards that ensure fairness, including the requirement that any motions be joined by all parties and show good cause. Overall, the proposed rule change represents a significant step toward modernizing disciplinary process procedures in a manner that preserves in-person hearings but allows

for the use of video conference technology under certain circumstances.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to create permanent rules that would allow video conference hearings if OHO determines that proceeding in person may endanger the health or safety of the participants or would be impracticable, or where both parties prefer doing so and show good cause, thereby providing greater harmonization with approved FINRA rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³⁸ and Rule 19b-4(f)(6) thereunder.³⁹ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.⁴⁰

A proposed rule change filed under Rule 19b-4(f)(6)⁴¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁴² the Commission may designate a shorter time if such

³⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁹ 17 CFR 240.19b-4(f)(6).

⁴⁰ 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.

⁴¹ 17 CFR 240.19b-4(f)(6).

⁴² 17 CFR 240.19b-4(f)(6)(iii).

³¹ See *id.*

³² 15 U.S.C. 78f(b).

³³ 15 U.S.C. 78f(b)(5).

³⁴ 15 U.S.C. 78f(b)(7) & 78f(d).

³⁵ See FINRA Approval Order, 88 FR at 51880.

³⁶ See *id.* at 51881 & n. 36.

³⁷ 15 U.S.C. 78f(b)(7) and 78f(d).

action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁴³ of the Act 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-NYSEARCA-2023-82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NYSEARCA-2023-82. 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-NYSEARCA-2023-82 and should be submitted on or before January 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99121; File No. SR-NYSEAMER-2023-62]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Harmonize Rules 9261 and 9830

December 8, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 27, 2023, NYSE American LLC ("NYSE American" or the "Exchange") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to harmonize Rules 9261 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc. ("FINRA") that allow for video conference hearings under specified conditions. The proposed rule change is available on the Exchange's website at www.nyse.com, at

the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) with recent changes by FINRA to its Rules 9261 and 9830 that allow for video conference hearings under specified conditions.

Background

In 2016, NYSE American (then known as NYSE MKT LLC) adopted disciplinary rules modeled the Rule 8000 Series and Rule 9000 Series of FINRA and its affiliate the New York Stock Exchange LLC, and which set forth rules for conducting investigations and enforcement actions.⁴ The NYSE American disciplinary rules were implemented on April 15, 2016.⁵

In adopting disciplinary rules modeled on FINRA's rules, NYSE American adopted the hearing and evidentiary processes set forth in Rule 9261 and in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 is identical to the counterpart FINRA rule. Rule 9830 is also identical to FINRA's counterpart rule, except for conforming and technical amendments.⁶

In 2020, given the spread of COVID-19 and its effect on FINRA's adjudicatory functions nationwide, FINRA filed a temporary rule change to grant FINRA's Office of Hearing Officers

⁴ See Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSEMKT-2016-30) ("2016 Notice").

⁵ See NYSE MKT Information Memorandum 16-02 (March 14, 2016).

⁶ See 2016 Notice, 81 FR at 11327 & 11332.

⁴³ 15 U.S.C. 78s(b)(2)(B).

⁴⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

(“OHO”) and the National Adjudicatory Council (“NAC”) the authority to conduct certain hearings by video conference if warranted by the current COVID–19-related public health risks posed by in-person hearings. Among the rules FINRA amended were FINRA Rules 9261 and 9830.⁷

In its filing, FINRA represented that its protocol for conducting hearings by video conference would ensure that such hearings maintain a fair process for the parties by, among other things, FINRA’s use of a high quality, secure and user-friendly video conferencing service and provision of thorough instructions, training and technical support to all hearing participants.⁸ According to FINRA, the changes were a reasonable interim solution to allow FINRA’s critical adjudicatory processes to continue to function while protecting the health and safety of hearing participants.⁹

Given that FINRA and OHO administer disciplinary hearings on the Exchange’s behalf pursuant to a regulatory services agreement (“RSA”),¹⁰ and that the public health concerns addressed by FINRA’s amendments applied equally to the Exchange’s disciplinary hearings, in 2020 the Exchange also temporarily amended its disciplinary rules to allow

virtual hearings.¹¹ Both FINRA¹² and the Exchange¹³ extended the temporary relief several times due to the continuing public health risks and logistical challenges related to COVID–19, including whether hearing participants could safely travel and abide by state or local quarantine requirements. The Exchange’s temporary amendments to Rules 9261 and 9830 expired on April 30, 2023.¹⁴

Recently, the Commission approved FINRA’s proposal to make the temporary amendments regarding video conference hearings permanent, with some modifications, to permit the use of video conferences for reasons beyond COVID–19.¹⁵ Specifically, FINRA amended, among other rules, FINRA Rules 9261 and 9830 to extend OHO’s authority to order hearings by video

conference to other similar situations in which proceeding in person could endanger the health or safety of the participant or alternatively would be impracticable (*e.g.*, an uncommon situation or extraordinary circumstances such as a natural disaster or terrorist attack that caused travel to be cancelled for an extended period of time).¹⁶ As approved, OHO has discretion to determine whether the circumstances for a video hearing have been met and can act quickly if a future unexpected event impairs their ability to conduct in-person hearings safely.¹⁷ In addition, OHO also has authority to order hearings to occur by video conference based on a motion, which was not permitted under the previous temporary amendments to FINRA Rules 9261 and 9830.¹⁸

As the FINRA Approval Order noted, FINRA represented that it will utilize the same protocols for conducting video conference hearings as those employed under the temporary amendments, including using a high quality, secure, user-friendly video conferencing service and providing thorough instructions, training, and technical support to all hearing participants.¹⁹ In addition, the FINRA Approval Order noted that, according to FINRA, the parties could file a joint motion requesting the hearing to occur, in whole or in part, by video conference based on a showing of good cause. In-person hearings, however, would remain the default method for conducting hearings.²⁰

Further, as noted in the FINRA Approval Order, given the nature of evidentiary hearings,²¹ which often occur over multiple days and generally include numerous documents in evidence and witness testimony, motions for a hearing by video conference would need to be joined by all parties, and even joint motions could be denied if the adjudicator determines that good cause has not been shown.²² According to FINRA, OHO would have reasonable discretion based on a joint motion of the parties to exercise its authority to determine whether a hearing should occur by video conference under the proposed rule change.²³ Moreover, in deciding whether to schedule a hearing by video conference, OHO could consider and

⁷ See Securities Exchange Act Release Nos. 83289 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027). FINRA also proposed to temporarily amend FINRA Rules 1015 and 9524. FINRA Rule 1015 governs the process by which an applicant for new or continuing membership can appeal a decision rendered by FINRA’s Department of Member Supervision under FINRA Rule 1014 or 1017 and request a hearing which would be conducted by a subcommittee of the NAC. *See id.* The Exchange has not adopted FINRA Rule 1015. FINRA Rule 9524 governs the process by which a statutorily disqualified member firm or associated person can appeal the Department’s recommendation to deny a firm or sponsoring firm’s application to the NAC. *See id.* Under the Exchange’s version of Rule 9524, if the Chief Regulatory Officer rejects the application, the member organization or applicant may request a review by the Exchange Board of Directors. This differs from FINRA’s process, which provides for a hearing before the NAC and further consideration by the FINRA Board of Directors.

⁸ See 85 FR at 55713.

⁹ *See id.*

¹⁰ FINRA’s OHO administers all aspects of Exchange adjudications, including assigning hearing officers to serve as NYSE American hearing officers. A hearing officer from OHO will, among other things, preside over the disciplinary hearing, select and chair the hearing panel, and prepare and issue written decisions. The Chief or Deputy Hearing Officer for all Exchange disciplinary hearings are currently drawn from OHO and are all FINRA employees. The Exchange believes that OHO will utilize the same video conference protocol and processes for Exchange matters under the RSA as it proposes for FINRA matters.

¹¹ See Securities Exchange Act Release No. 90085 (October 2, 2020), 85 FR 63603 (October 8, 2020) (SR–NYSEAMER–2020–69).

¹² See Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042); Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006); Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019); Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31); Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004); Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR–FINRA–2022–018); Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR–FINRA–2022–029); and Securities Exchange Act Release No. 96746 (January 25, 2023), 88 FR 6346 (January 31, 2023) (SR–FINRA–2023–001).

¹³ See Securities Exchange Act Release No. 90823 (December 30, 2020), 86 FR 650 (January 6, 2021) (SR–NYSEAMER–2020–88); Securities Exchange Act Release No. 91631 (April 22, 2021), 86 FR 22471 (April 28, 2021) (SR–NYSEAMER–2021–23); Securities Exchange Act Release No. 92910 (September 9, 2021), 86 FR 51418 (September 15, 2021) (SR–NYSEAMER–2021–37); Securities Exchange Act Release No. 93917 (January 6, 2022), 87 FR 1825 (January 12, 2022) (SR–NYSEAMER–2021–49); Securities Exchange Act Release No. 94665 (April 11, 2022), 87 FR 22594 (April 15, 2022) (SR–NYSEAMER–2022–16); Securities Exchange Act Release No. 95474 (August 11, 2022), 87 FR 50665 (August 17, 2022) (SR–NYSEAMER–2022–34); Securities Exchange Act Release No. 96257 (November 8, 2022), 87 FR 68533 (November 15, 2022) (SR–NYSEAMER–2022–50); and Securities Exchange Act Release No. 96870 (February 9, 2023), 88 FR 9934 (February 15, 2023) (SR–NYSEAMER–2023–09).

¹⁴ See Securities Exchange Act Release No. 96870 (February 9, 2023), 88 FR 9934 (February 15, 2023) (SR–NYSEAMER–2023–09) (extending expiration date of temporary rule amendments to, among other rules, FINRA Rules 9261 and 9830 from January 31, 2023 to April 30, 2023).

¹⁵ See Securities Exchange Act Release Nos. 98029 (August 4, 2023), 88 FR 51879 (August 4, 2023) (SR–FINRA–2023–008) (Order Approving a Proposed Rule Change To Amend FINRA Rules 1015, 9261, 9341, 9524, 9830 and Funding Portal Rule 900 (Code of Procedure) To Permit Hearings Under Those Rules To Be Conducted by Video Conference) (“FINRA Approval Order”).

¹⁶ See FINRA Approval Order, 88 FR at 51880.

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See id.*

²¹ As used herein, “evidentiary hearings” refers to hearings conducted before OHO under Rules 9261 and 9830. *See id.*, 88 FR at 51880, n. 25.

²² *See id.* at 51881.

²³ *See id.*

balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing. Additionally, as noted above, OHO may consider whether a situation is uncommon or there are extraordinary circumstances.²⁴

Finally, the FINRA Approval Order noted that for approximately two and a half years, while the temporary amendments were in effect, OHO successfully conducted numerous hearings by video conference using Zoom, a system which was vetted by FINRA's information technology staff.²⁵ FINRA stated that this use of video conference technology has been an effective and efficient alternative to in-person hearings.²⁶

As discussed below, the Exchange proposes to delete the temporary rule text in Rule 9261 and Rule 9830 permitting video conferences that expired earlier this year and replace it with rule text based on FINRA's recently approved amendments to its Rules 9261 and 9830 permitting video conference hearings under specified conditions.

Proposed Rule Change

NYSE American Rule 9261(b) provides that if a disciplinary hearing is held, a party shall be entitled to be heard in-person, by counsel, or by the party's representative. Similarly, NYSE American Rule 9830 outlines the requirements for hearings for temporary and permanent cease and desist orders. NYSE American Rule 9830(a), however, does not specify that a party shall be entitled to be heard in-person, by counsel, or by the party's representative. Consistent with FINRA's temporary amendment to FINRA Rules 9261 and 9830 that expired earlier this year, both NYSE American rules temporarily granted the Chief or Deputy Chief Hearing Officer temporary authority to order, upon consideration of COVID-19-related public health risks presented by an in-person hearing, that a hearing under those rules be conducted by video conference.

The Exchange proposes to delete the temporary amendments to Rules 9261 and 9830 and conform these rules to FINRA Rules 9261 and 9830 as recently amended. The Exchange would add text to the rules permitting the Chief or Deputy Chief Hearing Officer to order the hearing to be conducted in whole or

in part by video conference consistent with the FINRA Approval Order either based upon an assessment that proceeding in person may endanger the health or safety of the participants or would be impracticable or upon consideration of a joint motion of the parties for good cause shown. As noted, FINRA has adopted a detailed and thorough protocol to ensure that hearings conducted by video conference will maintain a fair process for the parties.²⁷ Moreover, the proposed rule change would modernize existing procedures and allow parties who jointly prefer video conference to potentially save travel costs and time. As proposed, the use of video conferences would be limited and controlled, and in-person hearings would continue to be the default method for conducting hearings.²⁸ Furthermore, the proposed rule includes procedural safeguards to ensure fairness, such as the requirement for evidentiary hearings that any motions be joined by all parties and show good cause.²⁹ The Exchange believes that this is a reasonable procedure to follow in hearings under Rules 9261 and 9830 chaired by a FINRA employee.

To effectuate these changes, the Exchange proposes to add the following deletions (bracketed) and additions (italicized) to Rule 9261(b):

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative. [Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.] *Upon a determination that proceeding in person may endanger the health or safety of the participants or would be impracticable, or upon consideration of a joint motion of the Parties for good cause shown, the Chief Hearing Officer or Deputy Chief Hearing Officer may, in the exercise of reasonable discretion, order the hearing to be conducted, in whole or in part, by video conference.*

The proposed text is identical to the language adopted by FINRA.³⁰

Similarly, the Exchange proposes the following deletions and additions to Rule 9830(a):

The hearing shall be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist

proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed. [Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.] *Upon a determination that proceeding in person may endanger the health or safety of the participants or would be impracticable, or upon consideration of a joint motion of the Parties for good cause shown, the Chief Hearing Officer or Deputy Chief Hearing Officer may, in the exercise of reasonable discretion, order the hearing to be conducted, in whole or in part, by video conference.*

Once again, the proposed language is identical to the language adopted by FINRA.³¹

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,³² in general, and furthers the objectives of Section 6(b)(5),³³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.³⁴

The Exchange believes that the proposed rule changes support the objectives of the Act by harmonizing Exchange rules modeled on FINRA's rules, resulting in less burdensome and more efficient regulatory compliance. As previously noted, the additional text proposed for Rule 9261 and Rule 9830 is identical to the text in the counterpart FINRA rules. As such, the proposed rule change would facilitate rule harmonization among self-regulatory organizations with respect to the conduct of video conference hearings, thereby fostering cooperation and coordination with persons engaged in

²⁴ See text accompanying note 16, *supra*.

²⁵ See FINRA Approval Order, 88 FR at 51880.

²⁶ See *id.*

²⁷ See text accompanying notes 8 & 19, *supra*.

²⁸ See FINRA Approval Order, 88 FR at 51882.

²⁹ See *id.*

³⁰ See Exchange Act Release No. 97403 (May 4, 2023), 88 FR 28645 (May 4, 2023) (File No. SR-FINRA-2023-008) (Notice of Filing of a Proposed Rule Change To Amend FINRA Rules 1015, 9261, 9341, 9524, 9830 and Funding Portal Rule 900 (Code of Procedure) To Permit Hearings Under Those Rules To Be Conducted by Video Conference).

³¹ See *id.*

³² 15 U.S.C. 78f(b).

³³ 15 U.S.C. 78f(b)(5).

³⁴ 15 U.S.C. 78f(b)(7) & 78f(d).

facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change protects investors and the public interest by permitting the use of broadly available technology to allow hearings to proceed by video conference under certain circumstances. The Exchange's disciplinary proceedings serve a critical role in providing investor protection and maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm by members and associated persons. The proposed rule change would encourage the prompt resolution of these cases while preserving fair process. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to proceed without delay, thereby enabling the Exchange to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

The proposed rule change promotes efficiency by permitting hearings to occur by video conference in situations where the hearings would otherwise be postponed for an uncertain period of time. Moreover, as noted, FINRA will utilize the same protocols for conducting video conference hearings as those employed under the temporary amendments, including using a high quality, secure, user-friendly video conferencing service and providing thorough instructions, training, and technical support to all hearing participants.³⁵ In addition, the Chief or Deputy Chief Hearing Officer may take into consideration, among other things, a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.³⁶

For the same reasons, the Exchange believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.³⁷ The Exchange believes that the proposed rule change provides a fair procedure by allowing hearings to proceed by video conference not only due to public health or safety reasons, but also at a party or the parties' request for reasons particular to them. The Chief or Deputy Chief Hearing Officer could

allow a hearing to proceed by video conference in the exercise of reasonable discretion and subject to procedural safeguards that ensure fairness, including the requirement that any motions be joined by all parties and show good cause. Overall, the proposed rule change represents a significant step toward modernizing disciplinary process procedures in a manner that preserves in-person hearings but allows for the use of video conference technology under certain circumstances.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to create permanent rules that would allow video conference hearings if OHO determines that proceeding in person may endanger the health or safety of the participants or would be impracticable, or where both parties prefer doing so and show good cause, thereby providing greater harmonization with approved FINRA rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³⁸ and Rule 19b-4(f)(6) thereunder.³⁹ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.⁴⁰

³⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁹ 17 CFR 240.19b-4(f)(6).

⁴⁰ 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

A proposed rule change filed under Rule 19b-4(f)(6)⁴¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁴² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁴³ of the Act 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-NYSEAMER-2023-62 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-NYSEAMER-2023-62. 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

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.

⁴¹ 17 CFR 240.19b-4(f)(6).

⁴² 17 CFR 240.19b-4(f)(6)(iii).

⁴³ 15 U.S.C. 78s(b)(2)(B).

³⁵ See FINRA Approval Order, 88 FR at 51880.

³⁶ See *id.* at 51881 & n. 36.

³⁷ 15 U.S.C. 78f(b)(7) and 78f(d).

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-NYSEAMER-2023-62 and should be submitted on or before January 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99119; File No. SR-CBOE-2023-063]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Its Rules Relating to Position and Exercise Limits

December 8, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,² notice is hereby given that on November 29, 2023, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its rules relating to position and exercise limits. The text of the proposed rule change is in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange proposes to amend its rules relating to position limits. By way of background, in March 2005, the Securities and Exchange Commission (the "Commission") approved the current position limit (and exercise limit) structure, which incorporates five categories of limits ranging from 25,000 to 250,000 contracts, based on two criteria: (1) the securities trading volume over the prior six months and (2) the number of shares outstanding.³

³ See Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (order approving SR-CBOE-2003-30, as amended), which adopted two pilot programs that increase position and exercise limits for equity options ("Pilot Program Order"). The Pilot Programs were extended 5 times for 6-month periods by the Commission, and expired on March 1, 2008. See Securities Exchange Act Release No. 52262 (August 15, 2005), 70 FR 48995 (August 22, 2005) (SR-CBOE-2005-61), Securities Exchange Act Release No. 53348 (February 22, 2006), 71 FR 10574 (March 1, 2006) (SR-CBOE-2006-11), Securities Exchange Act Release No. 54336 (August 18, 2006), 71 FR 50952 (August 28, 2006) (SR-CBOE-2006-69), Securities Exchange Act Release No. 55266 (February 9, 2007), 72 FR 7698 (February 16, 2007) (SR-CBOE-2007-12), and Securities Exchange Act Release No. 56266 (August 15, 2007), 72 FR 47094

More specifically, Cboe Options Rule 8.30 sets forth the position limits for equity options. Specifically, Rule 8.30 provides that the position limits for equity options are 25,000 or 50,000 or 75,000 or 200,000 or 250,000 option contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market or such other number of option contracts as may be fixed from time to time by the Exchange. Interpretation and Policy .02 to Rule 8.30 describes how the Exchange determines which of the five position limit amounts will apply to an equity option class (i.e., the position limit applicable to a class is determined based on the trading volume and outstanding shares of the underlying security). These categories have remained unchanged for the last 18 years.⁴

By way of further background, position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that position limits must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.

Proposal

To modernize the position limit rule, while minimizing impact of such change on industry participants, the Exchange is proposing the addition of three additional position limit categories: 500,000, 1,000,000 and 2,000,000 option contracts. Particularly, the proposed rule would adopt new Rule 8.30.02(f) which would provide that in order to be eligible for the 500,000-option contract limit, either the most recent six-month trading volume of the underlying security must have totaled at least 500,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 375,000,000 shares and the underlying security must have

(August 22, 2007) (SR-CBOE-2007-97). The Pilot Programs were made permanent in 2008. See Securities Exchange Act Release No. 57352 (February 19, 2007), 73 FR 10076 (February 25, 2008) (SR-CBOE-2008-007).

⁴ See Cboe Options Rule 8.30. Pursuant to Rule 8.42, the exercise limit for an equity option is the same as the position limit established in Rule 8.30 for that equity option.

⁴⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

at least 1,500,000,000 shares currently outstanding. The Exchange also proposes to adopt Rule 8.30.02(g) which would provide that in order to be eligible for the 1,000,000-option contract limit, either the most recent six-month trading volume of the underlying security must have totaled at least 1,000,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 750,000,000 shares and the underlying security must have at least 3,000,000,000 shares currently outstanding. Finally, the Exchange proposes to adopt Rule 8.30.02(h) which provides that in order to be eligible for the 2,000,000-option contract limit, either the most recent six-month trading volume of the underlying security must have totaled at least 5,000,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 3,750,000,000 shares and the underlying security must have at least 15,000,000,000 shares currently outstanding.⁵

As noted above, the current position limit categories were last updated 18 years ago. Since that time, there has been a significant increase in the overall volume of exchange traded equity options and a steady increase in the number of accounts that approach the current highest position limit (*i.e.*, 250,000 option contracts). The below chart demonstrates this growth in equity options trading industry-wide between 2005 and 2023.⁶ Indeed, annual equity options trading volume in recent years is nearly *seven* times the volume amount when the current position tier limits were adopted in 2005 and has more than doubled since 2017.

Year	Annual industry equity options trading volume (contracts)
2005	1,369,048,282
2006	1,844,181,918
2007	2,592,102,961
2008	3,284,761,345
2009	3,366,967,321
2010	3,610,436,931
2011	4,224,604,529
2012	3,681,820,659
2013	3,725,864,134

⁵ Current Rule 8.30.02(f) will be renumbered to Rule 8.30.02(i).

⁶ See Options Clearing Corporation ("OCC"), Annual Historical Volume Statistics at <https://www.theocc.com/market-data/market-data-reports/volume-and-open-interest/historical-volume-statistics>. Annual Industry Options Trading Volume for 2023 is as of November 24, 2023.

Year	Annual industry equity options trading volume (contracts)
2014	3,845,073,167
2015	3,727,919,066
2016	3,626,455,947
2017	3,689,013,636
2018	4,572,482,342
2019	4,420,542,768
2020	7,004,304,148
2021	9,366,823,566
2022	9,599,301,629
2023	9,285,621,375

By way of further example, based on the proposed criteria, over 300 equity options classes that currently are limited to the maximum position limit tier of 250,000 contracts would qualify for one of the three proposed position limit tiers. Particularly, the Exchange has determined that 182 equity options classes would be eligible for the 500,000 contracts tier limit; 110 equity options classes would be eligible for the 1,000,000 contracts tier limit and 13 equity options classes would be eligible for the 2,000,000 tier limit.⁷

By way of further example, prior to the stock split in August 2020,⁸ equity options class AAPL had approximately 4,000,000,000 shares outstanding and the position limit of 250,000 contracts represented control of 25,000,000 shares or 0.625% of the shares outstanding. After the stock split, AAPL had approximately 16,000,000,000 shares outstanding. The immediate adjustment of the position limit from 250,000 contracts to 1,000,000 contracts reflects control of 100,000,000 shares or 0.625% of the shares outstanding which retains the pre-stock split ratio. When the last AAPL option listed at the time of the stock split in 2020 expired in September 2022, the OCC reverted back to the original position limit for AAPL of 25,000,000 shares (250,000 contracts), which is the maximum stock option position limits permitted under the Exchange's rules.⁹ Although this position limit technically adheres to the Exchange's rules, it is more restrictive than the original position limit. Particularly, readjusting the position limit back to 25,000,000 shares (250,000

⁷ As of October 12, 2023.

⁸ See Notice, 88 FR at 29728, citing OCC Memo #47509, Apple Inc.—4 for 1 Stock Split (August 28, 2020).

⁹ Position limit increases that result in the case of a stock split remain in effect until the expiration of all listed options that existed at the time of the split, at which time the position limits revert to pre-split levels. This is an industry practice applied by OCC, which currently administers position limit levels on behalf of U.S. options exchanges.

contracts) when there are 16,000,000,000 shares outstanding reduces the position limit to 0.156% of the shares outstanding, making the post-stock split position limit more restrictive than the pre-stock split position limit and would [sic] arguably no longer be meaningfully related to the current shares outstanding. Further, the Exchange notes that the current 250,000 position limit for AAPL forces market participants to reduce trading activity because the maximum position limit only represents 0.156% of the total shares outstanding. This reduction in trading volume also represents a reduction in available liquidity and negatively impacts liquidity, trading volume, and possibly execution prices. By comparison, under the proposed criteria, AAPL options would qualify for the 2,000,000 contract position limit, which is over 12% higher than the current maximum position limit. The adjustment of the position limit from 250,000 contracts to 2,000,000 contracts reflects control of 200,000,000 shares or 1.25% of the shares outstanding, which is well within ratios provided by the prior methodology and the Exchange believes would lead to a more liquid and competitive market environment for these options, which will benefit customers that trade these options. Further, given the total increased volume in trading, the Exchange believes it is reasonable to conclude that in addition to AAPL, position limits for many classes is [sic] currently more restrictive than they were when adopted in 2005.

The Exchange also believes that the increase in options volume and lack of evidence of market manipulation occurrences over the past twenty years justifies the proposed increases in the position and exercise limits. Moreover, several market participants across the industry have petitioned the industry to increase the current levels.

The Commission has previously stated,

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for

disruption of the options market itself, especially in illiquid options classes.¹⁰

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange are adequate to identify violative trading activity. These procedures include daily monitoring of market activity via automated surveillance techniques to identify unusual activities in both options and underlying stocks and Exchange Traded Products (“ETPs”).

The Exchange believes that increasing the position limits for qualifying equity options would lead to a more liquid and competitive market environment for these options, which will benefit customers that trade these options. Further, the reporting requirement for such options would remain unchanged. Thus, the Exchange will still require that each TPH or TPH organization that maintains positions in impacted options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information includes, but would not be limited to, the options’ positions, whether such positions are hedged and, if so, a description of the hedge(s). Market-Makers (including Designated Primary Market-Makers (“DPMs”)) would continue to be exempt from this reporting requirement, however, the Exchange may access Market-Maker position information.¹¹ Moreover, the Exchange’s requirement that TPHs file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more option contracts of any single class for the previous day will remain at this level and will continue to serve as an important part of the Exchange’s surveillance efforts.¹²

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect

potential manipulation, as well as reviews in place to identify continued compliance with the Exchange’s listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlyings, as applicable. The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,¹³ which are used to report ownership of stock which exceeds 5% of a company’s total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in equity options. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a TPH must maintain for a large position held by itself or by its customer.¹⁴ In addition, Rule 15c3–1¹⁵ imposes a capital charge on TPHs to the extent of any margin deficiency resulting from the higher margin requirement.

The Exchange also has no reason to believe that the growth in trading volume in equity options will not continue. Rather, the Exchange expects continued options volume growth as opportunities for investors to participate in the options markets increase and evolve. The Exchange believes that the current position and exercise limits are restrictive, and not adopting increased position and exercise limit categories will hamper the listed options markets from being able to compete fairly and effectively with the over-the-counter (“OTC”) markets. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets. In fact, the Commission previously highlighted competition with the OTC markets as a reason for increasing the standard position and exercise limits.¹⁶ Specifically, the Commission stated,

The increase in position and exercise limits for standardized equity options should

allow the Exchanges to better compete with the growing OTC market in customized equity options, thereby encouraging fair competition among brokers and exchange markets.¹⁷

In addition, the Exchange believes that without the proposed changes to position and exercise limits, market participants will find the standard equity position limits an impediment to their business and investment objectives. As such, market participants may find the less transparent OTC markets a more attractive alternative to achieve their investment and hedging objectives, leading to a retreat from the listed options markets, where trades are subject to reporting requirements and daily surveillance.

Implementation Date

Given this is an industry-wide proposal, implementation will require that all U.S. listed options exchanges adopt similar rule language regarding position limits. The Exchange will wait to announce implementation date for the proposed rule change (via Exchange Notice) until all exchanges have received regulatory approval for similar rule language.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed adoption of three increased

¹⁰ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

¹¹ The Options Clearing Corporation (“OCC”) through the Large option Position Reporting (“LOPR”) system acts as a centralized service provider for TPH compliance with position reporting requirements by collecting data from each TPH or TPH organization, consolidating the information, and ultimately providing detailed listings of each TPH’s report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. (“FINRA”), acting as its agent pursuant to a regulatory services agreement (“RSA”).

¹² See Rule 8.43 for reporting requirements.

¹³ 17 CFR 240.13d–1.

¹⁴ See Rule 10.3 for a description of margin requirements.

¹⁵ 17 CFR 240.15c3–1.

¹⁶ See Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR-CBOE-1998-25).

¹⁷ *Id.*

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ *Id.*

position limit categories will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to more effectively execute their trading and hedging activities. Also, adopting increased position limit categories for equity options may allow Market-Makers to maintain their liquidity in these options in amounts commensurate with the continued high consumer demand in the impacted underlyings' options market. The proposed higher position limits may also encourage other liquidity providers to continue to trade on the Exchange rather than shift their volume to OTC markets, which will enhance the process of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the current liquidity in shares of and options on the underlyings will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. As a general principle, increases in active trading volume and deep liquidity of the underlying securities do not lead to manipulation and/or disruption. This general principle applies to the recently observed increased levels of trading volume and liquidity in shares of and options on the underlyings (as described above), and, as a result, the Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed higher position limit categories. Further, as noted above, the Exchange has no reason to believe that the growth in trading volume in equity options will not continue. Rather, the Exchange expects continued options volume growth as opportunities for investors to participate in the options markets continue to increase and evolve. Additionally, the Exchange continues to maintain a process in which every six-months, the status of the underlying securities are reviewed to determine what limit should apply.²¹ Accordingly, in the event stock trading volume and/or outstanding shares for particular securities significantly declines in the future, such overlying options classes will merely be moved to a lower corresponding, position tier limit under the rules at the next regularly scheduled review.

Further, the Exchange notes that the proposed rule change to adopt increased position limits for actively traded options is not novel. Indeed, the Commission has previously expressed the belief that not just increasing, but removing, position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.²² The Commission also has approved similar proposed rule changes by the Exchange to increase position limits for options on highly liquid and actively traded ETPs (e.g., iShares Russell 2000 ETF ("IWM"), the iShares MSCI Emerging Markets ETF ("EEM"), iShares China Large-Cap ETF ("FXI"), and iShares MSCI EAFE ETF ("EFA"), VanEck Vectors Gold Miners ETF ("GDX"), and iShares iBoxx \$ Investment Grade Corporate Bond ETF ("LQD")).²³ While those are ETPs and the current proposal applies to equity options, pursuant to Rule 8.30, the position limits for options on stock and ETPs are generally calculated in the same manner and based in part on trading volume of the underlying. Further, by way of comparison, the outstanding shares of AAPL stock is significantly higher than that of IWM, EEM, FXI and EFA, which have an overlying options position limit of 1,000,000 (as compared to the 250,000 position limit for AAPL options).²⁴ Particularly, while the outstanding shares of AAPL is currently nearly 16 billion shares, the outstanding shares of IWM, EEM, FXI and EFA range between approximately 187 million and 673 million. The Exchange notes that the criteria under the proposed new position limit tier categories of 1,000,000 and 2,000,000 for equity options require the most recent six-month trading volume of the underlying security to have totaled at least 1 billion or 5 billion shares, respectively or have at least 3 billion or 15 billion shares,

²² See Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911, 4913 (February 1, 1999) (SR-CBOE-98-23).

²³ See Securities Exchange Act Release Nos. 93525 (November 4, 2021), 86 FR 62584 (November 10, 2021) (SR-CBOE-2021-029); 88768 (April 29, 2020), 85 FR 26736 (May 5, 2020) (SR-CBOE-2020-015); 83415 (June 12, 2018), 83 FR 28274 (June 18, 2018) (SR-CBOE-2018-042); and 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR-CBOE-2012-066).

²⁴ See Securities Exchange Act Release Nos. 93525 (November 4, 2021), 86 FR 62584 (November 10, 2021) (SR-CBOE-2021-029); 88768 (April 29, 2020), 85 FR 26736 (May 5, 2020) (SR-CBOE-2020-015); 83415 (June 12, 2018), 83 FR 28274 (June 18, 2018) (SR-CBOE-2018-042); and 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR-CBOE-2012-066).

respectively, of the underlying security outstanding.²⁵ The proposed criteria under the 500,000 position limit category requires the most recent six-month trading volume of the underlying security to have totaled at least 500 million shares or have at least 1.5 billion shares of the underlying security outstanding²⁶ (by comparison, LQD and GDX, have approximately 275 million shares and 395 million shares outstanding, and have an overlying options position limit of 500,000). The Exchange therefore believes it is reasonable and appropriate to increase the position limit of options as proposed to similar position limits that apply for certain ETPs.

Finally, as discussed above, the Exchange's surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on the underlying securities, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as the rules of the Exchange apply equally to all TPHs of the Exchange and all TPHs of the Exchange are required to adhere to the position limits established by the Exchange's rules. The Exchange believes that the proposed rule change will also provide additional opportunities for market participants to continue to efficiently achieve their investment and trading objectives for equity options on the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition as the proposal is not competitive in

²⁵ There is also a corresponding recent six-month volume of the underlying security requirement that must be satisfied in addition to the requirement relating to total outstanding shares.

²⁶ There is also a corresponding recent six-month volume of the underlying security requirement that must be satisfied in addition to the requirement relating to total outstanding shares.

²¹ See Current Cboe Options Rule 8.30.02(f).

nature. The Exchange expects that all option exchanges will adopt substantively similar proposals for adopting the additional position limit tiers, such that the Exchange's proposal would benefit competition. For these reasons, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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-CBOE-2023-063 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-CBOE-2023-063. 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](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-CBOE-2023-063 and should be submitted on or before January 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99125; File No. SR-Phlx-2023-53]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its GPS Antenna Fees at General 8, Section 1

December 8, 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 November 29, 2023, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 the Exchange's GPS antenna fees at General 8, Section 1, as described further below. The text of the proposed rule change is available on the Exchange's website at <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. Purpose³

The Exchange offers a GPS antenna, which allows co-location customers⁴ to synchronize their time recording systems to the U.S. Government's Global Positioning System ("GPS") network time (the "Service"). The Exchange proposes to modify its monthly fees for the Service at General 8, Section 1(d).

GPS network time is the atomic time scale implemented by the atomic clocks in the GPS ground control stations and GPS satellites. Each GPS satellite contains multiple atomic clocks that contribute precise time data to the GPS signals. GPS receivers decode these signals, synchronizing the receivers to the atomic clocks. A GPS antenna serves as a time signal receiver and feeds a primary clock device the GPS network time using precise time data. Firms can

³ The Exchange initially filed the proposed pricing changes on September 29, 2023 with an effective date of October 1, 2023 (SR-Phlx-2023-46). On November 15, 2023, the Exchange withdrew SR-Phlx-2023-46 and replaced with SR-Phlx-2023-50. The instant filing replaces SR-Phlx-2023-50, which was withdrawn on November 29, 2023.

⁴ The Exchange offers customers the opportunity to co-locate their servers and equipment within the Exchange's primary data center, located in Carteret, New Jersey.

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

use the precise time data provided by the GPS antenna to time-stamp transactional information.

Time synchronization services are well established in the U.S. and utilized in many areas of the U.S. economy and infrastructure. The Service is not novel to the securities markets, or to the Exchange.

The Exchange offers connectivity to a GPS antenna via two options, over shared infrastructure or a dedicated antenna. If a firm wishes to connect via a dedicated connection, it must supply the antenna hardware.

The Exchange currently charges a monthly fee of \$200 for the Service, which applies to both the shared infrastructure option and the dedicated antenna option. The Exchange proposes to increase the monthly fee to \$600 for the Service, which would apply to both the shared infrastructure option and the dedicated antenna option. As such, the Exchange proposes to amend its fee schedule at General 8, Section 1(d) to reflect the increased monthly fee for the GPS antenna. The Exchange has not raised such price since the monthly fee of \$200 was adopted in 2010.⁵ In addition, the Exchange charges a higher monthly fee of \$350 for cross-connections to approved telecommunication carriers in the data center and for inter-cabinet connections to other co-location customers in the data center, despite the fact that the Service not only provides connectivity (like the cross-connections), but also provides data (*i.e.*, the network time) to co-location customers.

In addition, the Exchange's fee schedule at General 8, Section 1(d) currently states that the installation fee for the GPS antenna is installation specific. The Exchange proposes to add specific installation amounts for the Service within the fee schedule, providing greater transparency to market participants. Specifically, the Exchange proposes to charge an installation fee of \$900 for connectivity to a GPS antenna over shared infrastructure and \$1,500 for connectivity to a GPS antenna over a dedicated antenna.⁶ The difference in installation costs reflects the differing levels of complexity. For the dedicated antenna option, installation involves installing an antenna on the roof whereas the shared option involves

extending a cable from a device located inside the data center.

The Service is an optional product available to any firm that chooses to subscribe. Firms may cancel their subscription at any time. The Service simply provides time synchronization that may be utilized by firms to adjust their own time systems and time-stamp transactional information. The GPS antenna is offered on a completely voluntary basis. No customer is required to purchase the GPS antenna. Potential subscribers may subscribe to the Service only if they voluntarily choose to do so. It is a business decision of each firm whether to subscribe to the Service or not. Furthermore, firms have an array of options for time synchronization. Firms may purchase the Service (or enhanced time synchronization services) from other vendors.⁷ Customers do not receive an advantage by purchasing the Service from the Exchange rather than another provider. The Exchange is merely providing access to GPS signals, which can also be accessed via other providers.

In addition to cost, a firm's decision regarding which, if any, time synchronization option to purchase may depend, among other factors, on whether it wants to build or buy a time feed as well as the design of a firm's systems. A firm may prefer to build out its own time feed using GPS network time (as provided by the Exchange or a third-party vendor) or purchase a time synchronization service that handles the time feed for them. Examples of enhanced time synchronization include Precision Time Protocol ("PTP"), Pulse Per Second Time Synchronization Protocol ("PPS"), and Network Time Protocol ("NTP"), each of which are feeds that a client can consume rather than creating a feed itself. Such a choice may depend on a firm's desire for control of the feed, time sensitivity, and trade strategy, including whether a firm uses such time information to trigger trading decisions, as well as other considerations such as cost and convenience. In addition, with respect to the design of a firm's systems, a firm may choose to have its time synchronization equipment centralized or in multiple locations. Third-party vendors may be situated in Carteret or other New York metro financial data centers. Clients and vendors alike can produce a time feed in Carteret or any of the other locations.⁸

Approximately 59% of the Exchange's co-location customers subscribe to the Service, most of which opt for the shared option. The fact that approximately 41% of the Exchange's co-location customers do not subscribe to the Service demonstrate that there are alternative options available.

If the Exchange is incorrect in its determination that the proposed fees reflect the value of the GPS antenna, customers will not purchase the product or will seek other options at their disposal, such as purchasing time synchronization services from third-party vendors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed change to the pricing schedule is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"¹¹

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission

⁵ See Securities Exchange Act Release No. 62395 (June 28, 2010), 75 FR 38584 (July 2, 2010) (SR-Phlx-2010-18).

⁶ NYSE provides a similar service for a \$3,000 initial charge plus a \$400 monthly charge. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

⁷ For example, Pico, Guava Tech, and SFTI provide time synchronization services.

⁸ As needed, firms and vendors use latency between the data centers to adjust their time synchronization.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ See *NetCoalition*, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

Congress directed the Commission to “rely on ‘competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.’”¹³ As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. “If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.”¹⁴ Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”¹⁵ In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a “proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.”¹⁶

The proposed fees are reasonable and unlikely to burden the market because the purchase of the Service is optional for all categories of co-location customers. No firms are required to purchase the Service. Though many firms use GPS network time to synchronize their internal primary clock devices, firms can purchase time sync services from third-party vendors. Firms are also free to utilize other services that may assist them in enhanced time synchronization of their systems by consuming time feeds, such as PTP, PPS, and NTP. As noted above, approximately 59% of the Exchange’s co-location customers subscribe to the Service, most of which opt for the

shared option. The fact that approximately 41% of the Exchange’s co-location customers do not subscribe to the Service demonstrate that there are alternative options available. Firms may choose to purchase multiple time synchronization services for resiliency or otherwise.¹⁷ For example, a decision to purchase multiple synchronization services could be based on client strategy, as some strategies require more precise time than others. As described above, in addition to cost, a firm’s decision regarding which, if any, time synchronization option to purchase may depend, among other factors, on whether a firm wishes to build or buy a time feed, the design of a firm’s systems, including whether a firm chooses to have its time synchronization equipment centralized or in multiple locations, a firm’s time sensitivity, a firm’s trading strategy, including whether it uses such time information to trigger trading decisions, and a firm’s desire for control of the time feed.

The Exchange offers the Service as a convenience to firms to provide them with the ability to synchronize their own primary clock devices to the GPS network time and time-stamp transactional information.¹⁸ Customers do not receive an advantage by purchasing the Service from the Exchange rather than another provider. The Exchange is merely providing access to GPS signals, which can also be accessed via other providers. Firms that choose to subscribe to the Service may discontinue the use of the Service at any time if they determine that the time synchronization services provided via the GPS antenna are no longer useful. In sum, co-location customers can discontinue the use of the Service at any time, decide not to subscribe, or use a third-party vendor for time synchronization services, for any reason, including the fees.

The optional Service is available to all co-location customers that choose to subscribe. The proposed fees would apply to all co-location customers on a non-discriminatory basis, and therefore are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange also believes that the proposed changes to include specific installation fees promote just and equitable principles of trade and remove

impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule changes will provide greater clarity to Members and the public regarding the Exchange’s fees. It is in the public interest for rules to be accurate and transparent so as to eliminate the potential for confusion.

If the Exchange is incorrect in its determination that the proposed fees reflect the value of the GPS antenna, customers will not purchase the product or will seek other options at their disposal, such as purchasing time synchronization services from third-party vendors.

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.

In terms of inter-market competition (the competition among self-regulatory organizations), the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Approval of the proposal does not impose any burden on the ability of other exchanges to compete. As noted above, time synchronization services are offered by other vendors and any exchange has the ability to offer such services if it so chooses.

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data) because the GPS antenna is available to any co-location customer under the same fees as any other co-location customer, and any co-location customer that wishes to purchase a GPS antenna can do so on a non-discriminatory basis.

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.

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹³ See *NetCoalition*, 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (“[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.”).

¹⁴ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

¹⁵ *Id.*

¹⁶ See U.S. Securities and Exchange Commission, “Staff Guidance on SRO Rule Filings Relating to Fees” (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

¹⁷ Of the Exchange’s co-location customers that subscribe to the Service, approximately 9% of such co-location customers purchase both the dedicated and the shared options of the Service.

¹⁸ In offering the Service as a convenience to firms, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment, and personnel.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁹

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2023-53 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-2023-53. 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-2023-53 and should be submitted on or before January 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-27402 Filed 12-13-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99120; File No. SR-NYSE-2023-47]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Rules 9261 and 9830

December 8, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on November 27, 2023, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to harmonize Rules 9261 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc. ("FINRA") that allow for video conference hearings under specified conditions. The proposed rule change is available on the Exchange's website at www.nyse.com, at

the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) with recent changes by FINRA to its Rules 9261 and 9830 that allow for video conference hearings under specified conditions.

Background

In 2013, the NYSE adopted disciplinary rules modeled on the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.⁴ The NYSE disciplinary rules were implemented on July 1, 2013.⁵

In adopting disciplinary rules modeled on FINRA's rules, the NYSE adopted the hearing and evidentiary processes set forth in Rule 9261 and also in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 is identical to the counterpart FINRA rule. Rule 9830 is also identical to FINRA's counterpart rule, except for conforming and technical amendments.⁶

In 2020, given the spread of COVID-19 and its effect on FINRA's adjudicatory functions nationwide, FINRA filed a temporary rule change to grant FINRA's Office of Hearing Officers

⁴ See Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR-NYSE-2013-02) ("2013 Notice"); Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02) ("2013 Approval Order").

⁵ See NYSE Information Memorandum 13-8 (May 24, 2013).

⁶ See 2013 Approval Order, 78 FR at 15394, n. 7 & 15400; 2013 Notice, 78 FR at 5228 & 5234.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

(“OHO”) and the National Adjudicatory Council (“NAC”) the authority to conduct certain hearings by video conference if warranted by the current COVID-19-related public health risks posed by in-person hearings. Among the rules FINRA amended were FINRA Rules 9261 and 9830.⁷

In its filing, FINRA represented that its protocol for conducting hearings by video conference would ensure that such hearings maintain a fair process for the parties by, among other things, FINRA’s use of a high quality, secure and user-friendly video conferencing service and provision of thorough instructions, training and technical support to all hearing participants.⁸ According to FINRA, the changes were a reasonable interim solution to allow FINRA’s critical adjudicatory processes to continue to function while protecting the health and safety of hearing participants.⁹

Given that FINRA and OHO administer disciplinary hearings on the Exchange’s behalf pursuant to a regulatory services agreement (“RSA”),¹⁰ and that the public health concerns addressed by FINRA’s amendments applied equally to the Exchange’s disciplinary hearings, in 2020 the Exchange also temporarily amended its disciplinary rules to allow

virtual hearings.¹¹ Both FINRA¹² and the Exchange¹³ extended the temporary relief several times due to the continuing public health risks and logistical challenges related to COVID-19, including whether hearing participants could safely travel and abide by state or local quarantine requirements. The Exchange’s temporary amendments to Rules 9261 and 9830 expired on April 30, 2023.¹⁴

Recently, the Commission approved FINRA’s proposal to make the temporary amendments regarding video conference hearings permanent, with some modifications, to permit the use of video conferences for reasons beyond COVID-19.¹⁵ Specifically, FINRA

amended, among other rules, FINRA Rules 9261 and 9830 to extend OHO’s authority to order hearings by video conference to other similar situations in which proceeding in person could endanger the health or safety of the participant or alternatively would be impracticable (e.g., an uncommon situation or extraordinary circumstances such as a natural disaster or terrorist attack that caused travel to be cancelled for an extended period of time).¹⁶ As approved, OHO has discretion to determine whether the circumstances for a video hearing have been met and can act quickly if a future unexpected event impairs their ability to conduct in-person hearings safely.¹⁷ In addition, OHO also has authority to order hearings to occur by video conference based on a motion, which was not permitted under the previous temporary amendments to FINRA Rules 9261 and 9830.¹⁸

As the FINRA Approval Order noted, FINRA represented that it will utilize the same protocols for conducting video conference hearings as those employed under the temporary amendments, including using a high quality, secure, user-friendly video conferencing service and providing thorough instructions, training, and technical support to all hearing participants.¹⁹ In addition, the FINRA Approval Order noted that, according to FINRA, the parties could file a joint motion requesting the hearing to occur, in whole or in part, by video conference based on a showing of good cause. In-person hearings, however, would remain the default method for conducting hearings.²⁰

Further, as noted in the FINRA Approval Order, given the nature of evidentiary hearings,²¹ which often occur over multiple days and generally include numerous documents in evidence and witness testimony, motions for a hearing by video conference would need to be joined by all parties, and even joint motions could be denied if the adjudicator determines that good cause has not been shown.²² According to FINRA, OHO would have reasonable discretion based on a joint motion of the parties to exercise its authority to determine whether a

⁷ See Securities Exchange Act Release Nos. 83289 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR-FINRA-2020-027). FINRA also proposed to temporarily amend FINRA Rules 1015 and 9524. FINRA Rule 1015 governs the process by which an applicant for new or continuing membership can appeal a decision rendered by FINRA’s Department of Member Supervision under FINRA Rule 1014 or 1017 and request a hearing which would be conducted by a subcommittee of the NAC. *See id.* The Exchange has not adopted FINRA Rule 1015. FINRA Rule 9524 governs the process by which a statutorily disqualified member firm or associated person can appeal the Department’s recommendation to deny a firm or sponsoring firm’s application to the NAC. *See id.* Under the Exchange’s version of Rule 9524, if the Chief Regulatory Officer rejects the application, the member organization or applicant may request a review by the Exchange Board of Directors. This differs from FINRA’s process, which provides for a hearing before the NAC and further consideration by the FINRA Board of Directors.

⁸ See 85 FR at 55713.

⁹ *See id.*

¹⁰ FINRA’s OHO administers all aspects of Exchange adjudications, including assigning hearing officers to serve as NYSE hearing officers. A hearing officer from OHO will, among other things, preside over the disciplinary hearing, select and chair the hearing panel, and prepare and issue written decisions. The Chief or Deputy Hearing Officer for all Exchange disciplinary hearings are currently drawn from OHO and are all FINRA employees. The Exchange believes that OHO will utilize the same video conference protocol and processes for Exchange matters under the RSA as it proposes for FINRA matters.

¹¹ See Securities Exchange Act Release No. 90024 (September 28, 2020), 85 FR 62353 (October 2, 2020) (SR-NYSE-2020-76) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Harmonize Rules 9261 and 9830 with Recent Changes by the Financial Industry Regulatory Authority, Inc.).

¹² See Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR-FINRA-2020-042); Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR-FINRA-2021-006); Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR-FINRA-2021-019); Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR-FINRA-2021-31); Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR-FINRA-2022-004); Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR-FINRA-2022-018); Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR-FINRA-2022-029); and Securities Exchange Act Release No. 96746 (January 25, 2023), 88 FR 6346 (January 31, 2023) (SR-FINRA-2023-001).

¹³ See Securities Exchange Act Release No. 90821 (December 30, 2020), 86 FR 644 (January 6, 2021) (NYSE-2020-107); Securities Exchange Act Release No. 91629 (April 22, 2021), 86 FR 22505 (April 28, 2021) (NYSE-2021-27); Securities Exchange Act Release No. 92907 (September 9, 2021), 86 FR 51421 (September 15, 2021) (NYSE-2021-47); Securities Exchange Act Release No. 93920 (January 6, 2022), 87 FR 1794 (January 1, 2022) (NYSE-2021-78); Securities Exchange Act Release No. 94666 (April 11, 2022), 87 FR 22607 (April 15, 2022) (NYSE-2022-17); Securities Exchange Act Release No. 95473 (August 11, 2022), 87 FR 50648 (August 17, 2022) (NYSE-2022-35); Securities Exchange Act Release No. 96259 (November 8, 2022), 87 FR 68544 (November 15, 2022) (NYSE-2022-50); and Securities Exchange Act Release No. 96803 (February 3, 2023), 88 FR 8487 (February 9, 2023) (NYSE-2023-10).

¹⁴ See Securities Exchange Act Release No. 96803 (February 3, 2023), 88 FR 8487 (February 9, 2023) (NYSE-2023-10) (extending the expiration date of the temporary rule amendments to, among other rules, FINRA Rules 9261 and 9830 from January 31, 2023 to April 30, 2023). The temporary amendments expired on April 30, 2023, because the Exchange did not file another proposed rule change again extending the temporary amendments beyond that date. *See id.* at 8488.

¹⁵ See Securities Exchange Act Release Nos. 98029 (August 4, 2023), 88 FR 51879 (August 4, 2023) (SR-FINRA-2023-008) (Order Approving a Proposed Rule Change To Amend FINRA Rules 1015, 9261, 9341, 9524, 9830 and Funding Portal

Rule 900 (Code of Procedure) To Permit Hearings Under Those Rules To Be Conducted by Video Conference) (“FINRA Approval Order”).

¹⁶ See FINRA Approval Order, 88 FR at 51880.

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See id.*

²¹ As used herein, “evidentiary hearings” refers to hearings conducted before OHO under Rules 9261 and 9830. *See id.*, 88 FR at 51880, n. 25.

²² *See id.* at 51881.

hearing should occur by video conference under the proposed rule change.²³ Moreover, in deciding whether to schedule a hearing by video conference, OHO could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing. Additionally, as noted above, OHO may consider whether a situation is uncommon or there are extraordinary circumstances.²⁴

Finally, the FINRA Approval Order noted that for approximately two and a half years, while the temporary amendments were in effect, OHO successfully conducted numerous hearings by video conference using Zoom, a system which was vetted by FINRA's information technology staff.²⁵ FINRA stated that this use of video conference technology has been an effective and efficient alternative to in-person hearings.²⁶

As discussed below, the Exchange proposes to delete the temporary rule text in Rule 9261 and Rule 9830 permitting video conferences that expired earlier this year and replace it with rule text based on FINRA's recently approved amendments to its Rules 9261 and 9830 permitting video conference hearings under specified conditions.

Proposed Rule Change

NYSE Rule 9261(b) provides that if a disciplinary hearing is held, a party shall be entitled to be heard in-person, by counsel, or by the party's representative. Similarly, NYSE Rule 9830 outlines the requirements for hearings for temporary and permanent cease and desist orders. NYSE Rule 9830(a), however, does not specify that a party shall be entitled to be heard in-person, by counsel, or by the party's representative. Consistent with FINRA's temporary amendment to FINRA Rules 9261 and 9830 that expired earlier this year, both NYSE rules temporarily granted the Chief or Deputy Chief Hearing Officer temporary authority to order, upon consideration of COVID-19-related public health risks presented by an in-person hearing, that a hearing under those rules be conducted by video conference.

The Exchange proposes to delete the temporary amendments to Rules 9261 and 9830 and conform these rules to

FINRA Rules 9261 and 9830 as recently amended. The Exchange would add text to the rules permitting the Chief or Deputy Chief Hearing Officer to order the hearing to be conducted in whole or in part by video conference consistent with the FINRA Approval Order either based upon an assessment that proceeding in person may endanger the health or safety of the participants or would be impracticable or upon consideration of a joint motion of the parties for good cause shown. As noted, FINRA has adopted a detailed and thorough protocol to ensure that hearings conducted by video conference will maintain a fair process for the parties.²⁷ Moreover, the proposed rule change would modernize existing procedures and allow parties who jointly prefer video conference to potentially save travel costs and time. As proposed, the use of video conferences would be limited and controlled, and in-person hearings would continue to be the default method for conducting hearings.²⁸ Furthermore, the proposed rule includes procedural safeguards to ensure fairness, such as the requirement that for evidentiary hearings that any motions be joined by all parties and show good cause.²⁹ The Exchange believes that this is a reasonable procedure to follow in hearings under Rules 9261 and 9830 chaired by a FINRA employee.

To effectuate these changes, the Exchange proposes to add the following deletions (bracketed) and additions (italicized) to Rule 9261(b):

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative. [Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.] *Upon a determination that proceeding in person may endanger the health or safety of the participants or would be impracticable, or upon consideration of a joint motion of the Parties for good cause shown, the Chief Hearing Officer or Deputy Chief Hearing Officer may, in the exercise of reasonable discretion, order the hearing to be conducted, in whole or in part, by video conference.*

The proposed text is identical to the language adopted by FINRA.³⁰

²⁷ See text accompanying notes 8 & 19, *supra*.

²⁸ See FINRA Approval Order, 88 FR at 51882.

²⁹ See *id.*

³⁰ See Exchange Act Release No. 97403 (May 4, 2023), 88 FR 28645 (May 4, 2023) (File No. SR-FINRA-2023-008) (Notice of Filing of a Proposed Rule Change To Amend FINRA Rules 1015, 9261, 9341, 9524, 9830 and Funding Portal Rule 900 (Code of Procedure) To Permit Hearings Under

Similarly, the Exchange proposes the following deletions and additions to Rule 9830(a):

The hearing shall be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed. [Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.] *Upon a determination that proceeding in person may endanger the health or safety of the participants or would be impracticable, or upon consideration of a joint motion of the Parties for good cause shown, the Chief Hearing Officer or Deputy Chief Hearing Officer may, in the exercise of reasonable discretion, order the hearing to be conducted, in whole or in part, by video conference.*

Once again, the proposed language is identical to the language adopted by FINRA.³¹

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,³² in general, and furthers the objectives of Section 6(b)(5),³³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.³⁴

The Exchange believes that the proposed rule changes support the objectives of the Act by harmonizing Exchange rules modeled on FINRA's rules, resulting in less burdensome and more efficient regulatory compliance. As previously noted, the additional text proposed for Rule 9261 and Rule 9830 is identical to the text in the counterpart

Those Rules To Be Conducted by Video Conference).

³¹ See *id.*

³² 15 U.S.C. 78f(b).

³³ 15 U.S.C. 78f(b)(5).

³⁴ 15 U.S.C. 78f(b)(7) & 78f(d).

²³ See *id.*

²⁴ See text accompanying note 16, *supra*.

²⁵ See FINRA Approval Order, 88 FR at 51880.

²⁶ See *id.*

FINRA rules. As such, the proposed rule change would facilitate rule harmonization among self-regulatory organizations with respect to the conduct of video conference hearings, thereby fostering cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change protects investors and the public interest by permitting the use of broadly available technology to allow hearings to proceed by video conference under certain circumstances. The Exchange's disciplinary proceedings serve a critical role in providing investor protection and maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm by members and associated persons. The proposed rule change would encourage the prompt resolution of these cases while preserving fair process. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to proceed without delay, thereby enabling the Exchange to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

The proposed rule change promotes efficiency by permitting hearings to occur by video conference in situations where the hearings would otherwise be postponed for an uncertain period of time. Moreover, as noted, FINRA will utilize the same protocols for conducting video conference hearings as those employed under the temporary amendments, including using a high quality, secure, user-friendly video conferencing service and providing thorough instructions, training, and technical support to all hearing participants.³⁵ In addition, the Chief or Deputy Chief Hearing Officer may take into consideration, among other things, a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.³⁶

For the same reasons, the Exchange believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.³⁷ The Exchange believes that

the proposed rule change provides a fair procedure by allowing hearings to proceed by video conference not only due to public health or safety reasons but also at a party or the parties' request for reasons particular to them. The Chief or Deputy Chief Hearing Officer could allow a hearing to proceed by video conference in the exercise of reasonable discretion and subject to procedural safeguards that ensure fairness, including the requirement that any motions be joined by all parties and show good cause. Overall, the proposed rule change represents a significant step toward modernizing disciplinary process procedures in a manner that preserves in-person hearings but allows for the use of video conference technology under certain circumstances.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to create permanent rules that would allow video conference hearings if OHO determines that proceeding in person may endanger the health or safety of the participants or would be impracticable, or where both parties prefer doing so and show good cause, thereby providing greater harmonization with approved FINRA rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³⁸ and Rule 19b-4(f)(6) thereunder.³⁹ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the

proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.⁴⁰

A proposed rule change filed under Rule 19b-4(f)(6)⁴¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁴² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁴³ of the Act 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-NYSE-2023-47 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-NYSE-2023-47. 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

⁴⁰ 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.

⁴¹ 17 CFR 240.19b-4(f)(6).

⁴² 17 CFR 240.19b-4(f)(6)(iii).

⁴³ 15 U.S.C. 78s(b)(2)(B).

³⁵ See FINRA Approval Order, 88 FR at 51880.

³⁶ See *id.* at 51881 & n. 36.

³⁷ 15 U.S.C. 78f(b)(7) and 78f(d).

³⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁹ 17 CFR 240.19b-4(f)(6).

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-NYSE-2023-47 and should be submitted on or before January 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-27398 Filed 12-13-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99126; File No. SR-NASDAQ-2023-052]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its GPS Antenna Fees at General 8, Section 1

December 8, 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 November 29, 2023, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been

prepared by 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 the Exchange's GPS antenna fees at General 8, Section 1, as described further below. The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose³

The Exchange offers a GPS antenna, which allows co-location customers⁴ to synchronize their time recording systems to the U.S. Government's Global Positioning System ("GPS") network time (the "Service"). The Exchange proposes to modify its monthly fees for the Service at General 8, Section 1(d).

GPS network time is the atomic time scale implemented by the atomic clocks in the GPS ground control stations and GPS satellites. Each GPS satellite contains multiple atomic clocks that contribute precise time data to the GPS signals. GPS receivers decode these signals, synchronizing the receivers to the atomic clocks. A GPS antenna serves as a time signal receiver and feeds a

primary clock device the GPS network time using precise time data. Firms can use the precise time data provided by the GPS antenna to time-stamp transactional information.

Time synchronization services are well established in the U.S. and utilized in many areas of the U.S. economy and infrastructure. The Service is not novel to the securities markets, or to the Exchange.

The Exchange offers connectivity to a GPS antenna via two options, over shared infrastructure or a dedicated antenna. If a firm wishes to connect via a dedicated connection, it must supply the antenna hardware.

The Exchange currently charges a monthly fee of \$200 for the Service, which applies to both the shared infrastructure option and the dedicated antenna option. The Exchange proposes to increase the monthly fee to \$600 for the Service, which would apply to both the shared infrastructure option and the dedicated antenna option. As such, the Exchange proposes to amend its fee schedule at General 8, Section 1(d) to reflect the increased monthly fee for the GPS antenna. The Exchange has not raised such price since the monthly fee of \$200 was adopted in 2010.⁵ In addition, the Exchange charges a higher monthly fee of \$350 for cross-connections to approved telecommunication carriers in the data center and for inter-cabinet connections to other co-location customers in the data center, despite the fact that the Service not only provides connectivity (like the cross-connections), but also provides data (*i.e.*, the network time) to co-location customers.

In addition, the Exchange's fee schedule at General 8, Section 1(d) currently states that the installation fee for the GPS antenna is installation specific. The Exchange proposes to add specific installation amounts for the Service within the fee schedule, providing greater transparency to market participants. Specifically, the Exchange proposes to charge an installation fee of \$900 for connectivity to a GPS antenna over shared infrastructure and \$1,500 for connectivity to a GPS antenna over a dedicated antenna.⁶ The difference in installation costs reflects the differing levels of complexity. For the dedicated antenna option, installation involves installing an antenna on the roof

³ The Exchange initially filed the proposed pricing changes on September 29, 2023 with an effective date of October 1, 2023 (SR-NASDAQ-2023-039). On November 15, 2023, the Exchange withdrew SR-NASDAQ-2023-039 and replaced with SR-NASDAQ-2023-047. The instant filing replaces SR-NASDAQ-2023-047, which was withdrawn on November 29, 2023.

⁴ The Exchange offers customers the opportunity to co-locate their servers and equipment within the Exchange's primary data center, located in Carteret, New Jersey.

⁵ See Securities Exchange Act Release No. 61488 (February 3, 2010), 75 FR 6748 (February 10, 2010) (SR-NASDAQ-2010-019).

⁶ NYSE provides a similar service for a \$3,000 initial charge plus a \$400 monthly charge. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

⁴⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

whereas the shared option involves extending a cable from a device located inside the data center.

The Service is an optional product available to any firm that chooses to subscribe. Firms may cancel their subscription at any time. The Service simply provides time synchronization that may be utilized by firms to adjust their own time systems and time-stamp transactional information. The GPS antenna is offered on a completely voluntary basis. No customer is required to purchase the GPS antenna. Potential subscribers may subscribe to the Service only if they voluntarily choose to do so. It is a business decision of each firm whether to subscribe to the Service or not. Furthermore, firms have an array of options for time synchronization. Firms may purchase the Service (or enhanced time synchronization services) from other vendors.⁷ Customers do not receive an advantage by purchasing the Service from Nasdaq rather than another provider. The Exchange is merely providing access to GPS signals, which can also be accessed via other providers.

In addition to cost, a firm's decision regarding which, if any, time synchronization option to purchase may depend, among other factors, on whether it wants to build or buy a time feed as well as the design of a firm's systems. A firm may prefer to build out its own time feed using GPS network time (as provided by the Exchange or a third-party vendor) or purchase a time synchronization service that handles the time feed for them. Examples of enhanced time synchronization include Precision Time Protocol ("PTP"), Pulse Per Second Time Synchronization Protocol ("PPS"), and Network Time Protocol ("NTP"), each of which are feeds that a client can consume rather than creating a feed itself. Such a choice may depend on a firm's desire for control of the feed, time sensitivity, and trade strategy, including whether a firm uses such time information to trigger trading decisions, as well as other considerations such as cost and convenience. In addition, with respect to the design of a firm's systems, a firm may choose to have its time synchronization equipment centralized or in multiple locations. Third-party vendors may be situated in Carteret or other New York metro financial data centers. Clients and vendors alike can produce a time feed in Carteret or any of the other locations.⁸

⁷ For example, Pico, Guava Tech, and SFTI provide time synchronization services.

⁸ As needed, firms and vendors use latency between the data centers to adjust their time synchronization.

Approximately 59% of the Exchange's co-location customers subscribe to the Service, most of which opt for the shared option. The fact that approximately 41% of the Exchange's co-location customers do not subscribe to the Service demonstrate that there are alternative options available.

If the Exchange is incorrect in its determination that the proposed fees reflect the value of the GPS antenna, customers will not purchase the product or will seek other options at their disposal, such as purchasing time synchronization services from third-party vendors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed change to the pricing schedule is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"¹¹

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ See *NetCoalition*, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR-NYSEArca-2006–21)).

highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."¹²

Congress directed the Commission to "rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'"¹³ As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."¹⁴ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."¹⁵ In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a "proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces."¹⁶

The proposed fees are reasonable and unlikely to burden the market because the purchase of the Service is optional for all categories of co-location customers. No firms are required to purchase the Service. Though many firms use GPS network time to synchronize their internal primary clock devices, firms can purchase time sync services from third-party vendors. Firms are also free to utilize other services that may assist them in enhanced time synchronization of their systems by consuming time feeds, such as PTP, PPS, and NTP. As noted above, approximately 59% of the Exchange's co-location customers subscribe to the Service, most of which opt for the

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

¹³ See *NetCoalition*, 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) ("[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.").

¹⁴ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006–21).

¹⁵ *Id.*

¹⁶ See U.S. Securities and Exchange Commission, "Staff Guidance on SRO Rule Filings Relating to Fees" (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

shared option. The fact that approximately 41% of the Exchange's co-location customers do not subscribe to the Service demonstrate that there are alternative options available. Firms may choose to purchase multiple time synchronization services for resiliency or otherwise.¹⁷ For example, a decision to purchase multiple synchronization services could be based on client strategy, as some strategies require more precise time than others. As described above, in addition to cost, a firm's decision regarding which, if any, time synchronization option to purchase may depend, among other factors, on whether a firm wishes to build or buy a time feed, the design of a firm's systems, including whether a firm chooses to have its time synchronization equipment centralized or in multiple locations, a firm's time sensitivity, a firm's trading strategy, including whether it uses such time information to trigger trading decisions, and a firm's desire for control of the time feed.

The Exchange offers the Service as a convenience to firms to provide them with the ability to synchronize their own primary clock devices to the GPS network time and time-stamp transactional information.¹⁸ Customers do not receive an advantage by purchasing the Service from Nasdaq rather than another provider. The Exchange is merely providing access to GPS signals, which can also be accessed via other providers. Firms that choose to subscribe to the Service may discontinue the use of the Service at any time if they determine that the time synchronization services provided via the GPS antenna are no longer useful. In sum, co-location customers can discontinue the use of the Service at any time, decide not to subscribe, or use a third-party vendor for time synchronization services, for any reason, including the fees.

The optional Service is available to all co-location customers that choose to subscribe. The proposed fees would apply to all co-location customers on a non-discriminatory basis, and therefore are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange also believes that the proposed changes to include specific installation fees promote just and equitable principles of trade and remove

impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule changes will provide greater clarity to Members and the public regarding the Exchange's fees. It is in the public interest for rules to be accurate and transparent so as to eliminate the potential for confusion.

If the Exchange is incorrect in its determination that the proposed fees reflect the value of the GPS antenna, customers will not purchase the product or will seek other options at their disposal, such as purchasing time synchronization services from third-party vendors.

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.

In terms of inter-market competition (the competition among self-regulatory organizations), the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Approval of the proposal does not impose any burden on the ability of other exchanges to compete. As noted above, time synchronization services are offered by other vendors and any exchange has the ability to offer such services if it so chooses.

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data) because the GPS antenna is available to any co-location customer under the same fees as any other co-location customer, and any co-location customer that wishes to purchase a GPS antenna can do so on a non-discriminatory basis.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁹

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2023-052. 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,

¹⁷ Of the Exchange's co-location customers that subscribe to the Service, approximately 9% of such co-location customers purchase both the dedicated and the shared options of the Service.

¹⁸ In offering the Service as a convenience to firms, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment, and personnel.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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–NASDAQ–2023–052 and should be submitted on or before January 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023–27403 Filed 12–13–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99124; File No. SR–BX–2023–033]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its GPS Antenna Fees at General 8, Section 1

December 8, 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 November 29, 2023, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 the Exchange’s GPS antenna fees at General 8, Section 1, as described further below. The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/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

Purpose³

The Exchange offers a GPS antenna, which allows co-location customers⁴ to synchronize their time recording systems to the U.S. Government’s Global Positioning System (“GPS”) network time (the “Service”). The Exchange proposes to modify its monthly fees for the Service at General 8, Section 1(d).

GPS network time is the atomic time scale implemented by the atomic clocks in the GPS ground control stations and GPS satellites. Each GPS satellite contains multiple atomic clocks that contribute precise time data to the GPS signals. GPS receivers decode these signals, synchronizing the receivers to the atomic clocks. A GPS antenna serves as a time signal receiver and feeds a primary clock device the GPS network time using precise time data. Firms can use the precise time data provided by the GPS antenna to time-stamp transactional information.

Time synchronization services are well established in the U.S. and utilized in many areas of the U.S. economy and infrastructure. The Service is not novel to the securities markets, or to the Exchange.

The Exchange offers connectivity to a GPS antenna via two options, over shared infrastructure or a dedicated antenna. If a firm wishes to connect via a dedicated connection, it must supply the antenna hardware.

³ The Exchange initially filed the proposed pricing changes on September 29, 2023 with an effective date of October 1, 2023 (SR–BX–2023–025). On November 15, 2023, the Exchange withdrew SR–BX–2023–025 and replaced with SR–BX–2023–030. The instant filing replaces SR–BX–2023–030, which was withdrawn on November 29, 2023.

⁴ The Exchange offers customers the opportunity to co-locate their servers and equipment within the Exchange’s primary data center, located in Carteret, New Jersey.

The Exchange currently charges a monthly fee of \$200 for the Service, which applies to both the shared infrastructure option and the dedicated antenna option. The Exchange proposes to increase the monthly fee to \$600 for the Service, which would apply to both the shared infrastructure option and the dedicated antenna option. As such, the Exchange proposes to amend its fee schedule at General 8, Section 1(d) to reflect the increased monthly fee for the GPS antenna. The Exchange has not raised such price since the monthly fee of \$200 was adopted in 2010.⁵ In addition, the Exchange charges a higher monthly fee of \$350 for cross-connections to approved telecommunication carriers in the data center and for inter-cabinet connections to other co-location customers in the data center, despite the fact that the Service not only provides connectivity (like the cross-connections), but also provides data (*i.e.*, the network time) to co-location customers.

In addition, the Exchange’s fee schedule at General 8, Section 1(d) currently states that the installation fee for the GPS antenna is installation specific. The Exchange proposes to add specific installation amounts for the Service within the fee schedule, providing greater transparency to market participants. Specifically, the Exchange proposes to charge an installation fee of \$900 for connectivity to a GPS antenna over shared infrastructure and \$1,500 for connectivity to a GPS antenna over a dedicated antenna.⁶ The difference in installation costs reflects the differing levels of complexity. For the dedicated antenna option, installation involves installing an antenna on the roof whereas the shared option involves extending a cable from a device located inside the data center.

The Service is an optional product available to any firm that chooses to subscribe. Firms may cancel their subscription at any time. The Service simply provides time synchronization that may be utilized by firms to adjust their own time systems and time-stamp transactional information. The GPS antenna is offered on a completely voluntary basis. No customer is required to purchase the GPS antenna. Potential subscribers may subscribe to the Service only if they voluntarily choose to do so. It is a business decision of each firm

⁵ See Securities Exchange Act Release No. 62396 (June 28, 2010), 75 FR 38585 (July 2, 2010) (SR–BX–2010–012).

⁶ NYSE provides a similar service for a \$3,000 initial charge plus a \$400 monthly charge. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

²⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

whether to subscribe to the Service or not. Furthermore, firms have an array of options for time synchronization. Firms may purchase the Service (or enhanced time synchronization services) from other vendors.⁷ Customers do not receive an advantage by purchasing the Service from the Exchange rather than another provider. The Exchange is merely providing access to GPS signals, which can also be accessed via other providers.

In addition to cost, a firm's decision regarding which, if any, time synchronization option to purchase may depend, among other factors, on whether it wants to build or buy a time feed as well as the design of a firm's systems. A firm may prefer to build out its own time feed using GPS network time (as provided by the Exchange or a third-party vendor) or purchase a time synchronization service that handles the time feed for them. Examples of enhanced time synchronization include Precision Time Protocol ("PTP"), Pulse Per Second Time Synchronization Protocol ("PPS"), and Network Time Protocol ("NTP"), each of which are feeds that a client can consume rather than creating a feed itself. Such a choice may depend on a firm's desire for control of the feed, time sensitivity, and trade strategy, including whether a firm uses such time information to trigger trading decisions, as well as other considerations such as cost and convenience. In addition, with respect to the design of a firm's systems, a firm may choose to have its time synchronization equipment centralized or in multiple locations. Third-party vendors may be situated in Carteret or other New York metro financial data centers. Clients and vendors alike can produce a time feed in Carteret or any of the other locations.⁸

Approximately 59% of the Exchange's co-location customers subscribe to the Service, most of which opt for the shared option. The fact that approximately 41% of the Exchange's co-location customers do not subscribe to the Service demonstrate that there are alternative options available.

If the Exchange is incorrect in its determination that the proposed fees reflect the value of the GPS antenna, customers will not purchase the product or will seek other options at their disposal, such as purchasing time synchronization services from third-party vendors.

⁷ For example, Pico, Guava Tech, and SFTI provide time synchronization services.

⁸ As needed, firms and vendors use latency between the data centers to adjust their time synchronization.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed change to the pricing schedule is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"¹¹

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."¹²

Congress directed the Commission to "rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ See *NetCoalition*, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

and the national market system.'"¹³ As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonably or unfair behavior."¹⁴ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."¹⁵ In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a "proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces."¹⁶

The proposed fees are reasonable and unlikely to burden the market because the purchase of the Service is optional for all categories of co-location customers. No firms are required to purchase the Service. Though many firms use GPS network time to synchronize their internal primary clock devices, firms can purchase time sync services from third-party vendors. Firms are also free to utilize other services that may assist them in enhanced time synchronization of their systems by consuming time feeds, such as PTP, PPS, and NTP. As noted above, approximately 59% of the Exchange's co-location customers subscribe to the Service, most of which opt for the shared option. The fact that approximately 41% of the Exchange's co-location customers do not subscribe to the Service demonstrate that there are alternative options available. Firms may choose to purchase multiple time synchronization services for resiliency or otherwise.¹⁷ For example, a decision to purchase multiple synchronization services could be based on client strategy, as some strategies require more

¹³ See *NetCoalition*, 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) ("[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.").

¹⁴ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

¹⁵ *Id.*

¹⁶ See U.S. Securities and Exchange Commission, "Staff Guidance on SRO Rule Filings Relating to Fees" (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

¹⁷ Of the Exchange's co-location customers that subscribe to the Service, approximately 9% of such co-location customers purchase both the dedicated and the shared options of the Service.

precise time than others. As described above, in addition to cost, a firm's decision regarding which, if any, time synchronization option to purchase may depend, among other factors, on whether a firm wishes to build or buy a time feed, the design of a firm's systems, including whether a firm chooses to have its time synchronization equipment centralized or in multiple locations, a firm's time sensitivity, a firm's trading strategy, including whether it uses such time information to trigger trading decisions, and a firm's desire for control of the time feed.

The Exchange offers the Service as a convenience to firms to provide them with the ability to synchronize their own primary clock devices to the GPS network time and time-stamp transactional information.¹⁸ Customers do not receive an advantage by purchasing the Service from the Exchange rather than another provider. The Exchange is merely providing access to GPS signals, which can also be accessed via other providers. Firms that choose to subscribe to the Service may discontinue the use of the Service at any time if they determine that the time synchronization services provided via the GPS antenna are no longer useful. In sum, co-location customers can discontinue the use of the Service at any time, decide not to subscribe, or use a third-party vendor for time synchronization services, for any reason, including the fees.

The optional Service is available to all co-location customers that choose to subscribe. The proposed fees would apply to all co-location customers on a non-discriminatory basis, and therefore are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange also believes that the proposed changes to include specific installation fees promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule changes will provide greater clarity to Members and the public regarding the Exchange's fees. It is in the public interest for rules to be accurate and transparent so as to eliminate the potential for confusion.

If the Exchange is incorrect in its determination that the proposed fees reflect the value of the GPS antenna, customers will not purchase the product or will seek other options at their

disposal, such as purchasing time synchronization services from third-party vendors.

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.

In terms of inter-market competition (the competition among self-regulatory organizations), the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Approval of the proposal does not impose any burden on the ability of other exchanges to compete. As noted above, time synchronization services are offered by other vendors and any exchange has the ability to offer such services if it so chooses.

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data) because the GPS antenna is available to any co-location customer under the same fees as any other co-location customer, and any co-location customer that wishes to purchase a GPS antenna can do so on a non-discriminatory basis.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁹

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: (i) necessary or appropriate in

the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BX-2023-033 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-BX-2023-033. 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

¹⁸ In offering the Service as a convenience to firms, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment, and personnel.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

SR-BX-2023-033 and should be submitted on or before January 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-27401 Filed 12-13-23; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires Federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before February 12, 2024.

ADDRESSES: Send all comments to, Phillip Frechette, Financial Analyst, Office of Credit Risk Management, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT:

Phillip.frechette@sba.gov, Financial Analyst, Office of Credit Risk Management, 202-205-7262, *phillip.frechette@sba.gov* or Curtis B. Rich, Agency Clearance Officer, 202-205-7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: Small Business Lending Companies (SBLs) and Non-federally regulated lenders (NFRLs). NFRL'S are non-depository lending institutions authorized by SBA primarily to make loans under section 7(a) of the Small Business Act. As sole regulator of these institutions, SBA requires them to submit audited financial statements annually as well as interim, quarterly financial statements and other reports to facilitate the Agency's oversight of these lenders.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c)

whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Collection: 3245-0077.

Title of Collection: Reports to SBA Provisions of 13 CFR 120.464.

Description of Respondents: Small Business Lending Companies (SBLs) and Non-federally regulated lenders (NFRLs).

Total Estimated Annual Responses: 594.

Total Estimated Annual Hour Burden: 7,110.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023-27472 Filed 12-13-23; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA-2022-0547; Summary Notice No. 2023-48]

Petition for Exemption; Summary of Petition Received; Equinox Innovative Systems

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 3, 2024.

ADDRESSES: Send comments identified by docket number FAA-2022-0547 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, West

Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at (202) 493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alexander Kem at (202) 267-7571, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 8, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA-2022-0547.

Petitioner: Equinox Innovative Systems.

Section(s) of 14 CFR Affected: §§ 21 Subpart H, 61.3(a)(1)(i), 91.103(b)(2), 91.105, 91.107, 91.119, 91.121, 91.151(b), 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.409(a)(2), 91.417(a), and 91.417(b).

Description of Relief Sought: The petitioner seeks an exemption to conduct commercial flight operations with the Falcon Heavy tethered unmanned aircraft system (UAS).

[FR Doc. 2023-27503 Filed 12-13-23; 8:45 am]

BILLING CODE 4910-13-P

²⁰ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****[Docket No. FHWA–2023–0053]****Agency Information Collection****Activities: Notice of Request for Revision of a Currently Approved Information Collection**

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (USDOT).

ACTION: Notice of request for revision of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 12, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2023–0053 by any of the following methods:

- **Website:** For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Fax:** 1–202–493–2251.

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

- **Hand Delivery or Courier:** U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Daniel Jenkins, 202–366–1067, Daniel.jenkins@dot.gov, National Travel Behavior Data Program Manager, Federal Highway Administration, Office of Policy, 1200 New Jersey Avenue SE, Room E83–414, Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: 2024 Next Generation National Household Travel Survey (NextGen NHTS).

OMB Control #: 2125–0545.

Background: Title 23, United States Code, section 502 authorizes the USDOT to carry out advanced research

and transportation research to measure the performance of the surface transportation systems in the US, including the efficiency, energy use, air quality, congestion, and safety of the highway and intermodal transportation systems. The USDOT is charged with the overall responsibility to obtain current information on national patterns of travel, which establishes a data base to better understand travel behavior, evaluate the use of transportation facilities, and gauge the impact of the USDOT's policies and programs.

The NHTS is the USDOT's authoritative nationally representative data source for daily passenger travel. This inventory of travel behavior reflects travel mode (e.g., private vehicles, public transportation, walk and bike) and trip purpose (e.g., travel to work, school, recreation, personal/family trips) by U.S. household residents. Survey results are used by Federal and State agencies to monitor the performance and adequacy of current facilities and infrastructure, and to plan for future needs.

The collection and analysis of national transportation data has been of critical importance for nearly half a century. Previous surveys were conducted in 1969, 1977, 1983, 1990, 1995, 2001, 2009, 2017 and 2022. The current survey will be the tenth in this series, and allow researchers, planners, and officials at the State and Federal levels to monitor travel trends.

Data from the NHTS are widely used to support research needs within the USDOT, and State and local agencies, in addition to responding to queries from Congress, the research community and the media on important issues. Current and recent topics of interest include:

- Travel to work patterns by transportation mode for infrastructure improvements and congestion reduction,
- Access to public transit, paratransit, and rail services by various demographic groups,
- Measures of travel by mode to establish exposure rates for risk analyses,
- Support for Federal, State, and local planning activities and policy evaluation,
- Active transportation by walk and bike to establish the relationship to public health issues,
- Vehicle usage for energy consumption analysis,
- Traffic behavior of specific demographic groups such as Millennials and the aging population.

Within the USDOT, the Federal Highway Administration (FHWA) holds responsibility for technical and funding

coordination. The National Highway Traffic Safety Administration (NHTSA), Federal Transit Administration (FTA), and the Bureau of Transportation Statistics (BTS) are also primary data users and have historically participated in project planning and financial support.

Proposed Data Acquisition Methodology

NHTS data are collected from a stratified random sample of households that represent a broad range of geographic and demographic characteristics. Letters and postcards are sent to selected households requesting some basic demographic and contact information and inviting them to participate in the diary survey. The recruitment survey is completed on the study website.

Households who complete the recruitment survey are subsequently invited to complete a diary survey. All household members aged 5 and older are eligible. The household is assigned to record their travel on a specific day and asked to note every trip taken during a 24-hour period. Based upon their preferences, the travel information is then reported through a survey website, a smartphone app., or through a telephone interview. Reminders are sent periodically to households who do not respond within the expected timeframe. Monetary incentives are provided in increasing amounts for all households that complete the survey.

The survey will collect data during an entire 12-month period so that all 365 days of the year including weekends and holidays are accounted for. A total of 7,500 households will comprise the national sample for the 2024 survey.

Issues Related to Sampling. The sampling design reflects the U.S. household trends of decreasing landline telephone ownership and increasing access to the internet. The 2024 NextGen NHTS will leverage this shift in technology, in particular the move away from home telephone usage, to structure a research design that uses mail, web, smartphone app. and telephone data collection modes. The revised methodological approach starts with a national address-based sample (ABS).

The survey sample will be drawn from the ABS frame maintained by Marketing Systems Group (MSG). It originates from the U.S. Postal Service (USPS) Computerized Delivery Sequence file (CDS) and is updated on a monthly basis. MSG also provides the ability to match some auxiliary variables (e.g., race/ethnicity, education, household income) to a set of sampled

addresses. MSG geocodes their entire ABS frame, so block-, block group-, and tract-level characteristics from the Decennial Census and the American Community Survey (ACS) may be appended to addresses and used for sampling and/or data collection purposes.

Sample Size. Completed surveys will be obtained from a nationally representative sample of 7,500 households. Assuming response rates of 26 percent for the recruitment stage, 60 percent at the diary stage, and a residency rate of 92 percent for sampled addresses, a total of 53,000 sampled addresses will be required to attain the targeted 7,500 responding households.

Stratification. Census division will be used for stratification, with an urban/rural classification used as substrata. The target sample size (of responding households) will then be initially allocated among the strata according to the proportion of addresses falling in the stratum determined by the counts of addresses from the American Community Survey (ACS).

With the ABS approach, identifying targeted areas that correspond to those for which estimates can be developed from the NHTS data are straightforward. Geocoding and GIS processing can be used to link addresses to States and counties in a highly reliable fashion. There can be some ambiguity for addresses that are P.O. boxes or are listed as rural route addresses. These can be handled in a routine manner with a set of well-defined rules as such addresses will represent only a small proportion of the population. Thus, no important issues arise in the definition of areas with an ABS sample design that relies on mail for initial contact, as is the case with the proposed approach.

Assignments for recording travel data by sampled households will be equally distributed across all days to ensure a balanced day-of-week distribution. The sample (of recruitment letters to households) will be released periodically through a process that will control the balance of travel days by month.

Data Collection Methods

An updated approach to enhancing survey response has been developed. This includes providing progressive monetary incentives and using a mail with push-to-web recruitment survey that is just 5 minutes in length. Upon completing the recruitment survey, household members aged 5 and older are offered the opportunity to provide their travel on an assigned travel day via a smartphone app. or web using a

unique personal identification number (PIN) or telephone interview.

Information Proposed for Collection

Recruitment. The survey will begin with mailing the sampled households an initial invitation letter followed by postcard and letter reminders. The letter will contain a \$2 cash incentive and promised incentives (up to \$20) to encourage diary completion. Participants will complete the recruitment survey on the web. The survey is designed to collect key household information (e.g., enumeration of household members), basic demographic characteristics (e.g., age, gender, etc.), and personal contact information (e.g., email address and telephone number). To support recruitment, the study will provide a toll-free number on survey materials. The study website will provide responses to likely questions and will serve as the portal to the survey.

Diary Retrieval. The travel day diary data will be collected from respondents either from self-reporting via the web or a smartphone app., or from professionally trained interviewers using a computer-assisted telephone interviewing (CATI) system. The questionnaire and back-end systems allow for sophisticated branching and skip patterns to enhance data retrieval by asking only those questions that are necessary and appropriate for the individual participant. Look-up tables are included at the back end to assist with information such as vehicle makes and models. Google API is used to assist in identifying specific place names and locations. The location data for the participant's home, workplace, or school are stored and automatically inserted in the dataset for trips after the first report. Household rostering is a list of all vehicles and persons in the household that allows a trip to be reported from one household member and can include another household member who travel together to be inserted into the record for the second person. This automatic insert of information reduces the burden of the second respondent to be queried about a trip already reported by the initial respondent. Data range, consistency and edit checks are automatically programmed to reduce reporting errors, survey length, and maintain the flow of information processing. Data cross checks also help reduce the burden by ensuring that the reporting is consistent within each trip.

All respondent facing materials and instruments will be reviewed for Section 508 compliance using the rules specified in sections 1194.22—"Web-

based intranet and internet information and applications" and 1194.23—"Telecommunications products." All materials will be available in both English and Spanish language forms. Spanish translations will be developed using industry standards and will apply reverse-translation protocols.

Estimated Burden Hours for Information Collection

Frequency: This is a periodic study last conducted in 2022.

Respondents. A stratified random sample of 7,500 households across the 50 States and the District of Columbia will be included in the survey. Household will include an average of 2.5 members for a total of 18,750 individual respondents 5 years and older to the diary survey.

Estimated Average Burden per Response. It will take approximately 5 minutes per household member to complete the recruitment survey, and 20 minutes per eligible household member to complete the diary survey.

Estimated Total Annual Burden Hours. It is estimated that a total of 29,375 persons will complete the survey. This includes 5,000 persons in households who completed just the recruitment survey and did not participate in the diary survey and 16,875 persons who completed both the recruitment and diary surveys. This results in approximately 6,667 hours of support for this data collection effort assuming an average of 5 minutes per household for the recruitment, and 20 minutes per household member (aged 5 and older) for the diary survey.

Public Comments Invited

You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection of information is necessary for the USDOT's performance, including whether the information will have practical utility; (2) the data acquisition methods; (3) the accuracy of the USDOT's estimate of the burden of the proposed information collection; (4) the types of data being acquired; (5) ways to enhance the quality, usefulness, and clarity of the collected information; and (6) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 11, 2023.

Jazmyne Lewis,

Information Collection Officer, Federal Highway Administration.

[FR Doc. 2023-27449 Filed 12-13-23; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0181]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Motor Carrier Records Change Form

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The purpose of this ICR titled, “Motor Carrier Records Change Form,” is to collect information required by the Office of Registration to process name changes, address changes, and reinstatements of operating authority for motor carriers, freight forwarders, and brokers. FMCSA requests approval to renew an ICR titled, “Motor Carrier Records Change Form.”

DATES: Comments on this notice must be received on or before February 12, 2024.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2023-0181 using any of the following methods:

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

- **Mail:** Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

- **Fax:** (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Secrist, Office of Registration, Chief, Registration, Licensing, and Insurance Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 385-2367; jeff.secrist@dot.gov.

SUPPLEMENTARY INFORMATION:

Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2023-0181), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2023-0181/document>, click on this notice, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

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 www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Background

FMCSA registers for-hire motor carriers under 49 U.S.C. 13902, surface freight forwarders under 49 U.S.C. 13903, and property brokers under 49 U.S.C. 13904. Each registration is effective from the date specified under 49 U.S.C. 13905(c). “Procedures for changing the name or business form of a motor carrier, freight forwarder, or property broker,” (49 CFR 365.413) states that motor carriers, forwarders, and brokers must submit the required information to FMCSA’s Office of Registration requesting the change. Paragraph (f) of 49 CFR 360.3 mentions fees that FMCSA collects for “petition for reinstatement of revoked operating authority,” but does not provide any specifics for the content that petition should take.

Motor carriers, freight forwarders, and property brokers are required to use Form MCSA-5889 to request a name or address change and to request reinstatement of a revoked operating authority. Respondents can submit the form online through the Licensing and Insurance (L&I) website, by fax, or by mail. According to data collected between 2020 and 2022, annually, approximately 1 percent of forms are submitted by mail; 7 percent are submitted by fax; and 92 percent are submitted online. The information collected is then entered in the L&I database by FMCSA staff.

Form MCSA-5889 enables FMCSA to maintain up-to-date records so that the Agency can recognize the entity in question in case of enforcement actions or other procedures required to ensure that the carrier is fit, willing, and able to provide for-hire transportation services, and so that entities whose operating authority has been revoked can resume operation if they are not otherwise blocked from doing so. This multi-purpose form, filed by registrants on a voluntary, as-needed basis, simplifies the process of gathering the information needed to process the entities’ requests in a timely manner, with the least amount of effort for all parties involved.

The form prompts users to report the following data points (whichever are relevant to their records change request):

1. Requestor's fax number, email address, and applicant's oath.
2. Entity's legal/doing business as names, USDOT number, docket MC/MX/FX number, current street address, and phone number(s).
3. Affiliations with FMCSA-licensed entities.
4. Requested changes to the entity's address.
5. Requested changes to the entity's name and/or ownership, management, or control.
6. Type(s) of operating authority the entity wishes to reinstate.
7. Credit card information (name, number, expiration date, address, date) if filing a name change or reinstatement.

Changes From Previous Estimates

The currently approved version of this ICR estimated the average annual burden to be 6,781 annual burden hours, with 27,122 total annual respondents. For this renewal the estimated average annual burden is 16,168, with 64,673 total average annual respondents. The annual burden hour increase of 9,387 is due to the increase in average annual respondents.

Title: Motor Carrier Records Change Form.

OMB Control Number: 2126-0060.

Type of Request: Renewal of a currently approved ICR.

Respondents: For-hire motor carriers, brokers, and freight forwarders.

Estimated Number of Respondents: 64,673.

Estimated Time per Response: 15 minutes per response.

Expiration Date: July 31, 2024.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 16,168.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023-27457 Filed 12-13-23; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0179]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Licensing Applications for Motor Carrier Operating Authority

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew the ICR titled "Licensing Applications for Motor Carrier Operating Authority," OMB Control No. 2126-0016. This ICR applies to: (1) Existing registrants (*i.e.*, entities that already have a USDOT number and/or operating authority) that are subject to FMCSA's licensing, registration, and certification regulations that wish to apply for additional authorities; and (2) Mexico-domiciled carriers that wish to operate beyond the U.S. municipalities on the U.S.-Mexico border and their commercial zones. Existing registrants seeking additional authorities must use forms OP-1, OP-1(P), OP-1(FF), and OP-1(NNA), to apply for such authority. Mexico-domiciled carriers seeking the authority described above must apply for such authority using Form OP-1(MX).

DATES: Comments on this notice must be received on or before February 12, 2024.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2023-0179 using any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200

New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC, 20590-0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- *Fax:* (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey L. Secrist, Office of Registration, Chief, Registration, Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 385-2367; jeff.secrist@dot.gov.

SUPPLEMENTARY INFORMATION:

Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2023-0179), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2023-0179/document>, click on this notice, click "Comment," and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an

unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

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 www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Background

FMCSA registers for-hire motor carriers of regulated commodities and of passengers under 49 U.S.C. 13902(a); surface freight forwarders under 49 U.S.C. 13903; property brokers under 49 U.S.C. 13904; and certain Mexico domiciled motor carriers under 49 U.S.C. 13902(c). These motor carriers may conduct transportation services in the United States only if they are registered with FMCSA. Each registration is effective from the date specified and remains in effect for such period as the Secretary of Transportation (Secretary) determines by regulations.

Prior to 2015, all entities seeking authority (both first-time applicants and registered entities seeking additional authorities) were required to apply for such authority using the OP-1 series of forms, including OP-1, OP-1(P), OP-1(FF), OP-1(NNA), and OP-1(MX) (for Mexico-domiciled carriers only).

The final rule titled “Unified Registration System,” (78 FR 52608) dated August 23, 2013, implemented statutory provisions for an online registration system for entities that are subject to FMCSA’s licensing, registration, and certification regulations. The Unified Registration System (URS) streamlines the registration process and serves as a clearinghouse and repository of information on motor carriers, brokers, freight forwarders, intermodal equipment providers, hazardous materials safety permit applicants, and cargo tank facilities required to register with FMCSA. When developing URS, FMCSA planned that the OP-1 series of forms—except for OP-1(MX)—would ultimately be folded into one overarching electronic application (MCSA-1) which would be used by all motor carriers seeking authority.

FMCSA began a phased rollout of URS in 2015. The first phase, which went into effect on December 12, 2015, impacted only first-time applicants seeking an FMCSA-issued registration. FMCSA had planned subsequent rollout phases for existing registrants; however, there were substantial delays, and subsequent phases have not been rolled out to date.

On January 17, 2017, FMCSA issued a final rule titled “Unified Registration System; Suspension of Effectiveness,” which indefinitely suspended URS effective dates for existing registrants only (82 FR 5292). Pursuant to this final rule, FMCSA is still accepting forms OP-1, OP-1(P), OP-1(FF), and OP-1(NNA) for existing registrants wishing to apply for additional authorities. Separately, FMCSA requires Form OP-1(MX) for new and existing Mexico-domiciled motor carriers that wish to operate beyond the U.S. municipalities on the U.S.-Mexico border and their commercial zones. Information collected through URS, utilizing the MCSA-1, does not include registration form OP-1(MX), which continues to remain a paper form outside URS.

Forms in the OP-1 series request information to identify the applicant, the nature and scope of its proposed operations, a narrative description of the applicant’s safety policies and procedures, and information regarding the drivers and vehicles it plans to use in U.S. operations. The OP-1 series also requests information on the applicant’s familiarity with relevant safety requirements, the applicant’s willingness to comply with those requirements during its operations, and the applicant’s willingness to meet any specific statutory and regulatory requirements applicable to its proposed operations. Information collected through these forms aids FMCSA in determining the type of operation a company may run, the cargo it may carry, and the resulting level of insurance coverage the applicant will be required to obtain and maintain to continue its operating authority.

Changes From Previous Estimates

The currently approved version of this ICR estimated the average annual burden to be 162,476 annual burden hours, with 81,209 total annual respondents. For this renewal the estimated average annual burden is 318,656, with 159,312 total average annual respondents. The annual burden hourly increase of 156,180 is due to an increase in the number of entities that registered 2020 through 2022 and were required to obtain operating authority registration. The average number of

entities which registered in the three-year period 2020 and 2022 increased by 96 percent compared to the number that registered 2017 through 2019.

Title: Licensing Applications for Motor Carrier Operating Authority.

OMB Control Number: 2126–0016.

Type of Request: Renewal of a currently approved ICR.

Respondents: Carrier compliance officer or equivalent from motor carriers, motor passenger carriers, freight forwarders, brokers, and certain Mexico-domiciled motor carriers subject to FMCSA’s licensing, registration, and certification regulations.

Estimated Number of Respondents: 159,312.

Estimated Time per Response: 2 hours for forms OP-1, OP-1(P) and OP-1(FF); 4 hours for forms OP-1(MX) and OP-1(NNA).

Expiration Date: May 31, 2024.

Frequency of Response: Other (as needed).

Estimated Total Annual Burden: 318,656.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA’s functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB’s clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023–27455 Filed 12–13–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0100]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Accident Recordkeeping Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew the ICR titled “Accident Recordkeeping Requirements.” This ICR relates to Agency requirements that motor carriers maintain a record of accidents involving their commercial motor vehicles (CMVs). Motor carriers are not required to report this data to FMCSA, but must produce it upon inquiry by authorized Federal, State, or local officials.

DATES: Comments on this notice must be received on or before January 16, 2024.

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 information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlle Robinson, Driver and Carrier Operations Division, DOT, FMCSA, West Building, 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590-0001; 202-366-4225; pearlie.robinson@dot.gov.

SUPPLEMENTARY INFORMATION: *Title:* Accident Recordkeeping Requirements.

OMB Control Number: 2126-0009.

Type of Request: Renewal of a currently approved collection.

Respondents: Motor carriers.

Estimated Number of Respondents: 93,280.

Estimated Time per Response: 18 minutes.

Expiration Date: February 29, 2024.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 48,760 burden hours (162,533 accidents × 18 minutes per response/60 minutes in an hour = 48,760 hours).

Definitions: *Accident* is an occurrence involving a CMV operating on a public road which results in: (1) a fatality, (2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle (see 49 CFR 390.5T).

Background

Title 49 of the Code of Federal Regulations (CFR), section 390.15(b), requires motor carriers to make certain specified records and information pertaining to CMV accidents available to an authorized representative or special agent of FMCSA upon request or as part of an inquiry. Motor carriers are required to maintain an “accident register” consisting of information concerning all *accidents* involving their CMVs (§ 390.15(b) (see Definition: *Accident* above)). The following information must be recorded for each accident: date, location, driver name, number of injuries, number of fatalities, and whether certain dangerous hazardous materials were released. In addition, the motor carrier must maintain copies of all accident reports required by insurers or governmental entities. Motor carriers must maintain this information for 3 years after the date of the accident. Section 390.15 does not require motor carriers to submit any information or records to FMCSA or any other party.

This ICR supports the DOT strategic goal of safety. By requiring motor carriers to gather and record information concerning CMV accidents, FMCSA is strengthening its ability to assess the safety performance of motor carriers. This information is a valuable resource in Agency initiatives to prevent, and reduce the severity of, CMV crashes.

The Agency has modified several of its estimates for this ICR. The estimated number of annual respondents have increased, while the number of responses, burden hours, and annual costs to respondents have decreased. Explanations for these changes are summarized below.

The previously approved burden is 55,425 burden hours. The Agency decreases its estimate to 48,760 burden hours. The text of § 390.15(b) is unchanged; the decrease in burden hours does not reflect changes in the requirements for accident recordkeeping. The adjustment in annual burden hours is due to an increase in the number of annual respondents from 89,270 to 93,280, and a decrease in the estimate of the number of reportable accidents from 184,749 to 162,533 per year, using interstate and intrastate DOT-reportable motor carrier crash records in FMCSA’s Motor Carrier Management Information System for calendar years 2020 through 2022.

This ICR includes estimated labor costs associated with maintaining the accident register. The estimated annual labor cost for industry resulting from the accident register reporting requirements

is decreased from \$1.86 million to \$1.51 million.

Finally, the estimated annual cost associated with accident recordkeeping (outside of labor costs) is decreased from \$106,785 to \$93,944. In the current iteration of this ICR, FMCSA is assuming that (1) approximately 15 percent of motor carriers are storing their Accident Registers electronically, at no extra cost, and (2) approximately 85 percent of motor carriers are storing hard copy versions of their accident registers. FMCSA is further assuming that motor carriers that maintain paper records are storing their accident registers at their primary place of business, so that they have easy access to such records during an FMCSA investigation.

On August 8, 2023, FMCSA published a notice in the **Federal Register** with a 60-day public comment period announcing the proposed renewal of this ICR (88 FR 53579). The Agency received four comments. Two commenters, Philip Clark and an anonymous individual, submitted comments opposing the underlying regulatory requirement for an accident register. Michael Dolezal, a third individual, submitted comments that were neither in support of nor against the ICR renewal. The National Motor Freight Traffic Association, Inc. (NMFTA) submitted comments in favor of renewing this ICR, and suggested additional information be added to the accident register.

None of the commenters addressed whether the proposed collection is necessary for the accuracy of the estimated burden; nor the ways the burden could be minimized without reducing the quality of the collected information.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA’s functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB’s clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023–27456 Filed 12–13–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0159]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Inspection, Repair and Maintenance

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The information collection concerns records of inspection, repair, and maintenance of commercial motor vehicles (CMVs). FMCSA is seeking to renew an ICR titled, “Inspection, Repair and Maintenance.”

DATES: Comments on this notice must be received on or before January 16, 2024.

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 information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Jose R. Cestero, Vehicle and Roadside Operations Division, DOT, FMCSA, West Building, 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590; 202–366–5541; jose.cestero@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Inspection, Repair and Maintenance.

OMB Control Number: 2126–0003.

Type of Request: Renewal of a currently approved information collection.

Respondents: Motor carriers and CMV drivers.

Estimated Number of Respondents: 757,652 motor carriers and 5,646,722 drivers.

Estimated Time per Response: Varies according to the requirements for specific records.

Expiration Date: December 31, 2023.

Frequency of Response: Varies according to requirements for specific records.

Estimated Total Annual Burden: 19,103,153 hours [14,602,802 hours for inspection, repair, and maintenance + 3,516,342 hours for driver inspection reports + 161,528 hours for disposition of roadside inspection reports + 777,864 hours for periodic inspections + 23,571 hours for records of inspector qualifications + 21,046 hours for records of brake inspector qualifications].

Background

The Secretary of Transportation (Secretary) is authorized under the provisions of 49 U.S.C. 31502 to prescribe requirements for, among other things, safety of operations of equipment of motor carriers that operate CMVs in interstate commerce. Under 49 U.S.C. 31136, the Secretary also has authority to prescribe regulations to ensure that CMVs are maintained, equipped, loaded, and operated safely. Under 49 U.S.C. 31142 the Secretary must establish standards for annual or more frequent inspections of CMVs. The Secretary’s authority to establish improved standards or methods to ensure brakes and brake systems of CMVs are inspected by appropriate employees and maintained properly is provided under 49 U.S.C. 31137(g).

Motor carriers must maintain, or require maintenance of, records documenting the inspection, repair and maintenance activities performed on their owned and leased vehicles. There are no prescribed forms. Electronic recordkeeping is allowed (see 49 Code of Federal Regulations (CFR) 390.31(d)). Documents requiring a signature must be capable of replication (*e.g.*, photocopy, facsimile, etc.) in such form that will provide an opportunity for signature verification upon demand. Also, if electronic recordkeeping is used, all the relevant data on the original documents must be included in the electronic transmission for the records to be valid.

Most motor carriers would keep some records without any regulatory requirements to do so. Records of inspection, repair, and maintenance; roadside inspection reports; driver

vehicle inspection reports; the documentation of periodic inspections; the evidence of the qualifications of individuals performing periodic inspections; and the evidence of brake inspectors’ qualifications contain the minimum amount of information necessary to document that a motor carrier has established a system of inspection, repair, and maintenance for its equipment which meets the standards in 49 CFR part 396.

FMCSA and its representatives use these records to verify motor carriers’ compliance with the inspection, repair, and maintenance standards in part 396. This ICR supports DOT’s strategic goal of safety. The ICR also ensures that motor carriers have adequate records to document the inspection, repair, and maintenance of their CMVs, and to ensure that adequate measures are taken to keep their CMVs in safe and proper operating condition at all times. Compliance with the inspection, repair, and maintenance regulations helps to reduce the likelihood of accidents attributable, in whole or in part, to the mechanical condition of the CMV.

This ICR submittal includes updated data regarding the number of motor carriers subject to the Federal Motor Carrier Safety Regulations, vehicle counts, inspections, and other underlying data used to estimate the total burden hours.

If the recordkeeping were required to be completed less frequently, it would greatly hinder the ability of FMCSA and State officials and representatives to ascertain that CMVs are satisfactorily maintained. The timely documentation of CMV inspection, repair, and maintenance enables FMCSA and State officials to evaluate the present state of a motor carrier’s CMV maintenance program and to check the current level of regulatory compliance at any point in a carrier’s maintenance schedule or program.

FMCSA has identified periodic inspection standards of 22 States, the District of Columbia, the Alabama Liquefied Petroleum Gas Board, 10 Canadian Provinces, and one Canadian Territory that are comparable to, or as effective as, the Federal periodic inspection requirements. FMCSA does not require Federal periodic inspections and the related recordkeeping for motor carriers that comply with these equivalent periodic inspection programs. FMCSA is not aware of any other duplicative standards or recordkeeping requirements that apply to motor carriers.

On September 25, 2023, FMCSA published a notice in the **Federal Register** with a 60-day public comment period to announce this request to update the information collection (88 FR 65764). The Agency received one comment from Whip Around in response to the notice. Whip Around provided general support for the ICR, however, they suggested the use of electronic recordkeeping to reduce the need for frequent inspection, repair, and maintenance.

While this comment does not impact the information collection, FMCSA agrees with Whip Around's assessment that the process of creating, obtaining, and retaining documents can be improved by digitizing and automating vehicle inspection, repairs, and maintenance recordkeeping. The Agency has actively pursued this objective, evident by the amendment on December 16, 2015 (80 FR 78292). This amendment established minimum performance and design standards for electronic logging devices (ELDs) related to hours-of-service (HOS), mandating their use for drivers preparing HOS records of duty status. The amendment aims to enhance CMV safety, reduce paperwork burdens for motor carriers and drivers, and improve compliance with applicable HOS rules by promoting the use of ELDs.

Additionally, on April 16, 2018 (83 FR 16210), FMCSA introduced amendments permitting the use of electronic records and signatures. This aligned, in part, with the Government Paperwork Elimination Act and the Electronic Signatures in Global and National Commerce Act, as it only applies to those documents that FMCSA's regulations obligate entities or individuals to retain. The amendment also updated references to outdated recordkeeping and reporting methods throughout chapter III of subtitle B of 49 CFR (49 CFR parts 300 through 399) to make them technologically neutral.

FMCSA's ongoing efforts include projects related to providing data electronically during roadside inspections. One such project is the Operational Test of In-Motion CMV Inspections (Level VIII Inspections) in collaboration with the Commercial Vehicle Safety Alliance, which was noted by Whip Around in its comment. The project's goal is to transmit data through the vehicle's telematics to roadside inspectors while the vehicle is in motion. In addition to these efforts, the Agency will continue to pursue opportunities to increase safety and reduce the burden to motor carriers and CMV drivers.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023-27459 Filed 12-13-23; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0024]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 11 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on December 11, 2023. The exemptions expire on December 11, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001, (202) 366-4001, fmcsamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket

number (FMCSA-2023-0024) in the keyword box and click "Search." Next, sort the results by "Posted (Older-Newer)," choose the first notice listed, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

On November 1, 2023, FMCSA published a notice announcing receipt of applications from 11 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (88 FR 75088). The public comment period ended on December 1, 2023, and five comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received five comments in this proceeding. Of the five comments received, four commenters are in support of all applicants in this notice being granted the exemption and one commenter is specifically in support of Francis McBride being granted the exemption. The commenters, in general, also strongly urged FMCSA to remove or reconsider the Federal hearing standard. They indicated that hard of hearing and deaf drivers are likely as safe, if not safer, than CMV drivers that meet the Federal hearing standard and that there is recent information that supports this position.

FMCSA's basis for granting an exemption is stated in the next section of this notice, referencing relevant scientific information and literature. However, FMCSA is currently conducting research to investigate the safety of CMV operation by hard of hearing and deaf drivers. This research includes a thorough literature review of the topic to identify the most current information available on this topic. More information regarding this research can be viewed at <https://www.fmcsa.dot.gov/safety/research-and-analysis/investigating-safety-commercial-motor-vehicle-operation-deaf-and-hard>.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant scientific information and literature, and the 2008 Evidence Report, "Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety." The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the

relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 11 exemption applications, FMCSA

exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Melissa Bartlett (LA)
Jeromy Brand (AL)
Bryan Elzy (LA)
Brian Greco (NM)
Bradley Hess (WA)
Tony Jones (TX)
Alexander Lindsay (OH)
Francis McBride (NC)
Ray Perry (TX)
Lakeisha Rosbia (AR)
Anthony Scott (AL)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023-27458 Filed 12-13-23; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2023-0061]

Request for Comment: NHTSA's Nondiscrimination Compliance Program; Extension of Written Submission Deadline

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Extension of deadline for written submissions in response to NHTSA's Request for Comment on NHTSA's Nondiscrimination Compliance Program.

SUMMARY: NHTSA has received requests to extend the period during which commenters may submit written comments in response to the Request for Comment: NHTSA's Nondiscrimination Compliance Program published on November 16, 2023. The original written submission deadline was January 16, 2024. NHTSA is extending the deadline by 30 days to February 15, 2024.

DATES: The written submission deadline related to the Request for Comment published on November 16, 2023, at 88 FR 78811, is extended to February 15, 2024.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Mail: Docket Management Facility:** U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- **Fax:** 202-493-2251.

Instructions: All submissions must include the agency name and Docket No. NHTSA-2023-0061. All comments received will be posted without change, including any personal information provided. For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and search for Docket No. NHTSA-2023-0061.

Privacy Act: Anyone is able to search the electronic form for all comments received into USDOT's dockets by entering the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an organization, association, business, or other entity). You may review the U.S. Department of Transportation's (USDOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For more information, contact Heather Moss, Division Chief, Title VI Compliance, Office of Civil Rights, National Highway Traffic Safety Administration, Telephone number: (202) 366-0972. You may also contact NHTSA's Office of Civil Rights at NHTSACivilRights@dot.gov.

SUPPLEMENTARY INFORMATION: On November 16, 2023, NHTSA published a Request for Comment regarding NHTSA's Nondiscrimination Compliance Program. The original written submission deadline was January 16, 2024. NHTSA is extending the deadline by 30 days to February 15, 2024.

Through this request for comment (RFC), NHTSA seeks input to inform the development of Nondiscrimination Compliance Guidelines for NHTSA Financial Assistance Recipients (Nondiscrimination Guidelines). NHTSA's Nondiscrimination Guidelines will provide guidance for recipients on how to comply with their Federal civil rights obligations. NHTSA published this RFC to engage a broad cross-section of stakeholders and the public. After considering and incorporating comments and information received from this solicitation, NHTSA intends to publish draft Nondiscrimination Guidelines for comment before publishing final guidance.

With this 30-day extension, interested parties have until February 15, 2024, to submit written comments. Although submissions are strictly voluntary, all interested parties are encouraged to respond.

Comments may be submitted and viewed at Docket No. NHTSA-2023-0061 at <https://www.regulations.gov>.

Issued in Washington, DC, on December 8, 2023.

Regina E. Morgan,

Director, NHTSA Office of Civil Rights.

[FR Doc. 2023-27391 Filed 12-13-23; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Transportation Statistics Bureau

[Docket No. DOT-OST-2017-0010]

Request for Clearance for an Information Collection: Annual Tank Car Survey

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST-R), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the Bureau of Transportation Statistics (BTS) intention to request that the Office of Management and Budget (OMB) approves a 3-year extension of a currently approved information collection for the "Annual Tank Car Survey."

DATES: Interested persons are invited to submit comments on or before February 12, 2024.

ADDRESSES: You may submit comments identified by Docket No. DOT-OST-2017-0010 through the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

You may also submit comments identified by DOT Docket ID Number DOT-OST-2017-0010 to the U.S. Department of Transportation (DOT), Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket Management System, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Room W12-140, Washington, DC 20590. Comments should identify the docket number as indicated above. Paper comments should be submitted in duplicate. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on Docket DOT-OST-2017-0010." The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493-2251. Comments can also be viewed and/or submitted via the Federal Rulemaking Portal: <http://www.regulations.gov>.

Please note that anyone is able to electronically search all comments received into our docket management system by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19475-19570) or you may review the Privacy Act Statement at <http://www.gpoaccess.gov/fr/>.

FOR FURTHER INFORMATION CONTACT: Carl Cloyed, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, Department of Transportation, 1200 New Jersey Avenue SE, Room E34-455, Washington, DC 20590, Telephone (202) 366-2857.

SUPPLEMENTARY INFORMATION:

Title: Annual Tank Car Survey
Background: On December 4, 2015, President Barack Obama signed legislation entitled "Fixing America's Surface Transportation Act of 2015," or the "FAST Act." See Public Law 114-94. The FAST Act includes the

“Hazardous Materials Transportation Safety Improvement Act of 2015” (see sections 7001 through 7311) and instructs the Secretary of Transportation to make specific regulatory amendments to the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), including requirements for rail tank car manufacturers to report their progress toward modifying rail tank cars used for the transportation of Class 3 flammable liquids in accordance with the timeline established in section 7304 of the FAST Act.

This notice is applicable to section 7308(c) of the FAST Act which directs the Secretary to conduct an annual survey of tank car shops to acquire projections of the number of tank cars to be built or manufactured to the new safer specifications. This includes new tank cars built to the DOT Specification 117, or equivalent, as well as tank cars modified to the DOT Specification 117R. Tank cars will include, but may not be limited to, those originally built to Specifications: DOT105, DOT109, DOT111, DOT112, DOT114, DOT115, and DOT120.

Respondents: There are approximately 400 tank car facilities that are currently registered or certified to build or modify tank cars. However, the majority of these do not have the capacity to modify or build to the 117 or 117R Specifications. At most, an estimated 140 tank car shops have the capacity to build or modify to these new safety standards.

Estimated Average Burden per Response: An estimated 140 facilities will provide a response to this request for information on an annual basis. It will take approximately 30 minutes to complete, including record keeping and reporting. This notice is intended to accurately account for the annual burden.

Estimated Total Annual Burden: The estimated burden is equal to 70 annual burden hours (*i.e.*, 140 responses per year $\times$ 0.5 hour per response). The total burden cost is estimated at \$3,665 (*i.e.*, 70 burden hours $\times$ \$52.36 per hour for a manager in Transportation, Storage, and Distribution).

Frequency: The survey frequency is prescribed by section 7308(d) of the FAST Act. Specifically, the Secretary is required to conduct the survey annually until May 1, 2029 under section 7308(c).

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) the necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated

burden; (3) ways to enhance the quality, utility, clarity and content of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB’s clearance of this information collection.

Issued in Washington, DC, on 7th of December 2023.

Cha-Chi Fan,

Director, Office of Data Development and Standards, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology.

[FR Doc. 2023–27497 Filed 12–13–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC’s Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC’s determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC’s website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On December 8, 2023, OFAC determined that the property and interests in property subject to U.S.

jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. BOZIZE, Jean-Francis (a.k.a. BOZIZE, Jean Francis), Central African Republic; DOB 19 Feb 1970; POB Bangui, Central African Republic; nationality Central African Republic; citizen Central African Republic; alt. citizen France; Gender Male (individual) [CAR].

Designated pursuant to section 1(a)(ii)(A)(1) of Executive Order 13677 of May 13, 2014, “Blocking the Property of Certain Persons Contributing to the Conflict in the Central African Republic,” (E.O. 13667) 74 FR 28387 for being responsible for or complicit in, or to have engaged in, directly or indirectly, actions or policies that threaten the peace, security, or stability of the Central African Republic.

2. SALLEH ADOUM KETTE, Mahamat (a.k.a. “SALEH, Mahamat”; a.k.a. “SALLE, Mahamat”; a.k.a. “SALLEH, Mahamat”; a.k.a. “SALLEH, Mama”; a.k.a. “SALLET, Mahamar”), Central African Republic; DOB 1988; POB Bria, Haute-Kotto Prefecture, Central African Republic; nationality Central African Republic; Gender Male (individual) [CAR].

Designated pursuant to section 1(a)(ii)(A)(4) of E.O. 13667 for being responsible for or complicit in, or to have engaged in, directly or indirectly, the targeting of women, children, or any civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law in or in relation to the Central African Republic.

Dated: December 8, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–27454 Filed 12–13–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC’s Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC’s determination that one or more

applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On December 8, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. BIEL, Gordon Koang (a.k.a. BIEL, Gordon Koang Char; a.k.a. CHAR, Koang Biel; a.k.a. "NYALUALGO, Koang"), Koch County, Unity, South Sudan; Bentiu, Unity, South Sudan; alt. DOB 1973 to 1975; POB Gany, South Sudan; nationality South Sudan; Gender Male (individual) [SOUTH SUDAN].

Designated pursuant to Section 1(a)(i)(A) of Executive Order 13664 of April 3, 2014, "Blocking Property of Certain Persons With Respect to South Sudan" ("E.O. 13664"), for being responsible for or complicit in, or to have engaged in, directly or indirectly, in actions or policies that threaten the peace, security, or stability of South Sudan.

2. HOTH, Gatluak Nyang (a.k.a. "NYANGA, Hoth Gatluak"), Mayendit County, Unity, South Sudan; DOB 1982; POB Dablual Village, Mayendit County, Unity, South Sudan; nationality South Sudan; Gender Male (individual) [SOUTH SUDAN].

Designated pursuant to Section 1(a)(i)(A) of E.O. 13664 of April 3, 2014, "Blocking Property of Certain Persons With Respect to South Sudan", for being responsible for or complicit in, or to have engaged in, directly or indirectly, in actions or policies that threaten the peace, security, or stability of South Sudan.

3. WAJANG, Joseph Mantiel (a.k.a. WEJANG, Nguen Monyuil; a.k.a. WEJJANG, Joseph Monyuil; a.k.a. "WEJANG, Joseph Manyuil"), Bentiu, Unity, Sudan; DOB 1962; POB Sudan; nationality South Sudan; Gender Male; Passport 1561 (Sudan) expires 15 May 2006 (individual) [SOUTH SUDAN].

Designated pursuant to Section 1(a)(i)(A) of E.O. 13664 of April 3, 2014, "Blocking

Property of Certain Persons With Respect to South Sudan", for being responsible for or complicit in, or to have engaged in, directly or indirectly, in actions or policies that threaten the peace, security, or stability of South Sudan.

Dated: December 8, 2023.

Bradley T. Smith,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

[FR Doc. 2023–27453 Filed 12–13–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Bradley Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On December 8, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. NGOMA, Willy (a.k.a. "Pap"; a.k.a. "RUTIKANGA, Ngarurira Ingoma"), Bunagana, North Kivu, Congo, Democratic

Republic of the; DOB 1974; POB Kinigi, Rwanda; nationality Rwanda; alt. nationality Congo, Democratic Republic of the; Gender Male (individual) [DRCONGO] (Linked To: M23).

Designated pursuant to section 1(a)(ii)(G) of Executive Order (E.O.) 13413 of October 27, 2006, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo," as amended by E.O. 13671 of July 8, 2014, "Taking Additional Steps To Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo" (E.O. 13413, as amended) for having acted or purported to act for or on behalf of, directly or indirectly, M23, an entity whose property and interests in property are blocked pursuant to E.O. 13413, as amended.

2. RUKUNDA, Michel (a.k.a. "Makanika"), Hauts Plateaux, South Kivu, Congo, Democratic Republic of the; DOB 12 Sep 1974; POB Minembwe, Fizi Territory, South Kivu, Congo, Democratic Republic of the; nationality Congo, Democratic Republic of the; Gender Male; Military Registration Number 174935527545 (Congo, Democratic Republic of the) (individual) [DRCONGO].

Designated pursuant to section 1(a)(ii)(E)(i) of Executive Order (E.O.) 13413, as amended for being a leader of an entity, including any armed group, that has, or whose members are responsible for or complicit in, or have engaged in, directly or indirectly, the targeting of women, children, or any civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute serious abuse or violation of human rights or a violation of international humanitarian law, in or in relation to the Democratic Republic of the Congo (DRC).

3. YAKUTUMBA, William Amuri, South Kivu, Congo, Democratic Republic of the; DOB 1970; alt. DOB 1972; POB Lubondja, Fizi Territory, South Kivu, Congo, Democratic Republic of the; nationality Congo, Democratic Republic of the; Gender Male; Military Registration Number 172985458137 (Congo, Democratic Republic of the) (individual) [DRCONGO].

Designated pursuant to section 1(a)(ii)(E)(i) of Executive Order (E.O.) 13413, as amended for being a leader of an entity, including any armed group, that has, or whose members are responsible for or complicit in, or have engaged in, directly or indirectly, the targeting of women, children, or any civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute serious abuse or violation of human rights or a violation of international humanitarian law, in or in relation to the DRC.

Dated: December 8, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.

[FR Doc. 2023-27492 Filed 12-13-23; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 16, 2024 to be assured of consideration.

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:

Copies of the submissions may be obtained from Melody Braswell by emailing PRA@treasury.gov, calling (202) 622-1035, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. *Title:* Pre-Screening Notice and Certification Request for the Work Opportunity Credit.

OMB Number: 1545-1593.

Form Number: Form 1041-QFT.

Abstract: Internal Revenue Code section 685 allows the trustee of certain trusts to make an election for the trust to be taxed as a qualified funeral trust (QFT). The trustee of a QFT files Form 1041-QFT to report the income, deductions, gains, losses, and tax liability of the QFT. The IRS uses the information on the form to determine that the trustee filed the proper return and paid the correct tax.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, Federal Government, individuals or households, and not-for-profit institutions.

Estimated Number of Responses: 15,000.

Estimated Time per Respondent: 20.7 hours.

Estimated Total Annual Burden Hours: 310,350.

2. *Title:* Form 8835, Renewable

Electricity Production Credit.

OMB Number: 1545-1362.

Form Number: Form 8835.

Abstract: Form 8835 is used to claim the renewable electricity production credit. The credit is allowed for the sale of electricity produced in the United States or U.S. territories from qualified energy resources at a qualified facility. The IRS uses the information reported on the form to ensure that the credit is correctly computed.

Current Actions: There are changes to the existing collection. The form was revised to include information about the qualified facility, add lines for new credits, and remove lines for expired credits. The estimated number of responses was reduced to eliminate duplication of burden estimates. The estimated burden for individuals filing Form 8835 is approved under OMB control number 1545-0074, and the estimated burden for businesses filing Form 8835 is approved under OMB control number 1545-0123.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations; not-for-profit organizations.

Estimated Number of Responses: 40.

Estimated Time per Respondent: 17 hours, 43 minutes.

Estimated Total Annual Burden Hours: 697.

(Authority: 44 U.S.C. 3501 *et seq.*)

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023-27394 Filed 12-13-23; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Small Business Credit Initiative

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following

information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on this request.

DATES: Written comments must be received on or before January 16, 2024 to be assured of consideration.

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 Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Spencer W. Clark by emailing PRA@treasury.gov, calling (202) 927-5331, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Title: State Small Business Credit Initiative.

OMB Control Number: 1505-0227.

Type of Review: Revision of a currently approved collection.

Description: This information collection captures information related to the State Small Business Credit Initiative (SSBCI). The American Rescue Plan Act of 2021 (ARPA) reauthorized and amended the Small Business Jobs Act of 2010 (SSBCI statute) to fund the SSBCI as a response to the economic effects of the COVID-19 pandemic.¹ SSBCI is a Federal program administered by the U.S. Department of the Treasury (Treasury) that was created to strengthen the programs of jurisdictions (*i.e.*, States, the District of Columbia, Territories, Tribal governments) that support private financing for small businesses as well as to provide technical assistance (TA) to qualifying small businesses. Under the allocation formula-based TA Grant Program, Treasury awards Federal grants to eligible jurisdictions for the provision of legal, accounting, and financial advisory services to qualifying small businesses applying for the SSBCI Capital Program and other Federal or other jurisdiction small business programs. Treasury is updating the burden estimate for OMB Control

¹ ARPA, Public Law 117-2, sec. 3301, codified at 12 U.S.C. 5701 *et seq.* SSBCI was originally established in title III of the Small Business Jobs Act of 2010.

Number 1505–0227 to better account for applications received under the SSBCI Capital and TA Grant Programs,² as well as the reporting requirements under the TA Grant Program:³

Form: Treasury's reporting portal, various templates.

Affected Public: State, Territorial and Tribal governments, small businesses.

Estimated Number of Respondents: 200.

Frequency of Response: Once, on occasion, annually, semiannually, quarterly.

Estimated Total Number of Annual Responses: 112,376.

Estimated Time per Response: Varies by response type.

Estimated Total Annual Burden Hours: 24,877.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2023–27489 Filed 12–13–23; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0657]

Agency Information Collection Activity: Conflicting Interests Certification for Proprietary Schools

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 12, 2024.

²Treasury originally estimated it would receive 500 SSBCI Capital Program applications, but received approximately 200 applications. Similarly, Treasury originally estimated it would receive 500 TA Grant Program applications, but now expects that number to be approximately 138 applications.

³Treasury has published draft TA Grant Program Reporting Guidance on its website at <https://home.treasury.gov/system/files/136/SSBCI-Technical-Assistance-Reporting-Guidance.pdf>.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to “OMB Control No. 2900–0657” in any correspondence. During the comment period, comments may be viewed online through FDMS.

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. 2900–0657” in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Conflicting Interests Certification for Proprietary Schools, VA Form 22–1919.

OMB Control Number: 2900–0657.

Type of Review: Revision of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA) is authorized to pay education benefits to Veterans and other eligible persons pursuing approved programs of education under chapters 30, 31, 32, 33, and 35 of title 38, U.S.C., and chapter 1606 of title 10, U.S.C., sections 903 of Public Law 96–342, the National Call to Service provision of Public Law 107–314, and the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

Schools are required to submit information necessary to determine if their programs of training are approved

for the payment of VA educational assistance. This specified information is submitted either to VA or to the State Approving Agency (SAA) having jurisdiction over that school. Certain schools are considered “proprietary” schools. A proprietary educational institution, as defined in 38 Code of Federal Regulations (CFR) 21.4200(z), is a private institution legally authorized to offer a program of education in the state where the institution is physically located. Section 3683 of title 38, U.S.C., and sections of 38 CFR establish conflict of interest restrictions related to proprietary schools. The VA Form 22–1919 is the instrument VA has implemented to address these restrictions.

(a) VA Form 22–1919 is only used to collect information on two issues:

(i) Section 3683 of title 38, U.S.C., prohibits employees of VA and the SAA from owning any interest in an educational institution operated for-profit. In addition, the law prohibits VA or SAA employees from receiving any wages, salary, dividends, profits, or gifts from private for-profit schools in which an eligible person is pursuing a program of education under an educational assistance program administered by VA. In addition, the law prohibits VA employees from receiving any services from these schools. These provisions may be waived if VA determines that no detriment will result to the government, or to Veterans or eligible persons enrolled at that private for-profit school. Item 1 of VA Form 22–1919 collects the name and title of affected VA and SAA employees known by the President (or Chief Administrative Official) of the school, as well as a description of these employees' association with that school.

(ii) Sections 21.4202(c), 21.5200(c), 21.7122(e)(6), and 21.7622(f)(4)(iv) of title 38 of the CFR prohibit the approval of educational assistance from VA for the enrollment of a Veteran or eligible person in any proprietary school where the trainee is an official authorized to sign certifications of enrollment. Item 2 of VA Form 22–1919 collects the following information for each certifying official, owner, or officer who receives VA educational assistance based on an enrollment in that proprietary school: the name and title of these employees; VA file numbers; and dates of enrollment at the proprietary school.

(b) VA only collects this information at the time one (or more) of these events occurs:

(i) The initial approval of a program or course at a proprietary for-profit school;

(ii) Any change of ownership of the school (either reported by the school or found upon review of a school's records during VA's compliance survey);

(iii) A change in proprietary status (from non-proprietary to proprietary, or from non-profit to profit status). When the SAA, or VA acting as the SAA, visits the school in connection with the school's request for approval of its program(s), the representative has either the school's President or chief administrative official sign VA Form 22–1919. VA's Education Liaison Representative (ELR) will associate the

completed VA Form 22–1919 with the other documentation compiled for approval of the school's program(s) and will retain this information in the approval folder. The approval folder is retained until such time as the SAA or VA withdraws approval of all courses at the school. All information in the approval folder is then destroyed according to established record control schedules.

Affected Public: Institutions of Higher Learning.

Estimated Annual Burden: 39 hours.

Estimated Average Burden Time per Respondent: 10 minutes.

Frequency of Response: Occasional.

Estimated Number of Respondents: 236.

Authority: 38 U.S.C. 3683; 38 CFR 21.4202(c); 21.5200(c); 21.7122(e)(6); and 21.7622(f)(4)(iv).

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

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Part II

Department of Labor

29 CFR Part 9

Nondisplacement of Qualified Workers Under Service Contracts; Final Rule

DEPARTMENT OF LABOR**29 CFR Part 9****RIN 1235-AA42****Nondisplacement of Qualified Workers Under Service Contracts****AGENCY:** Wage and Hour Division, Department of Labor.**ACTION:** Final rule.

SUMMARY: This document finalizes regulations to implement Executive Order 14055, “Nondisplacement of Qualified Workers Under Service Contracts” (Executive order or the order), which was signed by President Joseph R. Biden, Jr. on November 18, 2021. The Executive order states that when a service contract with the Federal Government expires and a follow-on contract is awarded for the same or similar services, the Federal Government’s procurement interests in economy and efficiency are best served when the successor contractor or subcontractor hires the predecessor’s employees, thus avoiding displacement of these employees. The Executive order, therefore, provides that contractors and subcontractors performing on covered Federal service contracts must in good faith offer service employees employed under the predecessor contract a right of first refusal of employment. The Executive order directs the Secretary of Labor (Secretary) to issue regulations, consistent with applicable law, to implement the order’s requirements. This final rule establishes standards and procedures for implementing and enforcing the nondisplacement protections of the order.

DATES:

Effective date: This final rule is effective February 12, 2024.

Applicability date: This final rule will apply to solicitations issued on or after the effective date of the final regulations issued by the Federal Acquisition Regulatory Council (FAR Council).

FOR FURTHER INFORMATION CONTACT:

Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Questions of interpretation or enforcement of the agency’s existing

regulations may be directed to the nearest Wage and Hour Division (WHD) district office. Locate the nearest office by calling the WHD’s toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD’s website at <https://www.dol.gov/agencies/whd/contact/local-offices> for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:**I. Background**

On November 18, 2021, President Joseph R. Biden, Jr. issued Executive Order 14055, “Nondisplacement of Qualified Workers Under Service Contracts.” 86 FR 66397 (Nov. 23, 2021). This order explains that “when a service contract expires and a follow-on contract is awarded for the same or similar services, the Federal Government’s procurement interests in economy and efficiency are best served when the successor contractor or subcontractor hires the predecessor’s employees, thus avoiding displacement of these employees.” *Id.* Accordingly, Executive Order 14055 provides that contractors and subcontractors performing on covered Federal service contracts must in good faith offer service employees employed under the predecessor contract a right of first refusal of employment. *Id.*

Section 1 of Executive Order 14055 sets forth a general policy of the Federal Government that when a service contract expires and a follow-on contract is awarded for the same or similar services, the Federal Government’s procurement interests in economy and efficiency are best served when the successor contractor or subcontractor hires the predecessor’s employees, thus avoiding displacement of these employees. 86 FR 66397. Using a carryover workforce reduces disruption in the delivery of services during the period of transition between contractors, maintains physical and information security, and provides the Federal Government with the benefits of an experienced and well-trained workforce that is familiar with the Federal Government’s personnel, facilities, and requirements. *Id.* Section 1 explains that these same benefits are also often realized when a successor contractor or subcontractor performs the same or similar contract work at the same location where the predecessor contract was performed. *Id.*

Section 2 of Executive Order 14055 defines “service contract” or “contract” to mean any contract, contract-like instrument, or subcontract for services entered into by the Federal Government or its contractors that is covered by the

Service Contract Act of 1965, as amended (SCA), 41 U.S.C. 6701 *et seq.*, and its implementing regulations. 86 FR 66397. Section 2 also defines “employee” to mean a service employee as defined in the SCA, 41 U.S.C. 6701(3). *See* 86 FR 66397. Finally, section 2 defines “agency” to mean an executive department or agency, including an independent establishment subject to the Federal Property and Administrative Services Act (Procurement Act), 40 U.S.C. 101 *et seq.* *See* 86 FR 66397 (citing 40 U.S.C. 102(4)(A)).

Section 3 of Executive Order 14055 provides the wording for a required contract clause that each agency must, to the extent permitted by law, include in solicitations for service contracts and subcontracts that succeed a contract for performance of the same or similar work. 86 FR 66397–98. Specifically, the contract clause provides that the contractor and its subcontractors must, except as otherwise provided in the clause, in good faith offer service employees, as defined in the SCA, employed under the predecessor contract and its subcontracts whose employment would be terminated as a result of the award of the contract or the expiration of the predecessor contract under which the employees were hired, a right of first refusal of employment under the contract in positions for which those employees are qualified. *Id.* at 66397. The contractor and its subcontractors determine the number of employees necessary for efficient performance of the contract and may elect to employ more or fewer employees than the predecessor contractor employed in connection with performance of the work. *Id.* Except as otherwise provided by the contract clause, there is to be no employment opening under the contract or subcontract, and the contractor and any subcontractors may not offer employment under the contract to any employee prior to having complied fully with the obligation to offer employment to employees on the predecessor contract. *Id.* The contractor and its subcontractors must make an express offer of employment to each employee and must state the time within which the employee must accept such offer, and an employee must be provided at least 10 business days to accept the offer of employment. *Id.* at 66397–98.

The contract clause in section 3 of the Executive order also provides that, notwithstanding the obligation to offer employment to employees on the predecessor contract, the contractor and any subcontractors (1) are not required to offer a right of first refusal to any

employee(s) of the predecessor contractor who are not service employees within the meaning of the SCA and (2) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor for whom the contractor or any of its subcontractors reasonably believes, based on reliable evidence of the particular employee's past performance, that there would be just cause to discharge the employee(s). 86 FR at 66398.

The contract clause also provides that a contractor must, not fewer than 10 business days before the earlier of the completion of the contract or of its work on the contract, furnish the contracting officer a certified list of the names of all service employees working under the contract and its subcontracts during the last month of contract performance. 86 FR at 66398. The list must also contain anniversary dates of employment of each service employee on the contract and its predecessor contracts either with the current or predecessor contractors or their subcontractors. *Id.* The contracting officer must provide the list to the successor contractor, and the list must be provided on request to employees or their representatives, consistent with the Privacy Act and other applicable law. *Id.* The contract clause further provides that if it is determined, pursuant to regulations issued by the Secretary, that the contractor or its subcontractors are not in compliance with the requirements of the contract clause or any regulation or order of the Secretary, the Secretary may impose appropriate sanctions against the contractor or its subcontractors, as provided in the Executive order, the regulations, and relevant orders of the Secretary, or as otherwise provided by law. *Id.*

The contract clause also provides that in every subcontract entered into in order to perform services under the contract, the contractor will include provisions that ensure that each subcontractor will honor the requirements of the clause in the prime contract with respect to the employees of a predecessor subcontractor or subcontractors working under the contract, as well as of a predecessor contractor and its subcontractors. *Id.* The subcontract must also include provisions to ensure that the subcontractor will provide the contractor with the information about the employees of the subcontractor needed by the contractor to comply with the prime contractor's requirements. *Id.* The contractor must also take action with respect to any such subcontract as may be directed by the Secretary as a

means of enforcing these provisions, including the imposition of sanctions for noncompliance. However, if the contractor, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the contractor may request that the United States enter into the litigation to protect the interests of the United States. *Id.* Finally, the contract clause states that nothing in the order may be construed to require or recommend that agencies, contractors, or subcontractors pay the relocation costs of employees who exercise their right to work for a successor contractor or subcontractor pursuant to the Executive order. *Id.*

Section 4 of Executive Order 14055 provides that when an agency prepares a solicitation for a service contract that succeeds a contract for performance of the same or similar work, the agency will consider whether performance of the work in the same locality or localities in which the contract is currently being performed is reasonably necessary to ensure economical and efficient provision of services. 86 FR at 66398. If an agency determines that performance of the contract in the same locality or localities is reasonably necessary to ensure economical and efficient provision of services, section 4 requires the agency, to the extent consistent with law, to include a requirement or preference in the solicitation for the successor contract that it be performed in the same locality or localities. 86 FR at 66399.

Section 5 of Executive Order 14055 provides exclusions. Specifically, section 5 provides that the order does not apply to (a) contracts under the simplified acquisition threshold as defined in 41 U.S.C. 134 (*i.e.*, currently contracts less than \$250,000); and (b) employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employees were not deployed in a manner that was designed to avoid the purposes of the order. 86 FR at 66399.

Section 6 of Executive Order 14055 authorizes a senior official of an agency to grant an exception from the requirements of section 3 of the order for a particular contract under certain circumstances. In order to grant an exception from the requirements of section 3 of the order, the senior official must, by no later than the solicitation date, provide a specific written explanation of why at least one of the following circumstances exists with respect to the contract: (i) adhering to the requirements of section 3 would not advance the Federal Government's

interests in achieving economy and efficiency in Federal procurement; (ii) based on a market analysis, adhering to the requirements of section 3 of the order would: (A) substantially reduce the number of potential bidders so as to frustrate full and open competition; and (B) not be reasonably tailored to the agency's needs for the contract; or (iii) adhering to the requirements of section 3 would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or presidential memoranda. 86 FR at 66399. The order also requires each agency to publish descriptions of the exceptions it has granted on a centralized public website, and any contractor granted an exception to provide written notice to affected workers and their collective bargaining representatives. *Id.* In addition, the Executive order requires each agency to report to the Office of Management and Budget (OMB) any exceptions granted on a quarterly basis. *Id.*

Section 7 of Executive Order 14055 provides that, consistent with applicable law, the Secretary will issue final regulations to implement the requirements of the order. 86 FR at 66399. In addition, to the extent consistent with law, the FAR Council is to amend the Federal Acquisition Regulation (FAR) to provide for inclusion of the contract clause in Federal procurement solicitations and contracts subject to the order. *Id.* Additionally, the Director of OMB must, to the extent consistent with law, issue guidance to implement section 6(c) of the order, requiring each agency to report to OMB any exceptions granted on a quarterly basis. *Id.*

Section 8 of Executive Order 14055 assigns responsibility for investigating and obtaining compliance with the order to the U.S. Department of Labor (Department). 86 FR at 66399. This section authorizes the Department to issue final orders in such proceedings prescribing appropriate sanctions and remedies, including, but not limited to, orders requiring employment and payment of wages lost. *Id.* The Department may also provide that where a contractor or subcontractor has failed to comply with any order of the Secretary or has committed willful violations of the Executive order or its implementing regulations, the contractor or subcontractor, its responsible officers, and any firm in which the contractor or subcontractor has a substantial interest, may be ineligible to be awarded any contract of the United States for a period of up to 3 years. 86 FR at 66399–400. Neither an order for debarment of any contractor or subcontractor from further Federal

Government contracts nor the inclusion of a contractor or subcontractor on a published list of noncomplying contractors is to be carried out without affording the contractor or subcontractor an opportunity to present information and argument in opposition to the proposed debarment or inclusion on the list. 86 FR at 66400. Section 8 also specifies that Executive Order 14055 creates no rights under the Contract Disputes Act, 41 U.S.C. 7101 *et seq.*, and that disputes regarding the requirements of the contract clause prescribed by section 3 of the order, to the extent permitted by law, will be disposed of only as provided by the Department in regulations issued under the order. 86 FR at 66400.

Section 9 of Executive Order 14055 revokes Executive Order 13897 of October 31, 2019, which itself revoked Executive Order 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts. 86 FR at 66400; *see also* 84 FR 59709 (Nov. 5, 2019); 74 FR 6103 (Jan. 30, 2009). Section 9 also explains that Executive Order 13495 remains revoked. 86 FR at 66400.

Section 10 of Executive Order 14055 provides that if any provision of the order, or the application of any provision of the order to any person or circumstance, is held to be invalid, the remainder of the order and its application to any other person or circumstance will not be affected. 86 FR at 66400.

Section 11 of Executive Order 14055 provides that the order is effective immediately and applies to solicitations issued on or after the effective date of the final regulations issued by the FAR Council under section 7 of the order. 86 FR at 66400. For solicitations issued between the date of Executive Order 14055 and the date of the action taken by the FAR Council, or solicitations that were previously issued and were outstanding as of the date of Executive Order 14055, agencies are strongly encouraged, to the extent permitted by law, to include in the relevant solicitation the contract clause described in section 3 of the order. *Id.*

Section 12 of Executive Order 14055 specifies that nothing in the order is to be construed to impair or otherwise affect the authority granted by law to an executive department or agency, or the head thereof, or the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals. 86 FR at 66400. In addition, the order is to be implemented consistent with applicable law and subject to the availability of appropriations. The order is not intended to, and does not, create

any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities; its officers, employees, or agents; or any other person. *Id.* at 66401.

A. Prior Relevant Executive Orders

As indicated, section 9 of Executive Order 14055 revoked Executive Order 13897, which revoked Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts. On August 29, 2011, after engaging in notice-and-comment rulemaking, the Department promulgated regulations, 29 CFR part 9 (76 FR 53720), to implement Executive Order 13495. As required by Executive Order 13897, the Department rescinded these regulations in a notice published in the **Federal Register** on January 31, 2020. 85 FR 5567.

Executive Order 14055 is very similar to Executive Order 13495, but there are a few notable differences. For example, Executive Order 14055 requires that the contractor give an employee at least 10 business days to accept an employment offer, whereas Executive Order 13495 only required 10 calendar days. *Compare* 86 FR at 66398, with 74 FR at 6104. Similarly, Executive Order 14055 requires that the contractor must provide the contracting officer a certified list of the names of all service employees working under the contract during the last month of contract performance at least 10 business days before contract completion, whereas Executive Order 13495 only required 10 calendar days. *Compare* 86 FR at 66398, with 74 FR at 6104. Executive Order 13495 required that performance of the work be at the same location for the order's requirements to apply to the successor contract, whereas the requirements of Executive Order 14055 apply even if the successor contract is not performed at the same location as the predecessor contract. Further, Executive Order 14055 directs an agency to consider, when preparing a solicitation for a service contract that succeeds a contract for performance of the same or similar work, whether performance of the contract in the same locality is reasonably necessary to ensure economical and efficient provision of services. If an agency determines that performance of the contract in the same locality or localities is reasonably necessary to ensure economical and efficient provision of services, then the agency will, to the extent consistent with law, include a requirement or preference in the solicitation for the successor contract that it be performed in the same locality.

Executive Order 13495 did not contain a similar requirement.

Executive Order 14055 also differs from Executive Order 13495 in its provisions regarding a contracting agency's authority to grant an exception from the requirements of the order for a particular contract. Specifically, section 6 of Executive Order 14055 provides that a senior official within an agency may except a particular contract from the requirements of section 3 of the order by, no later than the solicitation date, providing a specific written explanation of why at least one of the particular circumstances enumerated in the order as grounds for exemption exists with respect to that contract. 86 FR at 66399. It also requires agencies to publish descriptions of each exception on a centralized public website and report exceptions to OMB on a quarterly basis. *Id.* Finally, Executive Order 14055 requires agencies to ensure that the incumbent contractor notifies affected workers and their collective bargaining representatives, if any, in writing of the agency's determination to grant an exception. *Id.* In contrast, Executive Order 13495 provided that if the head of a contracting department or agency found that the application of any of the requirements of the order would not serve the purposes of the order or would impair the ability of the Federal Government to procure services on an economical and efficient basis, the head of such department or agency could exempt its department or agency from the requirements of any or all of the provisions of the order with respect to a particular contract, subcontract, or purchase order or any class of contracts, subcontracts, or purchase orders. 74 FR at 6104. Executive Order 13495 did not require notice or publication of agency exemptions. *See id.*

B. Notice of Proposed Rulemaking

On July 15, 2022, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** inviting comments for a period of 30 days on a proposal to implement the provisions of Executive Order 14055. *See* 87 FR 42552. The 30-day comment period closed on August 15, 2022. The Department received 33 timely comments in response to the NPRM from a variety of interested stakeholders, such as labor organizations, nonprofit organizations, contractors, and contractor associations.

II. Discussion of Final Rule

A. Legal Authority

President Biden lawfully issued Executive Order 14055 pursuant to his

authority under “the Constitution and the laws of the United States,” expressly including the Procurement Act. 86 FR 66397 (citing 40 U.S.C. 101 *et seq.*). The Procurement Act’s express purpose is “to provide the Federal Government with an economical and efficient system” for “[p]rocur[ing] and supply[ing] property and nonpersonal services, and performing related functions including contracting.” 40 U.S.C. 101. The Act empowers the President to “prescribe policies and directives that the President considers necessary to carry out” that objective. 40 U.S.C. 121(a). Executive Order 14055 directs the Secretary, “to the extent consistent with law,” to issue regulations to “implement the requirements of this order.” 86 FR at 66399. The Secretary has delegated the authority to promulgate these types of regulations to the Administrator of the WHD (Administrator) and to the Deputy Administrator of the WHD if the Administrator position is vacant. Secretary’s Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (published Dec. 24, 2014); Secretary’s Order 01–2017 (Jan. 12, 2017), 82 FR 6653 (published Jan. 19, 2017).

Some commenters, particularly Associated Builders and Contractors (ABC), the Professional Services Council (PSC), and an anonymous commenter, generally contended that neither Executive Order 14055 nor the proposed rule provide evidentiary support for the proposition that establishing a nondisplacement obligation would actually achieve greater economy and efficiency in federal procurement. ABC further commented that it believes the proposed rule conflicts with the plain language of the SCA, as the SCA does not require a successor contractor to hire a predecessor contractor’s employees, and that neither the President nor the Department has the authority to override the SCA. Accordingly, ABC requested that the Department withdraw the proposed rule in its entirety.

As a threshold matter, the purpose of this rulemaking is to implement Executive Order 14055, and therefore the President’s legal authority to issue Executive Order 14055, and the justification for doing so, are not matters within the scope of this rulemaking. Concerning the scope of the Department’s rulemaking authority, the Department strongly disagrees with ABC’s comment that the proposed rule is in conflict with the SCA. While ABC is correct that the SCA does not require a successor contractor to hire the predecessor contractor’s workforce, the SCA does not prohibit the hiring of the predecessor contractor’s workforce or

address whether such hiring may be encouraged or required by another law. That Executive Order 14055 applies to SCA-covered contracts does not mean that the order and this rule must mirror the SCA’s substantive provisions and that the nondisplacement provision is “in conflict” with the SCA because it is not required by that statute. Rather, Executive Order 14055 provides for contractual requirements that are separate and distinct from the legal obligations of the SCA—with the President’s authority to issue the Executive order derived from the Procurement Act in particular. The Procurement Act empowers the President to “prescribe policies and directives that the President considers necessary to carry out” its objectives, and Executive Order 14055 further directs the Secretary to issue regulations to “implement the requirements of this order.” 40 U.S.C. 121(a); 86 FR at 66399. This final rule has been promulgated consistent with that authority and contains obligations that are independent from a contractor’s responsibilities under the SCA. The SCA’s requirements thus do not preclude the Department from implementing and enforcing the nondisplacement requirements of Executive Order 14055. Instead, the SCA and *Executive Order 14055* can and should be viewed as complementary and co-existing rather than in conflict because it is possible for contractors to comply with both authorities; the SCA does not reflect an intent to preclude application of a nondisplacement requirement established by another legal authority. Thus, the Department declines ABC’s request to withdraw the proposed rule.

After considering all timely comments received to the proposed rule, the Department is issuing this final rule to implement the provisions of Executive Order 14055.

B. Overview of the Rule

This final rule, which amends Title 29 of the Code of Federal Regulations (*CFR*) by adding part 9, sets forth standards and procedures for implementing and enforcing Executive Order 14055. Subpart A of part 9 relates to general matters, including the purpose and scope of the rule, as well as the definitions, coverage, exclusions, and exceptions that the rule provides pursuant to the Executive order. Subpart B establishes requirements for contracting agencies and contractors to comply with the Executive order. Subpart C specifies standards and procedures related to complaint intake, investigations, and remedies. Subpart D

specifies standards and procedures related to administrative enforcement proceedings.

The following section-by-section discussion of this rule presents the contents of each section in more detail.

Part 9 Subpart A—General

Subpart A of part 9 pertains to general matters, including the purpose and scope of the rule, as well as the definitions, coverage, exclusions, and exceptions that the rule provides pursuant to the Executive order.

1. Section 9.1 Purpose and Scope

Proposed § 9.1(a) explained that the purpose of the rule is to implement *Executive Order 14055*. The paragraph emphasized that the Executive order assigns enforcement responsibility for the nondisplacement requirements to the Department.

Proposed § 9.1(b) explained the underlying policy of *Executive Order 14055*. First, the provision repeated a statement from the Executive order that the Federal Government’s procurement interests in economy and efficiency are served when the successor contractor or subcontractor hires the predecessor’s employees. Like the order, the proposed rule elaborated that a carryover workforce minimizes disruption in the delivery of services during a period of transition between contractors, maintains physical and information security, and provides the Federal Government the benefit of an experienced and well-trained workforce that is familiar with the Federal Government’s personnel, facilities, and requirements. It is for these reasons that the Executive order concludes that requiring successor service contractors and subcontractors performing on Federal contracts to offer a right of first refusal to suitable employment under the contract to service employees under the predecessor contract and its subcontracts whose employment would be terminated as a result of the award of the successor contract will lead to improved economy and efficiency in Federal procurement.

Proposed § 9.1(b) further explained the general requirement established in section 3 of *Executive Order 14055* that service contracts and subcontracts that succeed a contract for performance of the same or similar work, and solicitations for such contracts and subcontracts, include a clause that requires the contractor and its subcontractors to offer a right of first refusal of employment to service employees employed under the predecessor contract and its subcontracts whose employment would

be terminated as a result of the award of the successor contract in positions for which the employees are qualified. Proposed § 9.1(b) also clarified that nothing in *Executive Order 14055* or part 9 is to be construed to excuse noncompliance with any applicable Executive order, regulation, or law of the United States.

Proposed § 9.1(c) outlined the scope of the regulations and provided that neither *Executive Order 14055* nor part 9 creates or changes any rights under the Contract Disputes Act, 41 U.S.C. 7101 *et seq.*, or any private right of action. The Department does not interpret the Executive order as limiting existing rights under the Contract Disputes Act. The provision also restated the Executive order's directive that disputes regarding the requirements of the contract clause prescribed by the Executive order, to the extent permitted by law, must be disposed of only as provided by the Secretary in regulations issued under the Executive order. This paragraph also clarified that neither the Executive order nor the regulations would preclude review of final decisions by the Secretary in accordance with the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

The Department did not receive any comments directly related to § 9.1. The Department has addressed comments directed at specific elements of the nondisplacement requirements, such as the scope of the right of first refusal, in the preamble sections for the relevant elements of the order's requirements. The final rule accordingly adopts the § 9.1 provisions as proposed.

2. Section 9.2 Definitions

Proposed § 9.2 defined terms for purposes of this rule implementing Executive Order 14055. Most defined terms follow common applications and are based on either Executive Order 14055 itself or the definitions of relevant terms set forth in the text of related statutes and Executive orders or the implementing regulations for those statutes and orders. The Department noted that, while the definitions discussed in the proposed rule would govern the implementation and enforcement of Executive Order 14055, nothing in the proposed rule was intended to alter the meaning of or to be interpreted inconsistently with the definitions set forth in the FAR for purposes of that regulation.

Consistent with the definition provided in Executive Order 14055, the Department proposed to define *agency* to mean an executive department or agency, including an independent

establishment subject to the Procurement Act. *See* 86 FR 66397. The Department explained that, for the purpose of this definition, "an executive department or agency" means any executive agency as defined in section 2.101 of the FAR. 48 CFR 2.101. The proposed definition of *agency* therefore would include executive departments within the meaning of 5 U.S.C. 101, military departments within the meaning of 5 U.S.C. 102, independent establishments within the meaning of 5 U.S.C. 104(1), and wholly owned Government corporations within the meaning of 31 U.S.C. 9101. The Department explained that the proposed definition would include independent regulatory agencies. The Department did not receive any comments addressing the term *agency* and the final rule adopts the definition of that term as proposed.

The Department proposed to adopt the definition of *Associate Solicitor* in 29 CFR 6.2(b), which means the Associate Solicitor for Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210. The Department did not receive any comments addressing the definition of *Associate Solicitor*, and the final rule adopts the definition of that term as proposed.

The Department proposed to define *business day* as Monday through Friday, except Federal holidays declared under 5 U.S.C. 6103 or by executive order, or any day with respect to which the U.S. Office of Personnel Management has announced that Federal agencies in the Washington, DC, area are closed. The Department did not receive any comments addressing the definition of *business day*. The final rule therefore adopts this definition as proposed, with one technical edit to correct the alphabetical order of definitions that is not intended to reflect a change in the substance of this section.

Consistent with section 2(a) of the Executive order, the Department proposed to define *contract* or *service contract* to mean any contract, contract-like instrument, or subcontract for services entered into by the Federal Government or its contractors that is covered by the SCA and its implementing regulations. *See* 86 FR 66397. PSC commented that the proposed definition of *contract* or *service contract* would wrongly expand the coverage of the SCA to "contract-like instruments," while others, such as the Coalition,¹ submitted comments

supporting the proposed rule's broad scope and coverage.

PSC recommended removing "contract-like instrument" from the definition of *contract* on the grounds that, among other reasons, the use of "contract-like instrument" might "create confusion by suggesting that a 'contract-like instrument' can be subject to the SCA." The Department acknowledges that the term "contract-like instrument" is not used in the SCA. However, the term "contract-like instrument" was expressly used in the definition of *contract* and *service contract* in Executive Order 14055, was used in both of the previous Executive orders requiring a minimum wage for Federal contractor employees (Executive Orders 13658 and 14026), and is defined, collectively with the term *contract*, in the Department's regulations implementing both Executive Order 13658 and Executive Order 14026. *See* 29 CFR 10.2; 29 CFR 23.20. Therefore, the Department expects that most contracting agencies and contractors affected by this rulemaking are already familiar with the use of this term.

Furthermore, the use of the term "contract-like instrument" in Executive Order 14055 neither expands SCA coverage nor expands coverage under Executive Order 14055 to contracts not subject to the SCA. Rather, consistent with the SCA's scope of coverage, the term simply reflects that the order is intended to cover all agreements of a contractual nature (*i.e.*, all agreements between two or more parties creating obligations that are enforceable or otherwise recognizable at law, including those agreements that may not be universally regarded as a *contract* in other contexts) that qualify as contracts under the SCA. Licenses, permits, and similar instruments may qualify as contracts under the SCA regardless of whether parties typically consider such instruments to be "contracts" and regardless of whether such instruments are characterized as "contracts" for purposes of the specific programs under which they are administered. Given the SCA's coverage of a such a wide variety of service contracts and its broad definition of covered contracts, *see, e.g.*, 29 CFR 4.110, the Department views the term "contract-like instrument" as simply reinforcing the breadth of contract coverage under the SCA, and

¹ As reflected in their comment, "the Coalition" refers collectively to the following organizations that submitted a joint comment in response to the

NPRM: The American Association of People with Disabilities; the Autistic Self Advocacy Network; Communications Workers of America; the International Brotherhood of Teamsters; the Laborers' International Union of North America; the National Employment Law Project; and the Service Employees International Union.

hence under Executive Order 14055. The Department further believes that the use of the term “contract-like instrument” in Executive Order 14055 is intended to prevent disputes or extended discussions between contracting agencies and contractors regarding whether a particular legal arrangement qualifies as a *contract* for purposes of coverage by the order and this part. In sum, the use of the term “contract-like instruments” in Executive Order 14055 and in this rule is consistent with previous Executive orders and will help facilitate more efficient determinations by contractors, contracting officers, and the Department as to whether a particular legal instrument is covered. The Department therefore declines to delete the term “contract-like instrument” from the definition of *contract*. Separately, however, to reduce ambiguity in the definition of *contract or service contract*, the Department is clarifying that SCA-covered temporary interim contracts are also included within the definition of *contract and service contract*. This technical clarification will ensure that temporary interim contracts are understood to be fully included within the definition. To effectuate the order, temporary interim contracts must be within that definition to prevent workforce displacement during any such contracts.

PSC also recommended removing the term “exercised contract options” from the illustrative list of terms defining *contract*, noting that the inclusion of the term in the definition is inconsistent with the Department’s statements in the preamble to § 9.3 regarding coverage. Under § 9.3, when an option is exercised and no solicitation is issued for a follow-on contract, the original contract is not considered expired for purposes of Executive Order 14055, and the requirements of the order and this rule do not apply at that time as a result of the exercised contract option. The Department agrees with PSC’s recommendation and therefore, to maintain consistency and reduce confusion, is not including “exercised contract options” in the definition of *contract*.

The Department proposed to substantially adopt the definition of *contracting officer* in section 2.101 of the FAR, which defines the term to mean an agency official with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term, as proposed, would include certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by

the contracting officer. *See* 48 CFR 2.101. The Department did not receive any comments addressing the definition of *contracting officer*, and the final rule adopts the definition of that term as proposed.

The Department proposed to define *contractor* to mean any individual or other legal entity that is awarded a Federal Government service contract or subcontract under a Federal Government service contract. The Department noted that, unless the context reflects otherwise, the term *contractor* refers collectively to both a prime contractor and all of its subcontractors of any tier on a service contract with the Federal Government. The proposed definition incorporated relevant aspects of the definitions of the term *contractor* in section 9.403 of the FAR, *see* 48 CFR 9.403, and the SCA’s regulations at 29 CFR 4.1a(f).

Importantly, the Department noted that the fact that an individual or entity is a *contractor* under the Department’s definition does not mean that such an individual or entity has legal obligations under the Executive order. Thus, an individual or entity that is awarded a service contract with the Federal Government will qualify as a “contractor” pursuant to the Department’s definition, but that individual or entity may only be subject to the nondisplacement requirements of the Executive order in connection with a particular contract if the contract is one that is covered under § 9.3(a). For example, an employment contract providing for direct services to a Federal agency by an individual is not covered by the SCA. 41 U.S.C. 6702(b)(6); 29 CFR 4.121. As a result, an individual who enters into such a contract may be a “contractor” under the definition of *contractor* in the nondisplacement rule, but the contract will not be covered by the nondisplacement requirements. The Department did not receive any comments addressing the definition of *contractor*, and the final rule adopts the definition of that term as proposed.

Consistent with the definition provided in Executive Order 14055, the Department proposed to define *employee* to mean a service employee as defined in the SCA. *See* 86 FR 66397 (citing 41 U.S.C. 6701(3)). Accordingly, *employee* “means an individual engaged in the performance of” an SCA-covered contract. *See* 41 U.S.C. 6701(3)(A). The term “includes an individual without regard to any contractual relationship alleged to exist between the individual and a contractor or subcontractor,” and it therefore includes an individual who is identified as an independent contractor on the contract. *See* 41 U.S.C.

6701(3)(B). It “does not include an individual employed in a bona fide executive, administrative, or professional capacity” as those terms are defined in 29 CFR part 541. *See* 41 U.S.C. 6701(3)(C).

The Coalition submitted a comment supporting the Department’s proposed inclusion of individuals identified as independent contractors in the definition of *employee*. They stated that given the significant volume of work performed by such individuals, the purposes of the Executive order will be promoted by inclusion of such workers. The Department received no other comments about the proposed definition of *employee*, and therefore the final rule adopts the definition as proposed in the NPRM, with an edit to remove “or service employee” from the regulatory text. This edit is not intended to reflect a change in the substance of the definition, but is made to reduce redundancy, as Executive Order 14055 already states that *employee* means service employee as defined by the SCA.

The Department proposed to define *employment opening* to mean any vacancy in a position on the successor contract. This is consistent with the definition of *employment opening* in the regulations that implemented Executive Order 13495. The Department did not receive any comments on the proposed definition of *employment opening*, and the final rule adopts the definition as proposed.

The Department proposed to define the term *Federal Government* as an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States. This proposed definition was based on the definition set forth in the regulations that implemented Executive Order 13495. Consistent with that definition and the SCA, the proposed definition of the term *Federal Government* included nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or of other Federal agencies. *See* 29 CFR 4.107(a). This proposed definition also included independent agencies because such agencies are subject to the order’s requirements. *See* 86 FR 66397. For purposes of Executive Order 14055 and part 9, the Department’s proposed definition would not include the District of Columbia or any Territory or possession of the United States. The Department did not receive any comments on the proposed definition of *Federal Government*, and the final rule adopts the definition as proposed.

The Department proposed to define *month* under the Executive order as a

period of 30 consecutive calendar days, regardless of the day of the calendar month on which it begins. The Department proposed defining the term to clarify how to address partial months and to balance calendar months of different lengths. The proposed definition was consistent with the definition of *month* in the regulations that implemented Executive Order 13495. The Department did not receive any comments addressing the definition of *month*, and the final rule adopts the definition of that term as proposed.

The Department proposed to define *same or similar work* to mean work that is either identical to or has primary characteristics that are alike in substance to work performed on a contract that is being replaced either by the Federal Government or by contractor on a Federal service contract. This would require the work under the successor contract to, at a minimum, share the characteristics essential to the work performed under the predecessor contract. Accordingly, work under a successor contract would not be considered to be *same or similar work* where it only shares characteristics incidental to performance of the contract under the predecessor contract.

PSC requested the Department further define how the definition of *same or similar work* would be applied to Multiple Agency Contracts, especially with regard to competition at the task-order level and completion of task orders over years-long performance periods on the master contract as a whole, as well as best-in class contracts. PSC's question also implicates the overall subset of contracts for indefinite delivery indefinite quantity (IDIQ), including the Multiple Award Schedule (MAS) and the Federal Supply Schedule program. See 48 CFR 8.401.

Whether work is "same or similar" is only relevant when specific work on an expiring contract is going to be replaced by work under another contract, such that one contract can reasonably be considered to be a successor contract and the other a predecessor contract. In that situation, the contracting agency must compare the expiring work and the anticipated work to determine whether they share primary characteristics. Thus, where a contracting agency is considering the use of an order under an IDIQ contracting vehicle for a specific scope of work, the nondisplacement requirements of the Executive order—including the determination of whether a contract involves the *same or similar work*—would apply at the task order level in the same manner as for any other contract. For example, an agency may have an expiring non-MAS contract

for security services at an individual federal facility and may seek to use the MAS program to identify a contractor to take over the same or similar security services at that facility. In such a circumstance, any new MAS program task order would need to include the nondisplacement clause to be a permissible contracting vehicle for the successor contract and the MAS contractor would need to provide job offers to qualified employees on the expiring non-MAS contract.

The Coalition recommended the Department modify the definition of *same or similar work* to make it clear that the definition applies regardless of whether the successor changes in size. However, such a change would be redundant to the existing use of the term "similar," which encompasses contracts of varying monetary amounts or other material changes in size. Furthermore, the rule addresses reductions in staffing in detail at § 9.12(d), and the Coalition's suggested revisions to the definition of *same or similar work* might add confusion to that existing framework. Although the Department therefore declines to modify the definition of *same or similar work* in the manner requested, the Department has revised the definition for purposes of clarity. As noted, the NPRM defined same or similar work as "work that is either identical to or has primary characteristics that are alike in substance to work performed on a contract that is being replaced either by the Federal Government or a contractor on a Federal service contract." However, the portion of this proposed definition beginning with "that is being replaced" does not address whether the work at issue is the "same or similar," but rather concerns the distinct (though related) issue of whether a predecessor-successor relationship exists. As a result, in the interest of clarity, the Department defines same or similar work in the final rule as "work that is either identical to or has primary characteristics that are alike in substance to work performed on another service contract." This change is intended to be nonsubstantive, as it preserves the operative language regarding whether the work under a predecessor and successor contract is the same or similar.

The Department proposed to define the term *Service Contract Act* to mean the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.*, and its implementing regulations. See 29 CFR part 4 (SCA implementing regulations); 29 CFR 4.1a(a) (defining the SCA for the purpose of the implementing

regulations). The Department did not receive comments about this proposed definition and the final rule adopts the definition as proposed.

The Department proposed to define *solicitation* as any request to submit offers, bids, or quotations to the Federal Government. This definition is consistent with the definition of *solicitation* in both the regulations that implemented Executive Order 13495 and in 48 CFR 2.101. The Department broadly interprets the term *solicitation* to apply to both traditional and nontraditional methods of solicitation, including informal requests by the Federal Government to submit offers or quotations. However, the Department notes that requests for information issued by Federal agencies and informal conversations with Federal workers are not "solicitations" for purposes of the Executive order. The Department did not receive any comments addressing the definition of *solicitation*, and the final rule adopts the definition of that term as proposed.

The Department proposed to define the term *United States* as the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities. When the term is used in a geographic sense, the Department proposed that the *United States* means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island. The geographic scope component of this proposed definition was derived from the regulations implementing the SCA at 29 CFR 4.112(a) and the SCA's definition of the term *United States* at 41 U.S.C. 6701(4).

The Coalition expressed support for this proposed definition, stating that it appropriately defines the geography it covers broadly and consistently with the SCA and its implementing regulations. The Coalition stated that they support such consistency because the Federal Government will obtain the most economy and efficiency benefits from Executive Order 14055 if it is applied broadly, and that uniform coverage between Executive Order 14055 and the SCA provides clarity for Federal agencies, contractors, and Federal

service contractor workers. The Department did not receive any other comments about the proposed definition of *United States*, and therefore the final rule adopts the definition as proposed.

Finally, the Department proposed to use the definitions of the terms *Administrative Review Board*, *Administrator*, *Office of Administrative Law Judges*, *Secretary*, and *Wage and Hour Division* that were set forth in the regulations that implemented Executive Order 13495. The Department did not receive comments on these proposed definitions, and the final rule adopts these definitions as proposed with one technical edit to correct the alphabetical order of *Secretary* that is not intended to reflect a change in the substance of this section.

3. Section 9.3 Coverage

Proposed § 9.3 addressed the coverage provisions of Executive Order 14055. It explained the scope of the Executive order and its coverage of executive agencies and contracts.

Executive Order 14055 provides that agencies must, to the extent permitted by law, ensure that service contracts and subcontracts (and solicitations for such contracts and subcontracts) that succeed a contract for performance of the same or similar work include a specific nondisplacement clause. This clause must state that the successor contractor and its subcontractors, except as otherwise provided in the order, must, in good faith, offer service employees employed under the predecessor contract and its subcontracts a right of first refusal of employment under the successor contract in positions for which those employees are qualified, if those service employees' employment would otherwise be terminated as a result of the award of the successor contract or the expiration of the contract under which the employees were hired. Section 2 of the order states that "service contract" means any contract, contract-like instrument, or subcontract for services entered into by the Federal Government or its contractors that is covered by the SCA. Section 2 also defines *agency* to mean an executive department or agency of the Federal Government, including an independent establishment subject to the Procurement Act, 40 U.S.C. 102(4)(A). Section 5 of the order specifies that the order does not apply to contracts under the simplified acquisition threshold as defined in 41 U.S.C. 134.

Section 9.3(a) of the NPRM proposed to implement these coverage provisions by stating that Executive Order 14055 and part 9 would apply to any contract or solicitation for a contract with an

executive department or agency of the Federal Government, provided that: (1) it is a contract for services covered by the SCA; and (2) the prime contract exceeds the simplified acquisition threshold as defined in 41 U.S.C. 134. Proposed § 9.3(b) would require all contracts that satisfy the requirements of § 9.3(a) to contain the contract clause set forth in Appendix A, and all contractors on such contracts to comply, without limitation, with the related requirements of paragraphs (e), (f), and (g) of § 9.12, regarding contractor obligations near the end of contract performance, recordkeeping, and cooperation with investigations. Proposed § 9.3(c) would require all contracts that satisfy the requirements of § 9.3(a) and that also succeed a contract for performance of the same or similar work, to contain the contract clause set forth in Appendix A. It also would require all contractors on such contracts to comply, without limitation, with all the requirements of § 9.12. As in the NPRM, several issues relating to the coverage provisions of the Executive order and § 9.3 are discussed below.

i. Coverage of Agencies

Section 9.3 of the NPRM proposed to apply the nondisplacement requirements to contracts or solicitations for contracts with "an agency." This language reflects that Executive Order 14055 applies to contracts and solicitations with the "Federal Government" that meet the other coverage requirements of the order. In § 9.2 of the NPRM, the Department proposed to define "Federal Government" to include "an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States." And, consistent with section 2(c) of the Executive order, the Department proposed to define "agency" as an "[e]xecutive department or agency, including an independent establishment subject to the [Procurement Act]." The Department noted in discussing the proposed definitions in § 9.2 that it would interpret the terms "executive departments" and "agencies" consistent with the definition of "executive agency" provided in section 2.101 of the FAR. See 48 CFR 2.101. Thus, the Department stated that the proposed rule would apply to contracts entered into by executive departments within the meaning of 5 U.S.C. 101, military departments within the meaning of 5 U.S.C. 102, independent establishments within the meaning of 5 U.S.C. 104(1), and wholly owned Government corporations within the meaning of 31

U.S.C. 9101. See 48 CFR 2.101 (definition of "executive agency"). The NPRM stated that this proposed definition would be interpreted to include independent regulatory agencies.

The plain text of Executive Order 14055 reflects that the order applies to executive departments and agencies, including independent establishments, but only when such establishments are subject to the Procurement Act, 40 U.S.C. 101 *et seq.* Thus, for example, contracts awarded by the U.S. Postal Service are not covered by the order or part 9 because the U.S. Postal Service is not subject to the Procurement Act. Finally, pursuant to the proposed definition of "Federal Government," contracts awarded by the District of Columbia and any Territory or possession of the United States would not be covered by the order.

No comments were received regarding coverage of agencies. The Department therefore affirms its discussion of coverage of agencies in the final rule.

ii. Coverage of Contracts

Proposed § 9.3(a) provided that the requirements of the Executive order generally would apply to "any contract or solicitation for a contract with an agency." Section 2(a) of the Executive order defines "contract" to mean "any contract, contract-like instrument, or subcontract for services entered into by the Federal Government or its contractors that is covered by the [SCA] and its implementing regulations." In § 9.2, the Department proposed to set forth a broadly inclusive definition of the term "contract" that is consistent with the Executive order and how the term is used in the SCA. Consistent with the definition of the term "contract" in the Restatement (Second) of Contracts, which was in the process of being developed when Congress enacted the SCA, an agreement is a "contract" for SCA purposes if it amounts to "a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes a duty." *Cradle of Forestry in Am. Interpretive Ass'n*, ARB No. 99-035, 2001 WL 328132, at *3 (Mar. 30, 2001) (quoting Restatement (Second) of Contracts section 1 (Am. L. Inst. 1979)). As discussed above with regard to the definition of "contract" in § 9.2, licenses, permits, and similar instruments thus may qualify as contracts under the SCA, *id.*, regardless of whether parties typically consider such instruments to be "contracts" and regardless of whether such instruments are characterized as "contracts" for

purposes of the specific programs under which they are administered.

Proposed § 9.3(a) provided that part 9 would also apply to “any . . . solicitation for a contract” that meets the other requirements for coverage. In § 9.2, the Department proposed to define “solicitation” to mean “any request to submit offers, bids, or quotations to the Federal Government.” In keeping with the definition proposed in that section, the Department broadly interprets the term “solicitation” to apply to both traditional and nontraditional methods of solicitation, including informal requests by the Federal Government to submit offers or quotations. However, requests for information issued by Federal agencies and informal conversations with Federal workers are not “solicitations” for purposes of the Executive order. If the solicitation is for a contract that is covered by part 9, then the solicitation will also be covered.

Consistent with section 2(a) of Executive Order 14055, proposed § 9.3(a)(1) clarified that the contract must be a contract for services covered by the SCA in order to be covered by the Executive order and part 9. The SCA generally applies to every “contract or bid specification for a contract that . . . is made by the Federal Government” and that “has as its principal purpose the furnishing of services in the United States through the use of service employees.” 41 U.S.C. 6702(a)(3). The SCA is intended to cover a wide variety of service contracts with the Federal Government. *See, e.g.*, 29 CFR 4.130(a) (providing a nonexclusive list of examples). As reflected in the SCA’s regulations, where the principal purpose of the contract with the Federal Government is to provide services through the use of service employees, the contract is covered by the SCA. *See* 29 CFR 4.133(a). Such coverage exists regardless of the direct beneficiary of the services or the source of the funds from which the contractor is paid for the service and irrespective of whether the contractor performs the work in its own establishment, on a Federal Government installation, or elsewhere. *Id.* SCA coverage, however, does not extend to contracts for services to be performed exclusively by persons who are not service employees, *i.e.*, persons who qualify as bona fide executive, administrative, or professional employees as defined in the FLSA regulations at 29 CFR part 541. Similarly, a contract for services performed essentially by bona fide executive, administrative, or professional employees, with the use of service employees being only a minor factor in contract performance, is not

covered by the SCA and thus is not covered by the Executive order or part 9. *See* 41 U.S.C. 6702(a)(3); 29 CFR 4.113(a); WHD Field Operations Handbook (FOH) 14c07. No comments were received regarding § 9.3(a)(1). Aside from adding language to make clear that only contracts or solicitations issued or entered on or after the applicability date of part 9 are covered, the final rule adopts that provision as proposed.

iii. Coverage of Contracts at or Above the Simplified Acquisition Threshold

Proposed § 9.3(a)(2) provided that a prime contract must exceed the simplified acquisition threshold to be covered by part 9. This is consistent with section 5 of Executive Order 14055, which provides that the order does not apply to contracts under the simplified acquisition threshold as defined in 41 U.S.C. 134. Unlike Executive Order 13495, which excluded “contracts or subcontracts under the simplified acquisition threshold,” section 5 of Executive Order 14055 expressly excludes only “contracts under the simplified acquisition threshold[.]” Accordingly, the Department proposed that all subcontracts for services, regardless of size, would be covered by part 9 if the prime contract meets the coverage requirements of § 9.3. As the Department noted in the NPRM, the definitions sections of both Executive Order 13495 and Executive Order 14055 define “contract” to include “contract or subcontract,” which could support a continued exception for subcontracts under the simplified acquisition threshold. For this reason, the Department sought comment from the public on the potential impact, including any unintended consequences, of covering subcontracts below the simplified acquisition threshold.

PSC advocated to exclude subcontracts with a value less than the simplified acquisition threshold, noting, as the Department also did, that Executive Order 14055 defines “contract” to include “contract or subcontract.” PSC also commented that applying the rule’s nondisplacement requirements to subcontracts below the current simplified acquisition threshold would be unreasonable, calculating that a 5-year service subcontract that has a value below the current simplified acquisition threshold might only employ one person. Nakupuna Companies (Nakupuna) also opposed coverage of subcontracts below the simplified acquisition threshold, positing that the costs of compliance

with Executive Order 14055 will be burdensome on small subcontractors.

Conversely, multiple commenters supported covering subcontracts for amounts below the simplified acquisition threshold where the prime contract meets or exceeds the simplified acquisition threshold. The Coalition supported coverage of these subcontracts because such an approach maximizes the reach of Executive Order 14055 and avoids incentivizing circumvention of the order’s requirements through subcontracting. Likewise, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) supported coverage of subcontracts below the simplified acquisition threshold as an “important tool for ensuring that the contractors do not evade the nondisplacement requirements,” and noted that the proposed rule appropriately specified that non-service subcontracts, such as supply subcontracts, were excluded. Relatedly, the Center for American Progress (CAP) supported the ways in which Executive Order 14055 “clos[ed] loopholes,” thereby “preventing low road firms from undermining the rules.”

The final rule adopts the regulatory language at § 9.3(a)(2) as proposed in the NPRM, with a limited addition for clarity explained below. As in the NPRM, the final rule is not excluding subcontracts that fall below the simplified acquisition threshold where the prime contract is itself covered. While section 2(a) of the Executive order defines the term “contract” as “any contract . . . or subcontract for services,” the order includes a different textual indication that the exclusion in section 5(a) for “contracts” below the simplified acquisition threshold is only intended to exclude prime contracts below that level, not subcontracts. Notwithstanding the expansive definition of the word “contract” in section 2(a), section 3(a) of the order expressly requires the incorporation of the contract clause into contracts “and subcontracts.” In section 5(a), however, the order provides an exclusion only for “contracts” below the threshold and does not mention subcontracts. This comparison (in addition to the change in language from previous Executive Order 13495) supports limiting the interpretation of the term “contract” in section 5 to mean “prime contract.”

This interpretation is consistent with the Executive order’s stated policy goals. The example provided by PSC—wherein a subcontractor employing a single person for 5 years might still be below the simplified acquisition threshold—supports, rather than

undercuts, extending nondisplacement protections to workers employed on subcontracts below the simplified acquisition threshold. This is because where, as in that example, an individual provides services to the government for a period as long as 5 years, displacing that well-trained and experienced employee when a new subcontract occurs would undermine the policies of Executive Order 14055, such as uninterrupted delivery of services, physical and informational security, and familiarity with operations. PSC's example demonstrates that such goals are equally operative whether a particular service employee happens to be employed under a high-dollar-amount subcontract or not. Consistent application of these goals outweighs the compliance costs to subcontractors even where subcontracts are for amounts below the simplified acquisition threshold.

In reaching this conclusion, the Department also considered that the existing exclusions in the rule limit the real-world scenarios in which the commenters' concerns regarding such compliance costs could be applicable. The Executive order's nondisplacement requirements do not apply to small prime contracts (and any subcontracts of those small prime contracts) that fall below the simplified acquisition threshold, nor (in keeping with the SCA) to non-service contracts, nor to contracts for services performed essentially by bona fide executive, administrative, or professional employees as defined in the FLSA's regulations at 29 CFR part 541, with the use of service employees being only a minor factor in contract performance. Likewise, the Executive order does not apply to "employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job." As a result, many subcontracts below the simplified acquisition threshold will be excluded from coverage for other reasons.

Finally, as indicated by commenters, extending coverage to subcontracts below the simplified acquisition threshold will avoid the creation of subcontracts for the purpose of circumventing the requirements of Executive Order 14055, helping to maintain the efficacy and consistent application of the order.

Separately, the Department is modifying the language of § 9.3(a)(2) to clarify the coverage of contracts at the simplified acquisition threshold. Proposed § 9.3(a)(2) provided that part 9 would apply only to prime contracts that exceed the simplified acquisition

threshold. However, section 5 of Executive Order 14055 provides that the order does not apply to contracts under the simplified acquisition threshold. To avoid ambiguity, the Department is adding language to § 9.3(a)(2) to include prime contracts equal to the simplified acquisition threshold. The Department did not receive any comments on this issue. This clarification is consistent with the intent of the order and ensures that prime contracts equal to the simplified acquisition threshold are covered by part 9.

Accordingly, the final rule adopts § 9.3(a)(2) as proposed with an amendment to clarify that part 9 applies to prime contracts equal to the simplified acquisition threshold.

iv. Coverage of Successor Contracts

Proposed § 9.3(c) provided that all of the nondisplacement requirements would apply only to contracts that satisfy the requirements of paragraph (a) of § 9.3 and that "*succeed*" a contract for performance of the same or similar work. Pursuant to section 1 of Executive Order 14055, this successor contract relationship exists when an existing service contract "expires" and a follow-on contract is awarded. Under the Executive order, the Department views a service contract as expired when the contract ends due to the completion of performance or is terminated. In contrast, if a term of an existing contract is simply extended pursuant to an option clause, and no solicitation is issued for a follow-on contract, then the original contract is not considered expired for purposes of Executive Order 14055, the extended term of the contract is not considered a new or a follow-on contract under the Executive order, and the requirements of the order and this part would not apply.

In accordance with the terms of Executive Order 14055, if a contract expires, the Department considers successor service contracts and subcontracts for performance of the same or similar work, and solicitations for such contracts and subcontracts, to be covered by the order, assuming the successor contracts meet the requirements of § 9.3(a). Thus, for example, when the term of a contract ends and a follow-on contract is awarded, a predecessor-successor relationship exists for purposes of Executive Order 14055 if the two contracts are for the same or similar work. This includes circumstances where a temporary interim contract is the successor to a full-term predecessor contract and circumstances where a temporary interim contract is a predecessor to a full-term successor

contract. Similarly, if a contract is terminated, a solicitation for a follow-on contract is issued, and a follow-on contract is awarded, then a predecessor-successor relationship exists for purposes of Executive Order 14055 (again if the two contracts are for the same or similar work). The identity of the contractor awarded the successor contract does not impact the coverage determination. For example, when a contract expires and the same contractor is awarded the successor contract, the terms of the order and part 9 apply. Similarly, the successor contract does not need to be awarded by the same contracting agency as the predecessor contract to be covered by the Executive order and this part.

PSC commented that the exclusion of options from the type of contract event that creates a successor contract under the Executive order conflicted with the Department's inclusion of "exercised contract options" in the list of terms in § 9.2 that define "contract" for purposes of the order. As explained in the discussion of § 9.2, to resolve this inconsistency in accordance with the Executive order's scope of coverage, the Department is removing the term "exercised contract options" from the definition in § 9.2 of the final rule. This change to § 9.2 reduces the potential for confusion identified by PSC and no change is necessary to § 9.3. No other comments were received regarding coverage of successor contracts, and the final rule adopts the language regarding those provisions of § 9.3 as proposed. For clarity, the Department has switched the order of § 9.3(b) and (c) and has revised the text for technical accuracy and to reflect that (b) applies to covered contracts that succeed a contract for performance of the same or similar work, whereas (c) applies to covered contracts and solicitations that do not succeed a contract for the same or similar work (*i.e.*, SCA-covered contracts that are strictly predecessor contracts). Revised (b) and (c) thus reflect more clearly that contractor requirements under this rule may depend on whether a contractor is a predecessor contractor, a successor contractor, or both. For example, a predecessor contractor that is not succeeding a contract for the same or similar work will be required to provide the certified list of employees under § 9.12(c) but would not be required to offer employment to any service employees because the contractor is not succeeding another contract.

v. Coverage of Contracts for Same or Similar Work

Consistent with section 3 of Executive Order 14055, proposed § 9.3(c) would require successor contracts to be for the “performance of the same or similar work” in order to be covered by the nondisplacement requirements. As explained in the discussion of proposed § 9.2, the Department proposed to define “same or similar work,” in relevant part, as “work that is either identical to or has primary characteristics that are alike in substance.” This definition requires the work under the successor contract to, at a minimum, share the characteristics essential to the work performed under the predecessor contract. Accordingly, work under a successor contract is not considered to be same or similar work where it only shares characteristics incidental to performance under the predecessor contract.

In many instances, determining whether a contract involves the same or similar work as the predecessor contract will be straightforward. For example, when a contract for food service at a Federal building expires and a new contract for food service begins at the same location, the work on the successor contract would be considered to be “same or similar work.” This is true even where more limited food services are provided under the successor contract than the predecessor contract, or where work on the successor contract requires additional job classifications that were not required for work under the predecessor contract. In other instances, the particular facts and circumstances may need to be carefully scrutinized to determine whether a contract involves the same or similar work as the predecessor contract. For example, when a contract expires, specific requirements from the contract may be broken out and placed in a new contract or combined with requirements from other contracts into a consolidated new contract. In such circumstances, it will be necessary to evaluate the extent to which the prior and new contracts involve the same or similar functions of work and the same or similar job classifications to determine whether the prior and new contracts involve the same or similar work. Although such a circumstance-specific evaluation may be complex in certain instances, nondisplacement requirements can be expected to apply when a larger SCA-covered contract expires and is re-bid as several individual SCA-covered contracts, as well as when two covered contracts expire and the new solicitation

combines the work previously performed under those two contracts into a new contract. Finally, in some instances, it will be evident that two contracts do not involve the same or similar work. For example, if an SCA-covered contract to operate a gift shop in a Federal building expires, and a new contract is awarded to operate a dry cleaning service in the same physical space as had been occupied by the gift shop, the two contracts would not involve the same or similar work because, even though the place of contract performance would be the same, the nature of the work performed under the contracts and the job classifications performing the work would not be the same or similar.

PSC expressed concern that various federal acquisition initiatives, including the category management initiative, are leading to an increase in the consolidation of smaller contracts and having a negative effect on small business contractors that are less able to compete for the resulting larger contracts. PSC stated that if nondisplacement rules apply in these situations, “small business employees may be retained by successor contractors” and “small businesses themselves may suffer from employee attrition to follow-on successors.” However, PSC also stated that “such hiring is commonplace in many instances” already even without the nondisplacement order. The Department understands that the Federal Government is carefully monitoring small business participation levels and implementing strategies to help ensure that new contracting initiatives such as category management do not undermine small business contracting. The Department believes this strikes the right balance for both small businesses and workers on service contracts even though there may be the potential for employee attrition from a small business predecessor to a successor contract.

As noted above, in the final rule, the Department has switched the order of § 9.3(b) and (c) and made edits for clarity, so that the proposed § 9.3(c) is now, with minor revisions, located at § 9.3(b).

vi. Coverage of Subcontracts

Consistent with sections 2 and 3 of Executive Order 14055, which specify that the nondisplacement requirements apply equally to subcontracts, the Department noted that where a prime contract is covered by the order and part 9, any subcontracts for services are also covered and subject to the requirements of the order and part 9. As a corollary, the Executive order does not apply to

non-service subcontracts. For example, a subcontract to supply napkins and utensils to a prime contractor as part of a covered contract to operate a cafeteria in a Federal building is not a covered subcontract for purposes of this order because it is a supply subcontract rather than a subcontract for services. No comments were received about the coverage of subcontracts, other than those related to the discussion of subcontracts below the simplified acquisition threshold.

vii. Geographic Scope

The Executive order and this part apply to contracts that are both: (1) with the Federal Government; and (2) require performance in whole or in part within the United States. Performance in whole or in part within the United States means within the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island. Under this approach—which is consistent with the geographic scope of coverage under the SCA—the Executive order and these regulations do not apply to contracts with the Federal Government to be performed in their entirety outside the geographical limits of the United States as thus defined. However, if a contract with the Federal Government is to be performed in part within and in part outside these geographical limits and is otherwise covered by the Executive order and these regulations, the order and the regulations apply to the contract and require a right of first refusal for any workers who have performed work inside the geographical limits of the United States as defined. As noted previously, contracts awarded by the District of Columbia or any Territory or possession of the United States are not covered by the order, as neither the District of Columbia nor any Territory or possession of the United States constitutes the “Federal Government” under these regulations. The Coalition expressed support for the scope of geographic coverage under the proposed rule; no other comments were received regarding the geographic scope of coverage.

4. Section 9.4 Exclusions

Pursuant to section 5(a) of Executive Order 14055, proposed § 9.4(a) addressed the exclusion for contracts under the simplified acquisition threshold, as defined in 41 U.S.C. 134. The simplified acquisition threshold currently is \$250,000. 41 U.S.C. 134.

The regulations, as finalized, omit that amount from the regulatory text in the event that a future statutory amendment changes the amount. Any such change would automatically apply prospectively to new contracts subject to part 9.

Proposed § 9.4(a)(2) clarified that the exclusion provision at § 9.4(a)(1) would apply only to prime contracts under the simplified acquisition threshold and that whether a subcontract is excluded from the requirements of part 9 is dependent on the prime contract amount. As discussed above in the discussion of § 9.3, section 5(a) of Executive Order 14055 excludes only “contracts under the simplified acquisition threshold[.]” The proposed rule explained that this language differs from Executive Order 13495, which excluded “contracts or subcontracts under the simplified acquisition threshold.” See Executive Order 13495, 74 FR 6103 (Feb. 4, 2009) (emphasis added). Accordingly, proposed § 9.4(a)(2) explained that subcontracts would be excluded under § 9.4(a)(1) only if the prime contract is under the simplified acquisition threshold. The Department sought comment on the potential impact, including any unintended consequences, of covering subcontracts below the simplified acquisition threshold.

As described in the preamble to § 9.3(a)(2), the Coalition and the AFL–CIO commented in support of coverage of subcontracts below the simplified acquisition threshold where the prime contract exceeds the simplified acquisition threshold. Conversely, PSC and Nakupuna suggested excluding subcontracts with a value less than the simplified acquisition threshold from the requirements of Executive Order 14055 and this part. For the reasons given in the preamble to § 9.3(a)(2), the final rule does not exclude subcontracts below the simplified acquisition threshold where the prime contract meets or exceeds that threshold, and the final rule adopts paragraphs § 9.4(a)(1) and 9.4(a)(2) as proposed.

In § 9.4(b), the Department proposed to implement the exclusion in section 5(b) of Executive Order 14055 relating to employment where Federal service work constitutes only part of the employee’s job. The Department did not receive any comments on proposed § 9.4(b), and the final rule adopts the provision as proposed.

Proposed § 9.4 did not include an exclusion for contracts awarded for services produced or provided by persons who are blind or have severe disabilities. The proposed rule explained that section 3 of Executive

Order 13495 specifically excluded “contracts or subcontracts awarded pursuant to the Javits-Wagner-O’Day Act,” “guard, elevator operator, messenger, or custodial services provided to the Federal Government under contracts or subcontracts with sheltered workshops employing the severely handicapped as described in section 505 of the Treasury, Postal Services and General Government Appropriations Act, 1995,” and “agreements for vending facilities entered into pursuant to the preference regulations issued under the Randolph-Sheppard Act[.]” In contrast, section 5 of Executive Order 14055 does not enumerate any such exclusions. For this reason, proposed § 9.4 did not exclude such contracts from the requirements of part 9.

The proposed rule explained, however, that section 12 of Executive Order 14055 expressly provides that nothing in the order should be construed “to impair or otherwise affect . . . the authority granted by law” to an agency and directs that the order be “implemented consistent with applicable law.” The applicable law encompassed by these sections includes the statutes that were excluded explicitly from Executive Order 13495, such as the Javits-Wagner-O’Day (JWOD) Act, 41 U.S.C. 8501 *et seq.*, and the Randolph-Sheppard Act, 20 U.S.C. 107. These laws establish requirements for contracts awarded for services produced or provided by persons who are blind or have severe disabilities, and the laws may conflict with the requirements of Executive Order 14055 in that the laws may impose staffing requirements that in many cases would preclude, in whole or in part, offering employment to the employees on the predecessor contract. For example, under the JWOD Act, a qualified nonprofit agency operating under the AbilityOne Program is required to employ blind or severely disabled individuals for at least 75 percent of the direct labor hours required for the particular nonprofit agency’s production or provision of services. See 41 U.S.C. 8501(6)(C). If there are few blind or severely disabled workers on a predecessor contract, it could be impossible for a successor contractor to make offers to all incumbent workers and also comply with the JWOD Act 75-percent requirement. The proposed rule explained that where direct legal conflicts squarely exist between the requirements of Executive Order 14055 and the requirements of another statute, regulation, Executive order, or presidential memorandum under the

particular factual circumstances of a specific situation, the requirements of this part would not apply. Under the proposed rule, a contracting agency would be obligated to follow the procedures proposed at § 9.5 to make a case-by-case exception for contracts on the basis of a determination that the requirements of this part did not apply to a particular contract because of a direct legal conflict.

In the NPRM, the Department also recognized that contracting agencies award contracts under a wide variety of programs, including those mentioned above, some of which have, by law, specific processes and requirements that may make it challenging to fully implement the requirements of Executive Order 14055. The Department invited comments on how Executive Order 14055 and its implementing regulations should be applied to any specific programs that are subject to contracting requirements that may conflict with Executive Order 14055 or the provisions of the proposed rule.

Several commenters supported the Department’s approach in the proposed rule. The Coalition commented that they supported the proposed rule’s coverage of contracts covered by the JWOD Act and awarded under the AbilityOne Program, indicating that coverage of AbilityOne contracts is consistent with modern disability policy and promotes “integrated employment in which workers with disabilities work alongside nondisabled workers and enjoy the same rights and protections.” In its comment, Jobs to Move America thanked the Department for “providing equal treatment to disabled workers by covering” these contracts.

Several other commenters expressed opposition to the proposed treatment of contracts covered by the JWOD Act. These commenters requested an across-the-board exclusion for contracts or subcontracts awarded pursuant to the JWOD Act, in line with the exclusion previously granted in Executive Order 13495. These commenters criticized the proposed exception process in § 9.5 that contracting agencies would need to use for AbilityOne contracts if the Department did not provide an express exclusion. Peckham Inc., Didlake Inc., and Nobis Enterprises, which are AbilityOne contractors, commented that making “case-by-case determinations on AbilityOne contracts will lead to inconsistent management of the AbilityOne Program, unnecessary contract award delays, and adverse impacts on the employment of individuals with disabilities.” Source America, an AbilityOne contractor network, noted that the lack of an

express exclusion puts the burden of decision-making on procurement officers, possibly leading to inconsistent application for contracts covered by the AbilityOne Program. Source America further noted that the exception process in the proposed rule does not apply to subcontracts and that there are several instances where a JWOD Act contractor may operate as a subcontractor instead of a prime contractor.

National Industries for the Blind (NIB), a nonprofit agency designated by the AbilityOne Commission to distribute Federal Government orders for products and services on the AbilityOne Procurement List, wrote that the potential need for a case-by-case exception for AbilityOne contracts may not even be recognized by the contracting agency. Melwood Horticultural Training Center, Inc. (Melwood), an AbilityOne contractor, commented that if the rule, as finalized, applies to AbilityOne authorized contractors, it would be extremely unlikely that those contractors would be able to maintain compliance with the AbilityOne program when a predecessor workforce does not have individuals who meet the required AbilityOne labor criteria. Melwood further explained that “[i]f AbilityOne authorized contractors are not explicitly exempted from the requirements of the rule, they will be compelled to hire the incumbent workforce instead of offering up meaningful, steady opportunities to people with significant disabilities.” Melwood recommended that the final rule explicitly exclude contracts under the JWOD Act. In the alternative, Melwood suggested that the Department codify an arrangement specifically for successor contracts awarded under the JWOD Act that would (1) create a right of nondisplacement for jobs constituting 25 percent of the direct labor hours on a contract; (2) require the successor contractor to offer positions to displaced predecessor contract workers on other contracts to the extent doing so would not affect AbilityOne compliance; (3) require the successor contractor to offer to displaced predecessor contract workers a right to be recalled for up to two years should a vacancy occur in roles performing the 25 percent of direct labor hours performed by people without disabilities; and (4) require the successor contractor to take a neutral position should a displaced worker accept an offer at a non-unionized site and attempt to organize it.

Other commenters similarly requested exemptions from the nondisplacement requirements based on a perceived inconsistency between the requirements and other statutes. PSC, in response to

the Department’s question about location continuity and HUBZones, as well as other procurement preference programs,² urged a broad exemption from the nondisplacement requirements whenever they would “impact internal organizational or federal Diversity, Equity, Inclusion and Accessibility goals.” The Council on Federal Procurement of Architectural & Engineering Services (COFPAES) asserted that architecture, engineering (A/E) and related services (including surveying and mapping) should be exempted from the rule because these services are governed by the Brooks Act, 40 U.S.C. 1101 *et seq.* COFPAES stated that the Brooks Act is inconsistent with the right of first refusal, because it requires that evaluation and selection of firms for A/E services be based on “demonstrated competence and qualification,” including award to the “most highly qualified” firm.

After consideration of these comments, the Department is amending the contract clause to give effect to the requirements and goals of Executive Order 14055 to the maximum extent possible in light of the requirements and policy objectives of the HUBZone program statute, the JWOD Act, and the Randolph-Sheppard Act. Specifically, the Department has added paragraph (j) to the contract clause in Appendix A, which sets forth a requirement that, to the maximum extent possible, contractors that are awarded contracts under the HUBZone program statute, the JWOD Act, or the Randolph-Sheppard Act must comply with both the relevant requirements under those statutes and the requirements of Executive Order 14055. Paragraph (j) clarifies that nothing in the contract clause will be construed to permit a contractor or subcontractor to fail to comply with any applicable provision of the HUBZone program statute, the JWOD Act, or the Randolph-Sheppard Act. Consistent with paragraph (j) of the contract clause, when the requirements of such laws would conflict with the requirements of Executive Order 14055

² The HUBZone program, established by title VI of the Small Business Reauthorization Act of 1997, is one of several procurement-related preference programs for small businesses, and it is designed to aid small businesses that are located in economically distressed areas. See 15 U.S.C. 657a. HUBZone is an acronym for Historically Underutilized Business Zone Empowerment Contracting (HUBZone). The other small business preference programs include preferences for small businesses generally, Women-Owned Small Businesses, Service-Disabled Veteran-Owned Small Businesses, and Small Disadvantaged Businesses. See generally Congressional Research Service, Small Business Administration HUBZone Program, R41268, (Updated July 29, 2022), <https://sgp.fas.org/crs/misc/R41268.pdf>.

in connection with a particular contract, then the requirements of such laws may be satisfied in tandem with and, if necessary, prior to the requirements of Executive Order 14055 and this part. In the contract clause, the Department has not included reference to section 505 of the Treasury, Postal Services and General Government Appropriations Act, because the requirements of that Act are covered already by the reference to the JWOD Act.

Under this framework, for example, a successor AbilityOne contractor will be required to provide a right of first refusal to workers from the predecessor contract who have significant disabilities or visual impairment, as defined by the JWOD Act. The AbilityOne successor contractor could then hire non-predecessor contract workers with significant disabilities or visual impairment to the extent necessary to satisfy the employment threshold requirements of the AbilityOne Program. Specifically, the JWOD Act requires that 75 percent of direct labor hours be performed by workers with significant disabilities or visual impairment. See 41 U.S.C. 8501(6)(c). After ensuring that this programmatic threshold requirement is met, the AbilityOne successor contractor will be required under paragraph (j) of the nondisplacement contract clause in Appendix A to provide the right of first refusal to as many of the remaining predecessor contract employees (*i.e.*, those who do not have significant disabilities or visual impairment) as necessary to fill any remaining positions on the successor contract for which those employees are qualified.

Similarly, the HUBZone program statute requires small business concerns (SBCs) to have 35 percent of all of their employees reside in a HUBZone to be certified under the program, and to attempt to maintain this percentage when they are awarded contracts on the basis of a HUBZone preference. See 14 U.S.C. 657a(c) and (d). When both the successor and the predecessor contractors are SBCs, the residence requirement threshold normally could be met through a standard application of this final rule where the successor contractor is required to offer a right of first refusal to employees on the predecessor contract. Under circumstances where the successor is an SBC but the predecessor is not, HUBZone SBCs can meet both the requirements of the HUBZone program and the Executive order in accordance with paragraph (j) of the contract clause. For instance, the successor SBC contractor would first have to extend

offers of employment to the qualified predecessor contractor's employees who reside in a HUBZone. If necessary to reach the residency threshold, the successor HUBZone SBC would next extend offers of employment to qualified residents of a HUBZone who are not employees of the predecessor. The HUBZone SBC would next extend offers for the remaining employment openings to non-HUBZone-resident qualified employees of the predecessor contractor. Under such an approach, the HUBZone SBC would first ensure that it meets the statutory requirements of the HUBZone program so that it is not decertified, and then would be required to offer employment to the predecessor's employees pursuant to Executive Order 14055 to the maximum extent possible without violating HUBZone program requirements. This approach would also apply in other circumstances, such as where the predecessor HUBZone SBC did not maintain the HUBZone residence requirement but was permitted to remain in the program. While the HUBZone SBC must maintain the 35 percent HUBZone residency requirement at all times while certified in the program, there is an exception: an SBC may "attempt to maintain" this requirement when performing on a HUBZone contract. When that occurs and the HUBZone SBC is permitted to fall below the 35 percent threshold, it still must meet the requirement any time it submits a subsequent offer and wins a HUBZone contract. Where a non-SBC successor follows a HUBZone SBC predecessor, the non-SBC successor would be required to comply without limitation with the requirements of the nondisplacement contract clause and implementing regulations by offering a right of first refusal to all qualified predecessor contract employees. This framework is consistent with the Department's treatment of HUBZones in the 2011 final rule for Executive Order 13495. *See* 76 FR 53720, 53723.

The Department believes that this framework recognizes contractors' obligations to comply with the requirements of the HUBZone program statute, the JWOD Act, and the Randolph-Sheppard Act while satisfying Executive Order 14055 by providing the nondisplacement benefit to workers employed on predecessor contracts to the greatest extent permissible. Consistent with Executive Order 14055, this part also applies to covered contracts in which the predecessor contractor, but not the successor contractor, is covered by the HUBZone program statute, the JWOD Act, or the Randolph-Sheppard Act.

Similarly, this part applies to covered contracts in which both the predecessor and successor contracts are covered by the HUBZone program statute, the JWOD Act, the Randolph-Sheppard Act.

In light of new paragraph (j) in the contract clause, there is no need for contracting agencies to authorize an exception under the agency exception procedure in § 9.5 of these regulations for contracts because of the potential application of the HUBZone program statute, the JWOD Act, or the Randolph-Sheppard Act. Paragraph (j) operates to provide an exception to the requirements of Executive Order 14055 where necessary (and only to the extent necessary) to enable compliance with these statutory provisions. The Department believes that the approach reflected in the final rule will promote consistency in applying the requirements of Executive Order 14055 to contracts subject to the HUBZone program statute, the JWOD Act, and the Randolph-Sheppard Act. The approach in the final rule thus is preferable to an approach under which some such contracts would nominally be fully subject to Executive Order 14055's requirements even where application of those requirements would conflict with these statutory preference programs, while others would be entirely exempt from Executive Order 14055's requirements even though certain positions on the successor contract could be filled with predecessor contract employees without any conflict with these preference programs. In this manner, the final rule strikes an important balance by retaining the nondisplacement benefit for many workers on predecessor contracts while enabling successor contractors to maintain compliance with these other statutes.

The Department declines to create a broader exemption from the nondisplacement requirements wherever they might impact a contractor's "internal organizational" or Federal Diversity, Equity, Inclusion, and Accessibility (DEIA) goals, as requested by PSC. There is no basis in the order to allow exceptions from the nondisplacement requirements to pursue internal corporate goals however laudable, and such an exemption would not be administrable. With regard to other Federal procurement preference and nondiscrimination programs, PSC did not identify any inconsistency between the nondisplacement requirements and such programs, other than the HUBZone employment requirements addressed in this preamble and contract clause. As noted in § 9.12(d)(3), contractors are required

to carry out their responsibilities and exercise their discretion under the nondisplacement requirements in a manner consistent with non-discrimination laws and regulations.

The Department also considered COFPAES's assertion that there is a direct conflict between the Brooks Act and the nondisplacement requirements. COFPAES commented that a conflict exists because the Brooks Act requires that evaluation and selection of firms for architecture and engineering services be based on "demonstrated competence and qualification" and be awarded to the "most highly qualified" firm. *See* 40 U.S.C. 1101, 1103(d). COFPAES further stated that the Brooks Act requires selection of contractors based on the qualifications of "key employees" who will work on the contract and that firms compete by submitting a Standard Form (SF) 330 with the resumes of proposed personnel. *See* 48 CFR 36.603. The Department does not agree that these requirements create direct conflicts. The nondisplacement requirements do not conflict with a requirement to contract with the most highly qualified firm or with a firm based on its qualifications or demonstrated competence. Moreover, the order does not require a right of first refusal for employees who are exempt under the professional exemption in part 541 of the FLSA regulations and who therefore are not service employees within the meaning of the SCA. *See* Executive Order 14055, section 3(b). The Department's FLSA regulations state that the "traditional professions" of architecture and engineering are "field[s] of science or learning" such that employees performing work requiring advanced knowledge in those fields generally meet the duties requirements for the learned professional exemption. *See* 29 CFR 541.301(a) and (c). Accordingly, these individuals will generally not be "service employees" under the definition in the Executive order and thus there will generally not be any duty under the nondisplacement rule to provide a right of first refusal to these individuals or any reason that a bidder cannot list its own professional employees on its SF 330 form.³

³ While the order does not require a right of first refusal for professional architects and engineers, Brooks Act contracts may still be covered by the nondisplacement requirement. As discussed in § 9.3, the order applies to contracts that are covered by the SCA and are at or above the simplified acquisition threshold. *See also* Executive Order 14055, section 2(a), 3(a). The SCA, and therefore the order, does not extend to contracts for services "to be performed exclusively by persons who are not service employees—i.e., persons who are bona fide executive, administrative or professional

While there is no direct conflict between the Brooks Act and the nondisplacement requirements so as to justify an across-the-board exemption, an agency exception may be appropriate depending on the specific facts of a particular contract under the nondisplacement regulations in § 9.5(a)(1) or (a)(2). *See* section II.B.5. below. These agency exceptions apply where adhering to the requirements of the order or the implementing regulations would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement or where, based on a market analysis, adhering to the requirements of the order or the implementing regulations would both substantially reduce the number of potential bidders so as to frustrate full and open competition and not be reasonably tailored to the agency's needs for the contract. Where a contract is largely performed by SCA-exempt professional services employees, it may still be covered by the order even if only a relatively small percentage of the employees on the project would be provided with a right of first refusal. In such a situation, where the agency's overriding interest may be in fostering creative competition between the professional employees on the project, it may not make sense to impose the nondisplacement requirements if their inclusion would adversely affect the ability of the agency to maximize the number of such firms that might participate while providing a benefit only to a limited number of covered service employees on the contract.

Accordingly, the final rule adopts the paragraph at § 9.4 as proposed, along with the amendments specified above to the contract clause in Appendix A.

5. Section 9.5 Exceptions Authorized by Agencies

Section 6 of the order provides a procedure for Federal agencies to exempt particular contracts from the application of the nondisplacement requirements.

personnel[.]” 29 CFR 4.113(a)(2). However, SCA (and therefore nondisplacement) coverage extends to contracts “which may involve the use of service employees to a significant or substantial extent,” even if there is “some use of bona fide executive, administrative, or professional employees[.]” 29 CFR 4.113(a)(3); *see also Nat'l Cancer Inst., BSCA* No. 93–10, 1993 WL 832143 (Dec. 30, 1993) (discussing the meaning of “significant or substantial extent”). Many employees who work on Brooks Act-covered contracts may be nonexempt service employees. The Brooks Act contemplates that covered work may include “incidental services” carried out by architects and engineers “and individuals in their employ.” 40 U.S.C. 1103(2)(C)). Accordingly, some Brooks Act contracts could be covered by the SCA and therefore the nondisplacement order.

The Department proposed to implement this procedure through language in § 9.5 of the regulations. Under section 6 of the order, and in § 9.5 as proposed and as adopted in this final rule, an agency would be permitted to grant an exception from the requirements of section 3 of the order (the incorporation of the nondisplacement contract clause) for a particular contract under certain circumstances. The determination must be made no later than the solicitation date for the contract and must include a specific written explanation of why at least one of the qualifying circumstances exists with respect to that contract.

Proposed § 9.5(a) listed the qualifying circumstances for an agency exception, as provided for in the agency exceptions provision in section 6(a) of the order. These included (1) where adhering to the requirements of the order or the implementing regulations would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement; (2) where based on a market analysis, adhering to the requirements of the order or the implementing regulations would both substantially reduce the number of potential bidders so as to frustrate full and open competition and not be reasonably tailored to the agency's needs for the contract; and (3) where adhering to the requirements of the order or the implementing regulations would otherwise be inconsistent with statutes, regulations, Executive orders, or Presidential Memoranda.

The Department proposed to interpret section 6(a) of the order as allowing agencies to make exceptions only for prime contracts and not for individual subcontracts. The proposed language in § 9.5(a) carried out this interpretation by authorizing contracting agencies to waive nondisplacement provisions only “as to a prime contract.” The Department's proposed interpretation of section 6(a) followed from a comparison of this section with the agency exemption provision in Executive Order 13495. In Executive Order 13495, the agency exemption provision permitted agencies to exempt “a particular contract, subcontract, or purchase order or any class of contracts, subcontracts, or purchase orders.” In Executive Order 14055, however, section 6(a) permits agencies to make exceptions only for “a particular contract” and does not reference subcontracts. In the NPRM, the Department also noted that section 2(a) of Executive Order 14055 defines the term “contract” as including “subcontract,” which could support an interpretation of section 6(a) as allowing

a continued case-by-case exception for subcontracts. For that reason, the Department sought comment from the public on the potential impact, including any unintended consequences, of not allowing agency exceptions for particular subcontracts or classes of subcontracts.

In response to the Department's request for comments, the Coalition responded in support of the proposed limitation that would allow exceptions to be granted only for prime contracts and not separately for subcontracts. The Coalition expressed concern that permitting exceptions for particular subcontracts could “create opportunities for circumvention” of the nondisplacement requirements by “pushing more work to the subcontractor.” The Coalition described an example of how contractors use subcontracting arrangements to evade contract requirements. In the example, a New Jersey state law required certain services to be provided only by nonprofits; a contractor evaded the law by using a shell nonprofit prime contractor and then subcontracting to a for-profit entity.

No commenter specifically opposed the Department's proposed interpretation. PSC's comment, however, contained a more general legal argument that paralleled the Department's discussion in the NPRM. PSC opposed the Department's proposed limitation on the application of the simplified acquisition threshold exclusion (which appears in section 5(a) of the order) to subcontracts. In making its argument, PSC referenced the order's definition section at section 2(a) that includes “subcontract” within the definition of the term “contract.” PSC asserted that, because of this definition, the order requires the exclusion for prime contracts below the simplified acquisition threshold in section 5(a) of the order to apply to subcontracts as well. Although PSC did not extend its argument to the interpretation of section 6(a) of the order, the same logic would apply there too, given that section 6(a) provides for agency exceptions for “a particular contract.”

NIB expressed concern that if the agency exception process only applies to prime contracts, then the regulations might not be able to adequately account for potential conflicts between the nondisplacement requirements and the requirements of the JWOD Act and the AbilityOne Program. NIB noted that the FAR recognizes “[t]he statutory obligation” under the JWOD Act “also applies when contractors purchase the supplies or services for Government use,” 48 CFR 8.002(c)—*i.e.*, including

when contractors subcontract for services. Likewise, SourceAmerica noted that Marine Corps Food Service contracts are “mandatory subcontracts” under the JWOD Act, so there would be a direct conflict between the JWOD Act and the Executive order if JWOD-covered subcontracts are not given an exception. To remedy this concern, NIB recommended providing an express exemption for AbilityOne contracts and subcontracts so that contracting agencies would not need to follow the procedures in § 9.5 of the nondisplacement regulations to except these contracts and subcontracts.

Finally, PSC raised questions about the application of the Executive order and the regulations to Multi-Agency Contracts (MACs) and the individual task orders that may be made from them. For MACs, as well as for similar MAS/IDIQ contracts, there are at least two separate moments in which a contracting agency takes an action to enter into a contract: First, when the General Services Administration (GSA) (or other coordinating agency) negotiates the underlying umbrella contract with the contractor; and second, when the individual contracting agency issues a task order under the umbrella contract. As a general matter, an umbrella IDIQ contract should include the nondisplacement clause with appropriate modification (or some mechanism for its later inclusion at the task order level) if there is any reasonable possibility that a future task order under the contract could be found to be a covered successor contract. Unless a mechanism exists to add the nondisplacement clause to individual task orders at the time of their issuance, the fact that such a possibility is unknown at the time of the solicitation for the underlying MAS/IDIQ contract would not be sufficient reason to exempt the entire umbrella contract from coverage under the procedure in § 9.5.

Having considered these comments, the final rule retains the language that authorizes agency exceptions for “a prime contract” and not subcontracts. As noted in the NPRM, this approach follows from a comparison between Executive Order 14055 and its predecessor, Executive Order 13495. Executive Order 13495 expressly included the term “subcontracts” in its authorization for agency exceptions, while section 6(a) of Executive Order 14055 does not. While it is true, as PSC noted, that the definition of “contract” in section 2(a) of Executive Order 14055 includes subcontracts, Executive Order 13495 contained this same definition. The Department therefore believes the

better interpretation of Executive Order 14055 is to give weight to the fact that Executive Order 14055 eliminated the express reference to “subcontracts” that was included in the agency exemptions provision of Executive Order 13495. A comparison between section 3(a) and section 6(a) supports this interpretation. Notwithstanding the expansive definition of the word “contract,” section 3(a) of the order expressly requires the incorporation of the contract clause into “contracts and subcontracts.” In 6(a), however, the order provides an exception process only for “contracts.” In addition, the potential division of contract work through subcontracts is often only clear after prime contractors have submitted bids in response to a solicitation and not before it is issued. It would be impractical or impossible in many cases for contracting agencies, prior to the solicitation date for a prime contract, to identify “particular” subcontracts which could appropriately be excepted from coverage.

The Department is mindful of NIB’s concern regarding the application of the § 9.5 agency exception procedure to JWOD Act-covered contracts and subcontracts. However, as discussed in section II.B.4., the Department has separately addressed these concerns by including language in the contract clause that applies to all such contracts and subcontracts and instructs contractors that they must implement the JWOD Act and the nondisplacement provisions in tandem and to the maximum extent possible.

To account for the unique structure of MAS/IDIQ contracts, the Department has added a new sentence to § 9.5(b) that provides for a bifurcated exception process. The provision provides that for IDIQ contracts, an exception must be granted prior to the solicitation date if the basis for the exception cited would apply to all orders. Otherwise, exceptions must be granted for each order by the time of the notice of the intent to place an order. The appropriate entity to analyze and grant an agency exception at the time of a task order may often be the ordering agency, as the ordering agency will usually be best placed to make the initial determination of whether a task order is a successor contract that would be covered by the order and therefore whether it is relevant to consider an agency exception to coverage. As a general matter, however, the agency responsible for the umbrella contract may determine the procedure through which task orders may be excepted (and whether the contracting agency can overrule an ordering agency’s determination

regarding an agency exception), as long as that procedure is consistent with the nondisplacement order, these regulations, and any applicable FAR provisions.

Accordingly, the final rule adopts the language limiting section 6(a) to prime contracts as proposed, with a limited amendment to account for MAS/IDIQ contract task orders. The Department has also added a sentence to § 9.5(b) to clarify that when an agency determines that a prime contract is excepted under this section, the nondisplacement requirements will not apply to any subcontracts under that prime contract.

Section 6(a) of Executive Order 14055 also limits contracting agency exception decisions by requiring that a decision to except a contract must be made by a “senior official” within the agency. The Department interprets “senior official” to mean the senior procurement executive, as defined in 41 U.S.C. 1702(c). Consistent with this interpretation, the Department proposed regulatory text at § 9.5(a) that identifies the senior procurement executive as the senior official who must make an exception decision. In the NPRM, the Department explained that, because the order specifically requires the decision to be made by a senior official, the decision cannot be delegated by the senior procurement executive to a lower-level official. This same non-delegation principle was applied in the 2012 FAR rule that implemented Executive Order 13495. *See* 77 FR at 75773.⁴

The Coalition approved of the Department’s interpretation of the term “senior official” in § 9.5(a), stating that the required approval of the senior procurement executive will ensure that exceptions are “subject to consistent, rigorous levels of review.” The Coalition noted that an agency’s senior procurement executive is “well positioned to assess whether the need for any particular service contract is sufficiently unusual to justify waiving the nondisplacement requirement.” The Coalition agreed with the Department that prohibiting any further delegation of this duty is consistent with use of the term “senior official” in section 6(a) of the order. The Coalition, however, also recommended that the Department add a consultation requirement, such that the senior procurement executive would have to make the determination “in consultation with the agency head.” The Coalition noted that such a requirement

⁴ Section 4 of Executive Order 13495 also included the authority to grant a waiver of that order’s effect but limited the authority to the “head of a contracting department or agency.”

would be consistent with the FAR, which permits individual deviations from FAR requirements when authorized by the agency head. *See* 48 CFR 1.403. The AFL-CIO stated that they supported the requirement that any exception decision be made by the senior procurement executive.

In contrast, Nakupuna expressed concern that the exception process in § 9.5(a) is “too arduous” and may result in agencies not granting exceptions that would have been in the best interest of the Federal government. Nakupuna also stated that the head of a contracting department or agency should have the authority to exempt contracts from the requirements of the order if justified. Several other commenters expressed more general concerns about the requirements for senior-level decision-making. PSC, in a response to the Department’s proposal regarding location continuity, stated that requiring the senior procurement executive to make a determination “would cause needless delay” because such decisions “require time, consideration, and decision capital” that may “bottleneck solicitations.” NIB, in requesting a blanket exemption for contracts awarded under the JWOD Act, suggested that exception decisions by senior procurement executives would be “superfluous” and “time-consuming.” Several other entities involved in contracting under the JWOD Act expressed similar concerns. These comments, however, did not address the express language in section 6(a) of the Executive order that limits the exception authority to a “senior official within an agency” or suggest that the Department was incorrect to interpret that language as limiting the decision to the senior procurement executive.

The final rule adopts the senior-procurement-executive requirement in § 9.5(a) as proposed. As the Coalition noted, this language is consistent with the requirement in the order that the decision must be made by a “senior official,” and the involvement of the senior procurement executive will promote consistency in agency exception decisions. The requirement is also consistent with the implementation of Executive Order 13495 in the 2012 FAR final rule, which adopted language at 48 CFR 22.103–3 authorizing the senior procurement executive to waive nondisplacement requirements. *See* 77 FR at 75767. The Department declines to implement the Coalition’s proposal to require consultation with the agency head. While such consultation may be appropriate and should be encouraged, it is not required by the order and may not be warranted in every instance.

NIB also suggested that the word “may” in § 9.5(a) should be replaced with the word “shall,” to more effectively require a contracting agency to grant an exception to the nondisplacement requirements in certain circumstances. While acknowledging that section 6(a) of the order itself uses the term “may,” NIB asserted that replacing it with the word “shall” in the regulations would eliminate any implication that a contracting agency has any “discretion” to apply the nondisplacement requirements even when that would be inconsistent with another law such as the JWOD Act. The Department agrees with NIB that in circumstances in which the application of the nondisplacement requirements would directly conflict with an express provision of another statute, such that compliance with the nondisplacement requirements set forth in this final rule would necessarily result in a violation of another statute, the agency should authorize the exception. But the Department interprets the order’s use of the term “may” to suggest only that (consistent with Nakupuna’s suggestion) the senior procurement executive’s determination can still be subject to review and revision by the contracting agency head or otherwise pursuant to an individual contracting agency’s procurement procedure. Accordingly, the final rule continues to authorize, but not require, the agency to waive the application of nondisplacement provisions after the determination of the senior procurement executive. The final rule therefore adopts the language of § 9.5(a) as proposed.

Proposed § 9.5(b) reiterated the procedural requirements that section 6(a) of the order states must be satisfied for an exception to be effective. The proposed language stated that the action to except a contract from some or all of the requirements of the Executive order or the regulations must include a specific written explanation of the facts and reasoning supporting the determination. Following the text of section 6(a) of the order, the proposed language in § 9.5(b) stated that this written explanation must be issued no later than the solicitation date, which is also the latest date that the action to except a contract may be taken. The proposed language in § 9.5(b) provided that any determination by an agency to exercise its exception authority that is made after the solicitation date or without the timely and specific written explanation would be inoperative. In such a circumstance, the contract clause would have been wrongly omitted and

the agency would be required to take action consistent with paragraph § 9.11(f) of this part, which sets forth the requirements for incorporating missing contract clauses.

The Coalition and the AFL-CIO expressed general support for the proposed procedural requirements in § 9.5(b). The Coalition noted that the requirement for a specific written explanation, including the facts and reasoning, will promote thorough analyses and consistent decision-making. They also noted that this requirement is in accordance with the FAR’s requirement that documentation in contract files be sufficient to constitute a complete history of the contractual action, including support for actions taken. *See* 48 CFR 4.801(b). The Coalition, however, recommended modifying the language of § 9.5(b) to also require an “attestation” by the incoming contractor that “no service disruption will occur due to the displacement of predecessor contract employees.” They explained that the attestation could be requested in the solicitation.

The Department declines to require an additional “attestation” condition. Such an attestation requirement could be an effective mechanism in a particular contract to maximize the use of predecessor employees and limit disruption even when the nondisplacement contract clause is not included in the solicitation. However, the order does not impose this blanket requirement, and the Department did not propose one in the NPRM. Thus, while agencies are encouraged to take alternative and contract-specific measures to protect against service disruption where the nondisplacement provisions do not apply—including an attestation requirement on a contract-by-contract or agency-wide basis—the Department is not imposing such a requirement in this final rule.

Multiple commenters noted potential challenges from the requirement in § 9.5(b) that the exception determination and written analysis must be carried out no later than the solicitation date. One entity, Professional Contract Services, Inc. (PCSI), requested a modification of these timing requirements to accommodate the potential for interaction between bidders and the contracting agency. PCSI noted that the regulations do not provide for a “process for a bidder or contractor to interact with the contracting agency and explain its need for such an exception.” PCSI suggested that such a procedure would be particularly useful with regard to the AbilityOne program, where “a contracting agency may not understand

the conflict in laws posed without such an interaction with the selected [AbilityOne contracting entity].” PCSI did not suggest how exactly the timeframe should be modified—whether by providing a pre-solicitation procedure or by allowing exceptions to be requested and provided after the solicitation date.

The Coalition discussed the challenge of the exception deadline in the context of a comment about the proposed reconsideration process. Under their suggestion, agencies would be required to notify workers and their representatives of a proposed exception no later than 120 days before the solicitation, providing time for comment from interested parties. The deadline for the agency to make an initial exception decision would be 60 days prior to the solicitation date, to accommodate time for interested parties to then request reconsideration and for that reconsideration to be resolved before any bid solicitation goes out. The AFL–CIO expressed agreement with the Coalition’s proposed timeframe.

The Department acknowledges that the solicitation-date deadline for an agency exception decision may be challenging in some circumstances because it requires agencies to collect relevant information regarding the need for an exception prior to the solicitation date, and because any decision that is made close to or on the solicitation date leaves little to no time for interested parties to assist the agency in correcting any mistakes before the solicitation is issued. Notwithstanding these concerns, the Department declines to extend the deadline for agency exceptions beyond the solicitation date, which would be contrary to the specification in the order itself that the exception may be granted “no later than the solicitation date.” This language does not allow a procedure in which exceptions are granted after the solicitation date, unless the solicitation is subsequently canceled and reissued. Such a rule strikes a reasonable balance, as allowing exceptions after the solicitation date would not make sense procedurally and could invite abuse of the exceptions provision.

The Department also declines to impose a procedural framework that would require agency exception decisions to be made 60 days before the solicitation date for all contracts. The Department agrees with the Coalition that agencies will be able to make better-informed decisions and avoid errors if they engage with stakeholders—including workers on predecessor contracts or their collective bargaining representatives—as early as possible in

the acquisition planning process. The order, however, requires only that the exception decision be made no later than the solicitation date, which allows, but does not require, agency exception decisions to be made at an earlier date. In responding to the Coalition’s suggestion, the Department considered that the FAR contains broad requirements for acquisition planning prior to the issuance of solicitations. *See generally* 48 CFR 7.102 (“Agencies shall perform acquisition planning and conduct market research . . . for all acquisitions[.]”). It is during this advance planning process that agencies should be identifying whether an exception from the nondisplacement provisions is necessary—and engaging workers and their representatives if possible—and not at the last minute before a solicitation is issued. The language of the order allows agencies to address exceptions in this way, and agencies are encouraged to carry out the exceptions decision as early as possible. At this time, however, the Department declines to impose by regulation an earlier deadline for agency exceptions determinations. As noted below, however, the Department has included new language in § 9.5(d) that requires contracting agencies, to the extent consistent with mission security, to include employee representatives in any pre-solicitation market-research-related industry exchanges that are specific to the nondisplacement requirements and conducted for the purpose of analyzing whether to impose an agency exception under § 9.5.

For the foregoing reasons, the final rule adopts § 9.5(b) as proposed.

i. Bases for Agency Exceptions

In the NPRM, the Department also proposed to provide additional guidance and requirements applicable to each of the three circumstances in which an agency may make an exception for a particular contract.

In § 9.5(c), the Department proposed language to address the first of the three circumstances under which an agency may authorize an exception from the nondisplacement provisions: where adhering to the requirements of the order would not advance the Federal Government’s interests in achieving economy and efficiency in Federal procurement. The proposed language in § 9.5(c) is consistent with the language in section 6(a)(i) of Executive Order 14055. The Department interprets this circumstance to be effectively the same as the agency exemption that was included in section 4 of Executive Order 13495, which authorized an exemption where the nondisplacement

requirements “would not serve the purposes of [the] order or would impair the ability of the Federal Government to procure services on an economical and efficient basis.” Both the Executive Order 13495 and Executive Order 14055 versions of this exception require consideration of whether, in the specific circumstances of the particular contract, economy and efficiency will not be served if the contract clause is incorporated. In 2011, the Department issued detailed regulations to implement the Executive Order 13495 exemption, including factors that could be considered and others that could not be considered. *See* 76 FR at 53726–29 (discussion of comments); 29 CFR 9.4(d)(4) (2012) (regulatory text). The Department has not received information suggesting that, during the several years in which the prior regulations were in effect, these factors were over- or under-prescriptive or abused by contracting agencies. The AFL–CIO noted in its comment that the prior nondisplacement procedure was a “resounding success.”

In § 9.5(c), as it did in the regulations implementing Executive Order 13495, the Department proposed to include language stating that the written analysis that accompanies the determination must, among other things, compare the anticipated outcomes of hiring predecessor contract employees with those of hiring a new workforce. In addition, the Department proposed to include the same requirement as under the prior regulations that the consideration of cost and other factors in exercising the agency’s exception authority must reflect the general findings made in section 1 of the Executive order that the government’s procurement interests in economy and efficiency are normally served when the successor contractor hires the predecessor’s employees. Thus, if the agency finds that costs or other factors support an exception from the nondisplacement requirements, it must specify how the particular circumstances support a conclusion contrary to the general findings of the order.

In § 9.5(c)(1), the Department proposed to include a non-exhaustive list of factors that the contracting agency may consider in making its determination. These factors are the same factors that the Department adopted in the regulations that implemented Executive Order 13495. They include circumstances where the use of the carryover workforce would greatly increase disruption to the delivery of services during the period of transition between contracts. This might

occur where, for example, the entire predecessor workforce would require extensive training to learn new technology or processes that would not be required of a replacement workforce. They also include emergency situations, such as a natural disaster or an act of war, that physically displace incumbent employees. Finally, they include situations where the senior official at the contracting agency reasonably believes, based on the predecessor employees' past performance, that the entire predecessor workforce failed, individually as well as collectively, to perform suitably, and it would not be economical or efficient to provide supplemental training to these workers.

As the Department explained in the NPRM, a determination that the entire workforce failed cannot be made lightly. A senior agency official who makes such a determination must demonstrate that their belief is reasonable and is based upon reliable evidence that has been provided by a knowledgeable source, such as department or agency officials responsible for monitoring performance under the contract. Absent an ability to demonstrate that this belief is based upon reliable evidence, such as written credible information provided by such a knowledgeable source, the employees working under the predecessor contract in the last month of performance would be presumed to have performed suitable work on the contract. Alone, information regarding the general performance of the predecessor contractor is not sufficient to justify an exception. It is also less likely that the agency would be able to make this showing where the predecessor employed a large workforce.

In § 9.5(c)(2), the Department proposed to list factors that the contracting agency may not consider in making an exception determination related to economy and efficiency. These include any general presumptions that directly contravene the purpose and findings of the order, such as any general presumption—without contract-specific facts—that the use of a carryover workforce would increase (as opposed to decrease) disruption of services during the transition between contracts. While, as described above, contract-specific factors demonstrating a potential for disruption are a potential factor that may be considered, any general presumption as to such disruption would be contrary to and inconsistent with the purpose and findings of the order. Similarly, it would not be appropriate to consider hypothetical cost savings that a contractor might attempt to achieve by

hiring a workforce with less seniority given the critical benefits that an experienced contractor workforce provides to the government.

The Department proposed in § 9.5(c)(2), as it did in the regulations that implemented Executive Order 13495, to preclude agencies from using any potential reconfiguration of the contract workforce by the successor contractor as a factor in supporting an exception. Successor contractors are permitted to reconfigure the staffing pattern to increase the number of employees employed in some positions while decreasing the number of employees in others. In such cases, providing a right of first refusal does not affect the contractor's ability to do so, except that proposed § 9.12(c)(3) would require the contractor to examine the qualifications of each employee to minimize displacement. Thus, any potential for reconfiguration cannot justify excepting the entire contract from coverage.

The Department also proposed in § 9.5(c)(2), as it did in the regulations that implemented Executive Order 13495, to prohibit any exception decision based solely on the contract performance by the predecessor contractor. This would include the termination of a service contract for default, which, standing alone, would not satisfy the exception standards of section 6(a)(i) of the Executive order. Such defaults, as well as other performance problems not leading to default, may result from poor management decisions of the predecessor contractor that have been addressed by awarding the contract to another entity. Even where contract problems can be traced to specific poor performing service employees, that is not necessarily sufficient to justify invocation of the exception, as, consistent with section 3(a) of the Executive order, the successor contractor can decline to offer the right of first refusal to employees for whom the contractor reasonably believes, based on reliable evidence of the particular employees' past performance, that there would be just cause to discharge the employees.

Finally, the Department proposed in § 9.5(c)(2) to limit contracting agencies from considering wage rates and fringe benefit rates of services employees in most circumstances. Minimum wage and fringe benefit rates are set by the SCA and the Executive orders governing minimum wage and sick leave for Federal contractors, and these rates will therefore apply regardless of whether the predecessor workforce is rehired. Thus, as a general matter, cost savings

from a reduction in wage or fringe benefits is not an appropriate basis for making an exception for a contract from the order's requirements. Moreover, even where cost savings may be achieved theoretically by lowering wages and fringe benefits, such savings would be an inappropriate basis alone for an exception from the order because higher wages and benefits allow for the employment of workers with more skills and experience. *Cf.* 48 CFR 52.222–46(c) (stating, with regard to professional contracts not subject to the SCA, that “[p]rofessional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements”). While barring the consideration of wage costs in most circumstances, the proposed language in § 9.5(c)(2) would allow such costs to be considered in exceptional circumstances. These exceptional circumstances would be limited to emergency situations; where the entire workforce would need significant training; or in other similar situations in which the cost of employing a carryover workforce on the successor contract would be prohibitive.

The AFL–CIO expressed general support for the Department's approach to agency exceptions, including the Department's decision to provide a set of specific factors in § 9.5(c) that the agency may and may not consider in determining whether an exception is appropriate. The Coalition stated that the Department's proposed agency exception process was a “good start.” The Coalition in particular supported the requirement in § 9.5(c) that an agency justify its deviation from the order's assessment of the benefits of nondisplacement if it seeks to rely on costs as a basis for exception. The Coalition stated that this requirement would promote a thorough and consistent analysis across agencies. They also stated that this requirement is in line with general principles under the Procurement Act, under which, they explained, “economy and efficiency are not necessarily promoted by contracting with the lowest bidder or seeking to minimize costs with a less effective workforce.”

The Coalition also suggested a number of changes to the procedural requirements in § 9.5(c). As an initial matter, the Coalition recommended that the required comparison of anticipated outcomes should include a cost-benefit analysis in a standard format, as

determined by the Secretary, that estimates the direct and indirect costs of employee turnover during the first year of the successor contract. The Coalition also suggested amending the discussion of relevant factors in § 9.5(c)(1) and exceptional circumstances in § 9.5(c)(2) to require that any conclusions about potential disruptions or workforce failures must be based on “documented incidents” during the predecessor contract’s period of performance “such as at least two consecutive annual past performance ratings of ‘unsatisfactory’ as defined by FAR 42.1503(b)(4).”

The Department declines to adopt the Coalition’s suggestion that § 9.5(c) include a requirement to carry out a standardized cost-benefit analysis in a format designated by the Secretary. As the Coalition noted, § 9.5(c) already requires agencies to carry out a written analysis that compares the anticipated outcomes of hiring predecessor contract employees with those of hiring a new workforce; and the proposed regulation already provides guidance for how to consider costs as part of that analysis, as well as guidance about factors that are not appropriate. The Department believes the scope of the current § 9.5(c) is sufficient to assist agencies in a way that will lead to consistent decision-making across agencies. Under paragraphs 6(b) and 6(c) of the Executive order, agencies are also required to publish descriptions of the exceptions they have granted on a centralized website and to report to OMB descriptions of these exceptions on a quarterly basis. The Department intends to analyze use of the agency exception process as these regulations are implemented and may consider in the future whether additional procedural requirements (such as the suggested standardized cost-benefit analysis) are necessary.

The Department also declines to adopt the Coalition’s suggestion regarding additional guideposts for the discussion of factors in § 9.5(c)(1) and (c)(2). The existence of two consecutive annual “unsatisfactory” past performance ratings, as suggested by the Coalition, would certainly be relevant evidence for a determination made with reference to the factor at § 9.5(c)(1)(iii). That factor provides for agency exceptions in situations where there is a reasonable belief “based on the predecessor employees’ past performance, that the entire predecessor workforce failed, individually as well as collectively to perform suitably on the job[.]” However, as the Department noted in the NPRM, a contractor’s past performance alone will generally not be sufficient basis to invoke an exception,

because poor performance may result from poor management decisions of the predecessor contractor (and not from failures of the predecessor’s service employees), and the management failures could be addressed by awarding the contract to another entity. Instead, as the Department proposed in the NPRM, the specific reasons for such poor performance ratings would need to be considered. The Department is concerned that adopting the Coalition’s suggested language could give the impression that past performance ratings alone can justify an exception. Thus, the Department declines to adopt the Coalition’s suggested amendments. For the reasons discussed, the final rule adopts § 9.5(c) as proposed.

In § 9.5(d), the Department proposed language to address the second of the three circumstances under which an agency may authorize an exception from the nondisplacement provisions: where their application would substantially reduce the number of potential bidders so as to frustrate full and open competition and not be reasonably tailored to the agency’s needs for the contract. This exception is provided for in section 6(a)(ii) of Executive Order 14055. The proposed language of § 9.5(d) clarified that a reduction in the number of potential bidders is not, alone, sufficient to except a contract from coverage under this authority; the senior procurement executive at the contracting agency must also find that inclusion of the contract clause would frustrate full and open competition and would not be reasonably tailored to the agency’s needs for the contract. The proposed language stated that on finding that inclusion of the contract clause would not be reasonably tailored to the agency’s needs, the agency must specify in its written explanation how it intends to more effectively achieve the benefits that would have been provided by a carryover workforce, including physical and information security and a reduction in disruption of services.

The order requires that any exercise of this authority must be based on a market analysis. This requirement was addressed in proposed § 9.5(a)(2) and (d). This market analysis requirement is consistent with existing requirements in the FAR. During the acquisition process for FAR-covered procurements, an agency must “conduct market research appropriate to the circumstances.” 48 CFR 10.001. Thus, the extent of market research conducted for any acquisition “will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience.” 48 CFR 10.002(b)(1). To justify the exception from the

nondisplacement requirements, the order requires that the market analysis show that adherence to the requirements would “substantially” reduce the number of potential bidders so as to frustrate full and open competition. In proposed § 9.5(d), the Department clarified that the likely reduction in the number of potential offerors indicated by market analysis is not, by itself, sufficient to except a contract from coverage under this authority unless the agency concludes that adhering to the nondisplacement requirements would diminish the number of potential offerors to such a degree that adequate competition at a “fair and reasonable price” could not be achieved and adhering to the nondisplacement requirements would not be reasonably tailored to the agency’s needs.

As with any of the exceptions, where an agency seeks to except a particular contract under this competition-related analysis, the agency is required, consistent with section 6(a) of Executive Order 14055 and proposed § 9.5(b), to provide a “specific written explanation” of why the circumstance exists. Thus, the agency’s market analysis—and consideration of whether the requirements are nonetheless reasonably tailored to its needs—must be documented in a manner sufficient to provide and support such an explanation. *See also* 48 CFR 4.801(b) (requiring sufficient documentation in contract files to support actions taken).

The AFL-CIO stated their general support for the Department’s proposed specific requirements in § 9.5(d). As noted above, however, the AFL-CIO and the Coalition also sought a process by which employees for incumbent contractors would be notified of the potential for an exception 120 days before the solicitation date and allowed to submit comments. The final rule adopts § 9.5(d) as proposed with a slight and nonsubstantive change to the wording of one sentence, and with two limited additions. In a nonsubstantive change, the Department has streamlined the language that explains that a potential reduction in the number of bidders alone is not sufficient to justify the exception. The final rule clarifies that such a reduction is not sufficient “unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price” and adhering to the nondisplacement requirements would not be reasonably tailored to the agency’s needs for the contract.

In the first addition to this paragraph, the Department has included a sentence to provide additional detail regarding

the requirement that the agency determine whether “a fair and reasonable price” can be achieved in order to justify this exception. The new sentence states that “[w]hen determining whether a fair and reasonable price can be achieved, the agency must consider current market conditions and the extent to which price fluctuations may be attributable to factors other than the nondisplacement requirements (e.g., costs of labor or materials, supply chain costs).” The consideration of current market conditions in a price analysis is consistent with agency approaches under FAR subpart 15.4 (Contract Pricing). *See Nomura Enter., Inc.*, B–271215 (May 24, 1996).

Second, the Department has added language to § 9.5(d) to require contracting agencies, to the extent consistent with mission security, to include employees’ representatives in any market-research-related exchanges with industry that are specific to the nondisplacement requirement. *See* 48 CFR 10.002(b)(2) (discussing market research techniques involving industry outreach); 48 CFR 15.201 (encouraging “early exchanges” of information with industry and other interested parties to identify concerns about acquisition strategy). As the Department noted in the NPRM, to satisfy the Executive order’s requirement for an agency exception, the market analysis must be an objective, contemporary, and proactive examination of the market conditions. Accordingly, it would not be appropriate for the agency to except a contract from the nondisplacement requirements on the basis of a market analysis without a proactive effort to determine whether sufficient bidders may exist so as to satisfy full and open competition, including through communication with other knowledgeable sources (such as, where feasible, the representatives of employees currently working in that industry) regarding the services to be provided.

In § 9.5(e), the Department proposed to address the third circumstance in which an agency exception would be appropriate: where adhering to the requirements of the order would otherwise be inconsistent with statutes, regulations, Executive orders, or Presidential Memoranda. This exception basis is articulated in section 6(a)(iii) of Executive Order 14055 and restated in § 9.5(a)(3) of the regulations. In § 9.5(e), the Department proposed to require that contracting agencies consult with the Department prior to excepting contracts on this basis, unless: (1) the governing statute at issue is one for which the

contracting agency has regulatory authority, or (2) the Department has already issued guidance finding an exception on the basis of the specific statute, rule, order, or memorandum to be appropriate. The Department proposed this requirement to provide consistency, to the extent possible, in the application of the order.

NIB commented that the exception process described in § 9.5(e) is, at least as to the legal questions around the JWOD Act, “unnecessary and likely to negatively impact the AbilityOne Program.” NIB noted that unless the Department issues guidance as referenced in the proposed § 9.5(e) regarding the AbilityOne Program, contracting agencies would always be required to consult with the Department before invoking this exception. For this reason, among others, NIB advocated for an express exemption for AbilityOne contracts to remove these steps from the procurement process. Melwood expressed a different but related general concern—that the determination of legal conflicts by contracting agencies “on a case-by-case basis” may lead to inconsistent application or exceptions for AbilityOne authorized contractors. Several other commenters, including SourceAmerica, Peckham Inc., ServiceSource, and Didlake Inc., expressed similar concerns.

The Coalition, on the other hand, commented in support of the proposed consultation requirement in § 9.5(e). In their comment, however, the Coalition advocated that the rule should further require that the Department approve any exception before a contracting agency is allowed to proceed. They also advocated that the Department’s approval should be contingent on a finding that such an exception would be “consistent with the federal government’s interest in promoting competitive integrated employment for people with disabilities, as defined by the Workforce Innovation and Opportunity Act and applicable implementing regulations and guidance issued by the Rehabilitation Services Administration.”

Having considered the comments received regarding the procedure in proposed § 9.5(e), the final rule adopts the text of this paragraph as proposed. Section 6(a) of the Executive order itself provides for a default procedure of individual case-by-case determinations regarding potential legal conflicts with the nondisplacement requirements. The Department agrees with the various commenters that it makes sense to ensure, as much as possible, that these agency exception decisions are not made on an inconsistent basis or with

inconsistent outcomes. The proposed consultation procedure in § 9.5(e) is intended to ensure that these case-by-case determinations are as consistent as possible.

The Department declines to adopt the Coalition’s suggestion that agencies be required to receive approval from the Department, in addition to seeking consultation, before issuing an exception for a contract under § 9.5. The procedure in § 9.5(e) provides an appropriate balance. In most cases, the procedure will require consultation with the Department if a potential conflict is identified. Consultation will allow the Department to share any resources or information with the contracting agency, including how the specific potential conflict has been treated by other agencies. This should decrease the potential for inconsistency, about which commenters expressed concern. Section 9.5(e) also seeks to increase efficiency, without cost to consistency, by eliminating the consultation requirement where the Department has already issued guidance on the potential conflict.

If an agency itself has the authority to interpret and implement a particular law or policy that potentially conflicts with the requirements of Executive Order 14055 or this regulation, the procedure in § 9.5(e) defers in the first instance to that agency and does not require consultation with the Department. Although no consultation is required, the Department encourages communication because the determination of whether a conflict exists between two legal requirements necessarily involves interpreting both legal requirements—and the Department itself has authority to interpret and enforce nondisplacement requirements.

Finally, with regard to the potential conflicts with contracts covered by the JWOD Act, as discussed in section II.B.4. above, the Department has separately addressed these concerns by including a contract clause that applies to all such contracts and subcontracts and instructs contractors that they must implement the JWOD Act (and certain other statutory procurement preference programs) and the nondisplacement provisions in tandem and to the maximum extent possible.

ii. Reconsideration of Agency Exceptions

In the NPRM, the Department proposed language at § 9.5(f) to provide a procedure for interested parties to request reconsideration of agency exception determinations. This proposed language mirrored the procedure that was included in the

regulations that implemented Executive Order 13495. *See* 29 CFR 9.4(d)(5) (2012). In using the term “interested parties,” the Department stated that it intended to extend the opportunity to request reconsideration to affected workers or their representatives, in addition to actual or prospective bidders. The Department stated that it did not intend that the term be limited to actual or prospective bidders as it is under the Competition in Contracting Act. *See* 31 U.S.C. 3551(2). The Department sought input from commenters regarding the proposed procedure.

PSC expressed concerns about the reconsideration process that the Department proposed for both the location continuity decision described in § 9.11 and the agency exception decision in § 9.5. The PSC noted that the Executive order does not expressly provide for a reconsideration process and stated that the process could have negative outcomes, such as by allowing a broad set of individuals or entities to “potentially delay the implementation of business judgments of agency acquisition personnel” and thereby delay acquisitions. PSC warned that the Department’s intent to give a broad meaning to the term “interested parties” could have unforeseen results, like potentially allowing formal requests for reconsideration by governmental jurisdictions that might be competing to be the location of a successor contract.

The Coalition and the AFL–CIO, on the other hand, expressed general support for the concept of a reconsideration provision, but with significant amendments. As noted above, these commenters suggested that agency exception decisions should be made 60 days before a solicitation is issued so that reconsideration could be sought and resolved before the solicitation date. The Coalition also advocated that requests for reconsideration be directed to the Department, not to the contracting agency that proposed the exception. The Coalition noted that this suggestion is “consistent with the fundamental principle of fairness that appeals should not be directed to the original decisionmaker.”

The Department considered these comments within the larger context of the agency exceptions determination and finds that it is not necessary at this time to include the proposed formal reconsideration provision in § 9.5. When an agency seeks to waive the nondisplacement requirements for a particular contract, there are several safeguards to ensure that this procedure is not misused. As adopted in this final

rule, § 9.5(b) of the regulations requires the agency, through its senior procurement executive, to make a written explanation, “including the facts and reasoning supporting the determination,” and to make that determination no later than the solicitation date. Paragraphs 9.5(c) and (d) contain specific additional requirements regarding the factors that must be considered and those that cannot be considered for the first two exception provisions, and § 9.5(e) contains additional procedural requirements where an agency seeks to waive the nondisplacement provisions based on a perceived conflict with another law or policy. If the agency does not issue a timely specific written explanation, then the exception will be inoperative, and the agency will be required to either terminate the contract or cancel the solicitation and properly reissue it or to modify the existing contract to incorporate the nondisplacement contract clause consistent with the procedure outlined in § 9.11(f) of the regulations.

Even without a formal reconsideration provision in the regulations, the Department expects and encourages workers and their representatives to communicate with contracting agencies (and the Department, as appropriate) about any potential agency exception decision. Decisions regarding agency exceptions should be rare. But when they occur, they will generally be fact-specific, and workers and their representatives will likely have important information that can assist agencies in weighing the potential outcomes of a decision regarding an agency exception. Moreover, section 6(b) of the Executive order itself requires agencies to provide notice of an agency exception decision to workers and any collective bargaining representatives. The implication of that notice provision is that contracting agencies should welcome communications from workers or their representatives about an exception decision, and agencies should be prepared to reconsider any decision if they are provided with material facts or persuasive legal arguments that they had not previously considered.

In light of these safeguards—and in particular the availability of the retroactivity mechanism at § 9.11(f)—the Department finds that it is not necessary at this time to implement the formal reconsideration procedure that was previously proposed for § 9.5(f). However, the Department will carefully analyze the publication and reporting of exception decisions that is required under the order, along with feedback

from workers, their representatives, and contractors. If appropriate, the Department may engage in a future notice and comment rulemaking to implement a more formal reconsideration procedure or take other appropriate action such as issuance of subregulatory guidance.

The Department therefore is removing the reconsideration provision that was at § 9.5(f) of the proposed rule and is removing from the contract clause, set forth in Appendix A, the language that required notices of agency exceptions to include reference to the manner of directing a request for reconsideration.

iii. Notification, Publication, and Reporting of Agency Exceptions

In the NPRM, the Department proposed to include in the regulations at § 9.5(g) a recitation of the notification, publication, and reporting requirements contained in sections 6(b) and 6(c) of the order. Section 6(b) of the order requires agencies, to the extent permitted by law and consistent with national security and executive branch confidentiality interests, to publish, on a centralized public website, descriptions of the exceptions it has granted under that section, and to ensure that the contractor notifies affected workers and their collective bargaining representatives, if any, in writing of the agency’s determination to grant an exception. Section 6(c) of the order also requires that, on a quarterly basis, each agency must report to the OMB descriptions of the exceptions granted under this section.

The Department received comments from the Coalition and the AFL–CIO regarding these notice and publication provisions. The commenters proposed revisions to the timeframe for notice of agency exceptions decisions so that agencies would have to notify workers and their representatives of a proposed exception no later than 120 days before a bid solicitation goes out to give workers time to comment on the proposed exception, the agency to respond, and the workers to request reconsideration (from the Department). The Coalition and Jobs to Move America also encouraged the Department to provide guidance to agencies about the form, content, and accessibility of the required publications on agency websites that are required by section 6(b) of the order, and to periodically monitor their compliance. They also stated that the Department could also promote the purposes of the order and transparency into government decision-making by coordinating with OMB to ensure that the quarterly reports that it receives from agencies are compiled and

published on a centralized public website.

The Department acknowledges these comments, but notes that section 7(a) of the Executive order does not provide the Department with the authority to issue implementing regulations regarding the notice and publication requirements in paragraphs 6(b) and (c) of the order. 86 FR at 66399. For that reason, the Department's proposed regulations at § 9.5(g), which are finalized in § 9.5(f) of the final rule, are recitations of the text of the Executive order itself and do not include any additional detail. For contracts that are subject to the FAR, the regulations that are implemented by the FAR Council may include additional instructions regarding the notice, publication, and reporting requirements.

Accordingly, the final rule adopts the language regarding notice, publication, and reporting provisions as proposed, except that the language now appears in § 9.5(f) of the final rule instead of § 9.5(g) to account for the removal of the reconsideration language previously proposed for § 9.5(f).

Subpart B—Requirements

6. Section 9.11 Contracting Agency Requirements

As proposed, § 9.11 would implement sections 3 and 4 of *Executive Order 14055*. Section 3 of the order directs agencies to ensure that covered contracts and solicitations include the nondisplacement contract clause. 86 FR at 66397–98. Section 4 of the order directs agencies to consider, during the preparation of a covered solicitation, whether performance of the work in the same locality or localities in which the contract is currently being performed is reasonably necessary to ensure economical and efficient provision of services—and, if so, to include a requirement or preference for location continuity in the solicitation. *Id.* at 66398–99.

Proposed § 9.11 specified contracting agency responsibilities to incorporate the nondisplacement contract clause in covered contracts, to ensure notice is provided to employees on predecessor contracts of their possible right to an offer of employment, and to consider whether performance of the work in the same locality or localities in which a predecessor contract is currently being performed is reasonably necessary to ensure economical and efficient provision of services. The proposed section also specified contracting agency responsibilities to provide the list of employees working under the predecessor contract and its subcontracts to the successor, to forward

complaints and other pertinent information to WHD when there are allegations of contractor non-compliance with the nondisplacement contract clause or this part, and to incorporate the contract clause when it has been erroneously omitted from the contract.

i. Section 9.11(a) Incorporation of Contract Clause

Section 3(a) of Executive Order 14055 specifies the contract clause that must be included in solicitations and contracts for services that succeed contracts for the performance of the same or similar work. 86 FR 66397. Proposed § 9.11(a) provided a regulatory requirement to incorporate the contract clause specified in Appendix A into covered service contracts, and solicitations for such contracts, except for procurement contracts subject to the FAR. For procurement contracts subject to the FAR, contracting agencies would use the relevant clause developed to implement this rule set forth in the FAR. As the proposed rule explained, that clause must both accomplish the same purposes as the clause set forth in Appendix A and be consistent with the requirements set forth in this rule.

Including the full contract clause in a covered contract is an effective and practical means of ensuring that contractors receive notice of their obligations under Executive Order 14055. Therefore, the Department prefers that covered contracts include the contract clause in full. However, as the Department noted in the proposed rule, there could be instances in which a contracting agency or a contractor does not include the entire contract clause verbatim in a covered contract or solicitation for a covered contract, but the facts and circumstances establish that the contracting agency or the contractor sufficiently apprised a prime or lower-tier contractor that the Executive order and its requirements apply to the contract. In such instances, the Department believes it would be appropriate to find that the full contract clause has been properly incorporated by reference. *See Nat'l Electro-Coatings, Inc. v. Brock*, No. C86–2188, 1988 WL 125784, at *4 (N.D. Ohio 1988) (finding SCA clause was enforceable where the SCA contract clause was not incorporated “verbatim,” but the contract incorporated by reference a GSA form that set forth the provisions of the SCA); *Progressive Design & Build, Inc.*, WAB No. 87–31, 1990 WL 484308, at *2 (Feb. 21, 1990) (finding subcontractor liable for Davis-Bacon Act (DBA) back wages where the DBA contract clause was not physically

incorporated into subcontracts, but was incorporated by reference). The Department specifically noted in the proposed rule that the full contract clause will be deemed to have been incorporated by reference in a covered contract when the contract provides that “Executive Order 14055 (Nondisplacement of Qualified Workers Under Service Contracts), and its implementing regulations, including the applicable contract clause, are incorporated by reference into this contract,” with a citation to a web page that contains the contract clause in full or to the provision of the Code of Federal Regulations containing the contract clause set forth at Appendix A. Similarly, under the FAR, a contract that contains a provision expressly incorporating contract clauses by reference gives those clauses the same force and effect as if they were given in full text. *See* 48 CFR 52.107, 52.252–2.

ii. Appendix A Contract Clause

Appendix A contains the nondisplacement contract clause that must be inserted in covered contracts as required by § 9.11(a). The proposed language of the contract clause in Appendix A is based on the language of the clause that appears in the Executive order itself. Contract clause paragraphs (a) through (e) of proposed Appendix A repeat the language in paragraphs (a) through (e) of the Executive order's contract clause verbatim, with one exception. The Department proposed to modify the contract clause by inserting the number of the Executive Order, 14055, to replace the blank line that appears in paragraph (d) of the contract clause contained in the order, as its number was not known at the time the President signed the order.

As proposed, contract clause paragraph (a) would require the successor contractor and its subcontractors to provide the service employees employed under the predecessor contract (including its subcontracts) the right of first refusal of employment in positions for which the employees are qualified. Proposed contract clause paragraph (b) would create two exceptions to the right of first refusal. One was for employees who are not service employees and the other was for any employee for whom there would be just cause to discharge based on evidence of the particular employee's past performance. Proposed contract clause paragraph (c) would require contractors to furnish the contracting officer with a list of employees that the contracting officer would provide to the successor contractor to ensure the

successor contractor has the information necessary to provide the employees with the right of first refusal. Proposed contract clause paragraph (d) provided that the Secretary may pursue sanctions against a contractor for its failure to comply with Executive Order 14055. Proposed contract clause paragraph (e) would require contractors to include provisions in their subcontracts that ensure that each subcontractor honor the requirements of paragraphs (a) through (c) and would require contractors to take any action with respect to any such subcontract as may be directed by the Secretary as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

Proposed Appendix A set forth additional provisions necessary to implement the Executive order. As the proposed rule explained, the additional paragraphs would appear in paragraphs (f) through (i) of the contract clause contained in Appendix A to part 9. Specifically, proposed contract clause paragraph (f)(1) provided notice that the contractor must furnish the contracting officer with a certified list of names of all service employees working under the contract (including its subcontracts) at the time the list is submitted. The list must also include anniversary dates of employment of each service employee on the contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Proposed paragraph (f)(1) further explained that if there are changes to the workforce made after the submission of this certified list, the contractor must, in accordance with proposed paragraph (c), furnish the contracting officer with an updated certified list of all service employees employed within the last month of contract performance, including anniversary dates of employment.

Proposed contract clause paragraph (f)(2) provided notice that under certain circumstances the contracting officer would, upon their own action or upon written request of the Administrator, withhold or cause to be withheld as much of the accrued payments due on either the contract or any other contract between the contractor and the Government that the Administrator requests or that the contracting officer decides may be necessary to pay unpaid wages or to provide other appropriate relief due under part 9.

Proposed contract clause paragraph (f)(3) provided that contractors would deliver notices to their employees of an agency determination to except a successor contractor from the nondisplacement requirements of 29

CFR part 9, or to decline to include location-continuity requirements or preferences in a successor contract.

In contract clause paragraph (g), the Department proposed to require the contractor to maintain certain records to demonstrate compliance with the substantive requirements of part 9. As proposed, this paragraph would enable contractors to understand their obligations and provide a readily accessible list of records that contractors would be required to maintain. The proposed paragraph specified that the contractor would be required to maintain the particular records (regardless of format, *e.g.*, paper or electronic) for 3 years. The proposed paragraph further specified that such records would include copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the employees from the predecessor contract to whom an offer was made; a copy of any record that forms the basis for any exclusion or exception claimed under part 9; a copy of the employee list(s) provided to or received from the contracting agency; and an entry on the pay records for an employee of the amount of any retroactive payment of wages or compensation under the supervision of the WHD Administrator, the period covered by such payment, and the date of payment, along with a copy of any receipt form provided by or authorized by WHD. The proposed clause also stated that the contractor is to deliver a copy of the receipt form provided by or authorized by WHD to the employee and, as evidence of payment by the contractor, file the original receipt signed by the employee with the Administrator within 10 business days after payment is made.

Proposed contract clause paragraph (h) would require the contractor, as a condition of the contract award, to cooperate in any investigation by the contracting agency or the Department into possible violations of the provisions of the nondisplacement clause and to make records requested by such official(s) available for inspection, copying, or transcription upon request. Proposed contract clause paragraph (i) provided that disputes concerning the requirements of the nondisplacement clause would not be subject to the general disputes clause of the contract. Instead, such disputes would be

resolved in accordance with the procedures in part 9.

The Coalition requested that the Department explicitly provide in the contract clause a statement that covered employees are intended third-party beneficiaries of the contract clause. The Coalition explained that this would give employees the ability to pursue private litigation to enforce Executive Order 14055. The Department does not adopt the Coalition's suggestion. Section 12(c) of Executive Order 14055 states that the order "is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person." 86 FR 66400. The Department interprets this language to limit its discretion to create or authorize a private right of action. *Accord* 86 FR 67192 (interpreting identical language to similarly limit discretion under Executive Order 14026). The Department declines to amend the contract clause to expressly designate workers as third-party beneficiaries of the contract's nondisplacement requirements. While the Coalition noted that Executive Order 14055 "explicitly create[s] particular nondisplacement rights for workers," the Department believes that section 12(c) of the order is clear in limiting the Department's ability to create or authorize a private right of action under Executive Order 14055. As explained in § 9.1(c), however, neither Executive Order 14055 nor this part creates or changes any private right of action that may exist under other applicable laws. Thus, nothing is intended to limit or preclude a civil action under the False Claims Act, 31 U.S.C. 3730, or criminal prosecution under 18 U.S.C. 1001. Likewise, whether a worker could make a third-party beneficiary claim under relevant state law would be determined by such state law.

The Department did not receive additional comments on proposed § 9.11(a) or on the proposed contract clause in Appendix A, and thus the final rule adopts them as proposed, with the following exceptions. The Department has added language to § 9.11(a) to reflect that the application of the FAR nondisplacement clause will take place under the procedures set forth in the FAR, as well as paragraph (f)(3) of Appendix A to add reference to the requirement from § 9.12(e)(3) that predecessor contractors provide notice to employees of their possible right to an offer of employment on the successor contract. The Department also made several revisions to the contract clause

for purposes of clarity and to reflect revisions to the regulations that are discussed elsewhere in this final rule.

iii. Section 9.11(b) Notices

Proposed § 9.11(b) specified that when a contract will be awarded to a successor for the same or similar work, the contracting officer must take steps to ensure that the predecessor contractor provides written notice to service employees employed under the predecessor contract of their possible right to an offer of employment, consistent with the requirements in § 9.12(e)(3). The Department did not receive any comments on proposed § 9.11(b). Comments addressing the other notice requirements contained in this rule are addressed in the preamble sections corresponding to where they appear in the regulatory text. The final rule adopts § 9.11(b) as proposed, other than, for clarity, adding a cross-reference to the other employee notice provisions found at § 9.11(c)(4) (relating to notice to employees' representatives to provide information relevant to the location continuity analysis), and where relevant, § 9.5(f) (relating to agency exceptions).

iv. Section 9.11(c) Location Continuity

Section 9.11(c) implements the location continuity requirements in section 4 of Executive Order 14055. Section 4(a) of the order states that, in preparing covered solicitations, contracting agencies must consider whether performance of the work in the same locality or localities in which the contract is currently being performed is reasonably necessary to ensure economical and efficient provision of services. 86 FR at 66398. Section 4(b) states that, if a contracting agency determines that performance in the same locality is reasonably necessary, then the agency must, to the extent consistent with law, include a requirement or preference in the solicitation for the successor contract that it be performed in the same locality or localities. 86 FR at 66399. For IDIQ contracts under the MAS and other similar programs, the location continuity determination would be made by the ordering agency prior to issuing the RFQ. *See* 48 CFR 8.405–1(d)(2), 8.405–2(b)–(c), 8.405–3(b)(ii) (requiring statements of work and/or RFQs for proposed orders and blanket purchase agreements exceeding the simplified acquisition threshold).

These requirements represent a different approach to location considerations than the prior nondisplacement provisions in Executive Order 13495. The new

requirements seek to increase the government's opportunity to benefit from carryover workforces even where a contract location changes, but the requirements also place significantly more emphasis on the potential benefits of keeping contract locations constant. Executive Order 13495 limited the application of the nondisplacement requirements to contracts for similar services at the "same location." 74 FR at 6104. Executive Order 14055, in contrast, does not contain such a limitation. As a result, Executive Order 14055 applies the nondisplacement requirements regardless of the location of the successor contract. Even if the place of performance for a successor contract will be in a different locality from the predecessor contract, the successor contract will still be required to include the nondisplacement contract clause and the successor contractor will still be required to provide workers on the predecessor contract with a right of first refusal for positions on the new contract. Section 3(b) of Executive Order 14055, however, clarifies that these requirements should not be construed to require or recommend the payment of relocation costs to workers who exercise their right to take a new position when a contract location is moved. 86 FR at 66398. Executive Order 14055 recognizes this through the location continuity requirements in section 4 of the order, as well as in a discussion of location continuity in section 1 of the order. *Id.* at 66397–99. The central location continuity provisions, in section 1 and section 4 of Executive Order 14055, reflect the basic but important conclusion that the right of first refusal in the contract clause may have a more limited effect in many circumstances if a contract is moved beyond commuting distance from the predecessor contract. Section 1 states that location continuity can often provide the same benefits that stem from the core nondisplacement requirement—which, the order explains, includes reducing disruption in the delivery of services between contracts, maintaining physical and information security, and providing experienced and well-trained workforces that are familiar with the Federal Government's personnel, facilities, and requirements. 86 FR 66397. The benefits of using a carryover workforce and location continuity are intertwined because for many contracts, in particular those on which workers cannot or may not be allowed to work in a fully remote capacity, moving performance to a different locality will mean that most (or all) of the incumbent contractor's

workers will ultimately not be able or willing to relocate and therefore will not provide a carryover workforce. In such circumstances, imposing a location continuity requirement or preference may be the best way to ensure the effectiveness of Executive Order 14055. For that reason, the provisions of section 4 of the order require that for each covered contract, the contracting officer consider whether to include a requirement or preference for location continuity. *See* 86 FR at 66398–99. The Department proposed to restate these requirements from the order in § 9.11(c)(1) and § 9.11(c)(2), respectively.

The Department received several general comments regarding the location continuity requirements in the order and in the proposed text of § 9.11(c). The AFL–CIO and the Coalition expressed strong support for the requirements. The Coalition stated that the benefits of retaining experienced workers are no different for contracts that change locations. They provided the example of a 2008 decision by the State Department to move a call center contract for the National Passport Center to Michigan from New Hampshire, where it had been operating for 12 years. The decision resulted in the termination of hundreds of trained workers and allegations of significant service disruptions.⁵ The AFL–CIO agreed with the NPRM that the benefits of using a carryover workforce and location continuity are intertwined. They stated that absent a location continuity requirement, there is "significant risk that the broader benefits of the nondisplacement rule will not be realized."

In contrast, ABC and Nakupuna opposed the location continuity provision in its entirety. ABC commented that the combination of the location continuity provisions and the elimination of the "same location" requirement from the prior nondisplacement order "will needlessly limit successor contractors from performing the work in a new locality with employees who are familiar with the new location." Nakupuna expressed concern that the required location continuity analysis will be burdensome for agencies and that "any subsequent final decision will severely constrain the government if labor market

⁵ *See* "Call Center to Close in Dover; 300 Jobs Cut," Associated Press (Dec. 3, 2008), <https://www.seacoastonline.com/story/news/2008/12/03/call-center-to-close-in/52169521007/>; "Local AT&T Worker Claims Mich. Call Center Backed Up," *Fosters Daily Democrat* (Mar. 11, 2009), <https://www.fosters.com/story/news/2009/03/11/local-at-t-worker-claims/52067699007/>.

conditions change rapidly throughout the solicitation, award, and hiring/staffing process.” Nakupuna thus advocated for limiting coverage of the nondisplacement rule only to the same location, and “specifically the same Federal facility.”

The Department reviewed and considered the above general comments regarding the location continuity provisions and declines to eliminate these provisions in the final rule. The Executive order expressly requires agencies to consider location continuity and include location continuity requirements or preferences where reasonably necessary. 86 FR at 66398–99. Accordingly, § 9.11(c)(1) and (c)(2), as finalized, include these requirements within the subpart of the regulations that addresses contracting agency requirements.

The Department, however, also disagrees with ABC and Nakupuna that the location continuity requirements will have adverse effects. Even though there is no express requirement to do so in the FAR, agencies already in many cases require contracts to be performed at specific locations or otherwise consider whether to include location continuity requirements in solicitations. For example, where the services at issue are related to the physical security or maintenance of a specific Federal facility, the location of the contract performance will not be in question. In other circumstances, where the Federal employees who receive services from or provide oversight for the contract at issue are located at a specific Federal facility, location continuity or a related geographic limitation may be appropriate to ensure continuity of services or facilitate site visits to the contractor’s facilities for oversight or collaboration purposes. *See, e.g., Novad Mgmt. Consulting, LLC*, B–419194.5, 2021 WL 3418798, at *3–4 (July 1, 2021) (finding geographic limitation to locate contracted loan services within 50 miles of Tulsa to be appropriate to facilitate oversight and monitoring of contractor facility by agency’s Tulsa office). In still other cases, however, where the place of performance would otherwise be unspecified, a location continuity requirement or preference may be reasonably necessary to ensure economical and efficient provision of services.

Executive Order 14055 does not suggest that a location continuity requirement is appropriate in all circumstances. Rather, it instructs contracting agencies to consider whether to impose such a requirement or preference on a case-by-case basis. 86 FR at 66398–99. In some cases, location

continuity may be particularly important because the use of a carryover workforce provides critical benefits. This may be particularly true, for example, where the incumbent workforce on the contract handles classified information or sensitive information, such as personal financial or identifiable information. For such workforces, the contracting agency may have an overriding interest in keeping the contract’s incumbent employees—whose dependability and trust have already been tested—rather than starting over with a new set of contractor employees. One commenter, PSC, while opposing several of the procedural safeguards that the Department proposed for the location continuity requirement, noted its general agreement that location continuity might be appropriate where related to “efficiency in facilities or with regard to classified information management.”

The Department also noted in the NPRM that there will be other cases in which changed agency needs may outweigh the basic interest in a carryover workforce. If, for example, an agency moves the Federal facility that will be providing oversight for the contract from one state to another, it may make sense not to require or prefer location continuity but instead to move the preferred contract locality along with the related Federal facility even if it may have a detrimental effect on contract-employee retention. The Coalition provided another example in their comment. If workers under the predecessor contract have been primarily working in a fully remote capacity, location continuity may be less necessary to obtain the goals of the order, particularly if the solicitation contemplates the continued availability of remote work on the successor contract. As discussed below, the Department is not limiting contracting agencies from considering any aspects of agency requirements in making location continuity determinations. Accordingly, the Department does not agree with ABC or Nakupuna that the location continuity provisions will unnecessarily limit or constrain agency decision-making.

(A) “Same Location” and “Same Locality”

COFPAES requested clarification regarding the meaning of the Executive order’s statement in section 1 that the same benefits of the nondisplacement order are also realized when the successor contractor performs the work at “the same location where the predecessor contract was performed.” *See* 86 FR 66397. COFPAES stated that

this reference was confusing because the NPRM explained that the order’s coverage applies coextensively with the SCA, and therefore applies irrespective of where the contractor performs the work. *See* 29 CFR 4.133(a).⁶ COFPAES also stated that the nondisplacement requirements would be “unworkable and impractical” if applied to mapping or engineering design firms where “a deliverable of plans and specifications is prepared on the contractor’s site and delivered to the government.”

The order uses two slightly different terms to discuss the same concept: “same location” (in section 1) and “same locality” (in section 4). 86 FR at 66397–98. The operative requirement of the order is in section 4 of the order and in § 9.11(c)(1) and (c)(2) of the regulations, all of which require consideration of whether performance of the work in the “same locality or localities” is reasonably necessary for economy and efficiency. *See* 86 FR at 66398. The Department interprets this language to mean performance within a reasonable commuting distance of the specific facility at which the predecessor contract employees worked or were based, or, where relevant, within commuting distance of the locality in which most of the predecessor contract employees live. As noted in the NPRM, the language about contract “location” and “locality” and sections 1 and 4 of the order reflect the basic conclusion that the right of first refusal in the nondisplacement contract clause may have a more limited effect if a contract is moved beyond commuting distance from the predecessor contract, such that predecessor employees may be less likely to accept an offer of employment on the successor contract. Accordingly, a “same locality” preference or requirement generally means a preference or requirement that the location of the facility at which employees will be working or operations will be headquartered (if covered employees work remotely) be sufficiently within the same general geographic area such that employees on the predecessor contract could continue to work on the successor contract without having to move their residences.

The Department’s understanding of the concept of “location” and “locality” in Executive Order 14055 is consistent with the FAR Council’s interpretation of

⁶ COFPAES also stated that the nondisplacement provisions are inconsistent with the Brooks Act, 40 U.S.C. 1101 et seq, and its implementing regulations and stated that these types of contracts should be exempted from coverage. The Department has addressed this request for an exemption above in section II.B.4.

the term “same location” as it was used in Executive Order 13495. In its final rule implementing Executive Order 13495, the FAR Council refrained from narrowly defining the term to mean the “same building, base, city, command” or something else. See 77 FR 75766, 75768–69. Instead, it stated that what constitutes the “same location” in that context “will depend upon the geographic area in which performance under the predecessor and successor contracts occur” and can be resolved with reference to the statement of work or similar contract provision. *Id.* at 75769. The Department’s understanding of these terms is also consistent with the interpretation of the term “locality” as it is used in the SCA to define the geographic unit within which prevailing wages are calculated. See 41 U.S.C. 6703(1). In the SCA context, the Department and reviewing courts have given the word “locality” a flexible but not unlimited meaning, see *S. Packaging & Storage Co. v. United States*, 618 F.2d 1088 (4th Cir. 1980), such that a “locality” typically encompasses a metropolitan statistical area (MSA) or similar grouping of nonmetropolitan counties.⁷

(B) Location-Continuity Factors

In the NPRM, the Department sought comment on whether § 9.11(c) should provide additional guidance on the relevant factors that an agency should consider when it is considering location continuity, and, if so, which factors to include and whether to provide guidance regarding any particular weight that should be given to each of them. The Department sought comment on whether contracting agencies should be required to start with a presumption in favor of location continuity, and regarding when, if ever, it is appropriate for contracting officers to consider costs as a reason to decline to require location continuity. The Department also sought comment on how the HUBZone program or other procurement-related programs⁸ should factor into a location-continuity analysis, how an agency should weigh the history of remote work or telework by incumbent contractor employees, and whether there are circumstances in which the contracting agency should

indicate in the solicitation that telework is permitted or require the successor contractor to allow workers to telework.

The AFL–CIO and the Coalition encouraged the Department to apply a presumption in favor of location continuity. The AFL–CIO further proposed that contracting agencies should have to identify clear and convincing evidence to rebut such a presumption. They noted that it may be appropriate to presume that the contracting agency chose the location of the predecessor contract for a substantial reason, and that keeping the same location increases the benefits of the nondisplacement provisions by making it more likely that predecessor employees will be able to accept an offer from the successor contractor. Accordingly, they suggested, the burden should be on the contracting agency to explain why the location of a contract should be moved.

The Coalition also urged the Department to provide additional guidance to contracting agencies in the final rule regarding relevant factors for a location-continuity determination and regarding the consideration of cost. The Coalition proposed several factors, including (1) the size of the workforce under the new contract; (2) the level of experience and training of the incumbent workforce; (3) whether workers on the predecessor contract have access to any sensitive, privileged, or classified information; and (4) prior successful performance by the predecessor workforce. The Coalition urged a general prohibition on the consideration of labor costs, asserting that the policy of the Executive order prefers the benefits of worker nondisplacement over potential reduction in labor costs.

PSC, on the other hand, urged the Department not to impose a presumption in favor of location continuity or to provide guidance regarding factors to consider. They commented that a presumption would “put[] agencies in the position of having to prove a negative” and would “intrude[] on acquisition judgements.” They expressed concern that guidance regarding factors to consider would lead to a “check-the-box exercise on factors that may be irrelevant to the agency, and potentially downplay factors that really matter to the agency,” and that, even if the factors are framed as optional, they “may not be optional in practice.” PSC stated that costs must always be a permissible consideration with regard to location continuity, “with the scope of other potential considerations left to the contracting officer’s discretion.” They added that if “economy and efficiency

are realized by requiring successors to offer employment to predecessor employees by location, those efficiencies must be balanced with costs that may result from imposing that requirement.”

The Department does not agree with PSC that the provision of guidance regarding factors to consider in the location-continuity analysis will confuse contracting officers or undermine their business judgement. The provision of nonexclusive lists of factors for contracting officers to consider is a routine aspect of contract formation. See, e.g., 48 CFR 15.304 (Evaluation factors and significant subfactors). In addition, as the Department noted in the NPRM, many covered contracts will not require consideration of factors related to nondisplacement because the location of the services must be fixed for other reasons. For example, an agency drafting a solicitation for a successor contract for janitorial or security services for a specific federal facility would not need to consider nondisplacement factors as part of a location-continuity analysis because there is no reasonable possibility that the location of the services could be moved. However, where the agency believes the services could possibly (nondisplacement factors aside) be carried out at a different location, the location-continuity analysis required by the Executive order should include consideration of the nondisplacement factors. The final rule, therefore, includes at § 9.11(c)(3) a nonexclusive list of factors that are important to consider when there is a possibility that the successor contract could be performed in a locality other than where the predecessor contract has been performed.

The list of factors in § 9.11(c)(3) includes: (i) whether factors specific to the contract at issue suggest that the employment of a new workforce at a new location would increase the potential for disruption to the delivery of services during the period of transition between contracts (e.g., the large size of workforce to be replaced or the relatively significant level of experience or training of the predecessor workforce); (ii) whether factors specific to the contract at issue suggest that the employment of a new workforce at a new location would unnecessarily increase physical or informational security risks on the contract (e.g. whether workers on the contract have had and will have access to sensitive, privileged, or classified information); (iii) whether the workforce on the predecessor contract has

⁷ The Office of Management and Budget designates counties or groups of counties as MSAs as part of its core based statistical area (CBSA) standards. See 86 FR 37770 (July 16, 2021).

⁸ The HUBZone program, 15 U.S.C. 657a, is one of several procurement-related preference programs for small businesses, and it is designed to aid small businesses that are located in economically distressed areas. See *supra* footnote 2 in section II.B.4. Of all existing small business preference programs, the HUBZone program is the only one that has a geographic component.

demonstrated prior successful performance of contract objectives so as to warrant a preference to retain as much of the current workforce as possible; and (iv) whether program-specific statutory or regulatory requirements govern the method through which the location of contract performance must be determined or evaluated, or other contract-specific factors favor the performance of the contract in a particular location.

The listed factors added in § 9.11(c)(3) of the final rule follow directly from the policy and purpose of the Executive order as described in section 1 therein. *See* 86 FR at 66397. The first three factors will generally weigh in favor of location continuity.

The Coalition expressed concern about successor contractors eliminating or significantly reducing the options of remote work or telework where it has existed on predecessor contracts. If workers on a predecessor contract have been provided the option of remote work or significant telework, the removal of that option on the successor contract may make it difficult for the successor contractor to maintain a carryover workforce, even if the contract stays in the same location and even if the workers are provided with a nondisplacement right-of-first-refusal offer. Any reduction in the option for remote work, the Coalition asserted, “should be treated as a change in location that is presumed to be disruptive.”

The Department agrees that the removal of telework options by a successor contractor could cause significant disruptions, and consideration of the availability of remote work could therefore be relevant to location continuity determinations. Congress has specifically encouraged the use of telework by Federal contractors. *See* 41 U.S.C. 3306(f) (authorizing telecommuting for Federal contractors); *see also* 48 CFR 7.108 (requiring agencies make a specific determination regarding security or other requirements before prohibiting telecommuting or unfavorably evaluating proposals involving telecommuting). In addition, § 9.12(b)(5) of these regulations limits successor contractors from changing the terms and conditions of predecessor contractors for the purpose of discouraging employees from accepting the offer of employment on the successor contract. That paragraph states that successor contractors generally must offer employees of the predecessor contractor the option of remote work under reasonably similar terms and conditions to those that the successor contractor

offers to any employees it has or will have in the same or similar occupational classifications who work in an entirely remote capacity.

The fourth factor in § 9.11(c)(3) of the final rule reminds contracting officers that it is appropriate to consider any program-specific statutory or regulatory requirements governing the method by which location of performance must be determined or evaluated, or other contract-specific factors that favor the performance of the contract in a particular location. For example, the FAR regulations regarding the architectural and engineering services under the Brooks Act contain their own location preference. *See* 48 CFR 36.602(a)(5). Under this regulation, one of five enumerated selection criteria is: “Location in the general geographical area of the project and knowledge of the locality of the project; provided, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project.” *Id.* Because the Brooks Act already determines that location is to be factored into the solicitation by way of this specific location-continuity preference, it generally would not be appropriate to impose a location-continuity requirement (as opposed to this preference) because of the location-continuity provision in the nondisplacement regulation. This factor is consistent with the Executive order’s mandate in section 4(b) that, upon determining that location continuity is reasonably necessary to ensure economical and efficient provision of services, agencies must include location-continuity requirements or preferences “to the extent consistent with law.” 86 FR at 66399.

The language at § 9.11(c)(3) of the final rule that introduces the relevant location-continuity factors clarifies that the list is nonexclusive. It states that the location-continuity analysis “should generally include, but not be limited to” the listed considerations. The final rule does not contain a required presumption in favor of location continuity, and it does not restrict consideration of costs. Having considered the comments submitted regarding these additional proposed provisions, the Department finds at this time that they are not necessary to achieving the purpose of the order. The final rule requires agencies to approach the location-continuity analysis on a case-by-case basis, while providing guidance regarding the critical benefits that carryover workforces provide and the possibility that changing a contract’s location may have adverse effects on contract performance, physical or

information security, or other proprietary interests of the Federal government.

In this case-by-case analysis, in addition to considering whether a location-continuity requirement is reasonably necessary, the contracting agency must also consider the option of including a location-continuity preference instead of a requirement. Inclusion of a preference still allows the agency to weigh proposals that involve moving a contract to a different location and award the contract to such a bidder if the benefits from moving outweigh the nondisplacement-related and other benefits of maintaining the same contract location. However, in some circumstances where the need for a carryover workforce is stronger (for example, where retaining a carryover workforce may limit risks related to information and physical security), it may be more important to ensure workforce continuity and thus suggest that a location-continuity requirement may be more appropriate than a preference. Ultimately, the decision regarding whether to use a requirement or a preference, like the determination of reasonable necessity, will be a case-by-case determination based on the agency’s analysis of its needs.

PSC responded to the Department’s request for comment about how the HUBZone program or other similar procurement programs should factor into the location-continuity analysis. In their response, PSC suggested that “these considerations would greatly factor into such an analysis.” Though they did not suggest a specific method of balancing the programs or goals, PSC noted that 35 percent of employees of HUBZone contractors must live within a HUBZone.⁹ They also raised the question of whether “equity [would] be realized” if a successor contractor offered a right of first refusal to a HUBZone contractor’s employees “and relocated employees from that HUBZone.”¹⁰

⁹ To benefit from the sole-source awards, set-asides, or price-evaluation preferences under the HUBZone program, a contractor must become certified as a HUBZone small business concern (SBC), which requires that “the principal office of the business is located in a HUBZone and not fewer than 35 percent of its employees reside in a HUBZone.” 15 U.S.C. 657a(d)(1). The SBC also must certify that it will attempt to maintain the 35 percent employment ratio during the performance of any contract awarded on the basis of one of these HUBZone mechanisms. *Id.*

¹⁰ In addition to commenting on the location continuity analysis, PSC also recommended an exemption to the right-of-first refusal requirement when such a right would “impact internal organizational or federal Diversity, Equity, Inclusion and Accessibility goals.” The Department

The Department agrees that aspects of the HUBZone program could be relevant to whether an agency imposes a location-continuity requirement, depending on the facts and circumstances of the particular contract. As an initial matter, if a predecessor contract is located in a HUBZone, a location-continuity requirement or preference for a successor contract would be consistent with the goals of the HUBZone program. And even where the predecessor contract is outside of a HUBZone, a location-continuity requirement or preference would not necessarily be inconsistent with the program, as there is no requirement under the HUBZone program that contracts set aside for or awarded to HUBZone-certified contractors must themselves be performed within a HUBZone. *See Cont. Mgmt., Inc. v. Rumsfeld*, 434 F.3d 1145, 1149 (9th Cir. 2006); *see generally* 48 CFR subpart 19.13. There is also a possibility that a HUBZone-certified contractor could be awarded a contract outside of the sole-source or set-aside processes, instead using only the HUBZone price-evaluation preference or in open competition. Given the breadth of contracts in which this can be the case, it would not be appropriate to give any significant weight against a location-continuity requirement or preference because of this possibility.

However, there may also be circumstances in which a location-continuity requirement for a successor contract at a non-HUBZone location could make it challenging for HUBZone contractors to complete the successor contract while complying with the 35-percent employee-residency requirement. This could be the case, for example, where the contract location is outside of commuting distance from any HUBZone and the workers cannot perform the contract remotely. In such a situation, where an agency identifies the potential for a HUBZone sole-source award or a set-aside, this fact might reasonably weigh against imposing a location-continuity requirement. In that circumstance, however, the contracting agency would still also need to consider whether other aspects of the contract, such as the handling of classified or confidential information, may justify a location-continuity requirement and therefore instead make the contract not suitable for a HUBZone set-aside.

Finally, while there may be circumstances in which the potential for a HUBZone set-aside weighs against a location-continuity requirement, such a

potential will not weigh against the inclusion of a location continuity preference. As a general matter, there is no conflict where a solicitation contains multiple different preferences mandated by different statutes or regulations, as “[e]ach preference can be given its due.” *Automated Comm’n Sys., Inc. v. United States*, 49 Fed. Cl. 570, 577–79 (2001) (finding HUBZone preference and Randolph-Sheppard Act preference can both be applied in the same solicitation). Moreover, the inclusion of a location continuity preference will generally be compatible with the HUBZone program procedures even where a set-aside is used. Where a set-aside is used, the inclusion of a location continuity preference may lead to location continuity if feasible for one of the SBCs, but not limit the contract from being performed at a new location if continuity is not feasible for any bidders.

(C) Location-Continuity Procedural Safeguards

In the NPRM, the Department proposed language in § 9.11(c)(3) to implement several procedural safeguards for the location continuity determination. The Department proposed to require that agencies complete the location continuity analysis prior to the date of issuance of the solicitation. The Department proposed that any agency decision not to include a location continuity requirement or preference in a particular contract must be made in writing by the agency’s senior procurement executive. In addition, the Department proposed that when an agency determines that no such requirement or preference is warranted, the agency must include a statement to that effect in the solicitation and also ensure that the incumbent contractor notifies affected workers and their collective bargaining representatives, if any, in writing of the agency’s determination and of the workers’ right to request reconsideration.

In the NPRM, the Department also proposed further requirements related to notice to predecessor workers and requests for reconsideration. Under the proposed text, the notice would need to occur within 5 business days after the solicitation is issued, and the incumbent contractor would need to provide confirmation to the contracting agency that the notification has been made. The Department proposed language in the nondisplacement contract clause set forth in Appendix A of the NPRM to require contractors to agree to provide this notification. The NPRM also provided that any request by an

interested party for reconsideration of an agency’s location continuity decision would have to be directed to the head of the contracting department or agency. Finally, the Department sought comment regarding whether there should be a remedy for an agency’s failure to follow location continuity procedures, such that a procedurally deficient location-related determination would be ineffective as a matter of law. The Department also requested comment on whether there should be specific remedies for workers or sanctions for contractors in the circumstances in which a contractor fails to timely provide the required notice of a location continuity determination.

The Coalition and the AFL–CIO commented that the Department should require the same or similar procedural safeguards for location continuity as for agency exception decisions under the provisions set forth in § 9.5, and for the same reasons. These commenters thus supported the Department’s proposed requirement that decisions be made in writing, by an agency’s senior procurement executive, and before the solicitation date. As they did for § 9.5 exceptions, however, the commenters also advocated that the Department amend the timing requirement for the determination, notice, and reconsideration, to provide ample time before the solicitation for interested parties to comment on the determination and request reconsideration if necessary. These commenters also advocated that the rule should include a right to appeal to the Secretary, who would be “an independent arbiter.”

The Coalition and the AFL–CIO advocated that the final rule require agencies to notify workers and their representatives of their location continuity determinations no later than 120 days before a bid solicitation goes out, and, with the notice, also provide the agency’s written analysis and supporting evidence. They suggested that interested parties be given 30 days to comment on the determination, that agencies be required to respond no fewer than 60 days before the bid solicitation, and that interested parties be given 15 days to file an appeal with the Secretary, who would have to decide the appeal within 45 days and before any solicitation is issued. The AFL–CIO strongly urged the Department to treat procedurally deficient location-continuity determinations in the same manner as exception determinations, by making such determinations ineffective as a matter of law.

had addressed this request for an exemption above in section II.B.4.

Conversely, PSC and Nakupuna advocated against the Department's proposed procedural safeguards. PSC stated that the Department's interpretation of section 4 of the Executive order and proposed § 9.11(c) would be "unworkable." PSC suggested that requiring a case-by-case analysis by the senior procurement executive could "bottleneck solicitations" and cause "needless delay." PSC said the procedure would "make it difficult for contracting agencies to decide for themselves whether they really need performance to be in the same location," thereby inviting contractor bid protests. Nakupuna commented that the subsequent notification of affected workers and their collective bargaining representatives is burdensome for both agencies and contractors. PSC likewise opposed, as unnecessary and burdensome, the Department's proposed requirement that agencies must include language in the solicitation affirmatively stating that the location continuity analysis has been completed. PSC stated that the order only requires agencies to "consider" location continuity, and that this obligation should be satisfied by acquisition teams with "[a] (brief) notation in the acquisition plan or equivalent, commensurate with the size and complexity of the acquisition."

PSC also opposed the Department's proposed reconsideration language for the same reasons that they opposed the proposed provision discussing reconsideration of agency exceptions in § 9.5. PSC stated that the order itself does not provide for such reconsideration, and that allowing "catch-all 'interested parties' to speculate on . . . business judgments . . . will delay acquisitions needlessly and would undermine economy and efficiency in Government contract performance." PSC stated that it recognizes workers must have a fair say in matters of their employment, but that "interested parties" could include "a wide variety of entities or even a community in which many incumbent employees reside." Finally, PSC recommended against including remedies or enforcement in circumstances where the predecessor contractor does not relay performance location determinations to employees.

The final rule includes amended procedural safeguards for location continuity that are reorganized into a new paragraph at § 9.11(c)(4). In response to the comments received, the Department is narrowing the requirements to focus on ensuring that contracting agencies benefit from information that employees may have that would be helpful and relevant to

the analysis. The Department is not adopting some of the proposed requirements that were not provided for expressly by the order—including the requirements that certain determinations be made by the senior procurement executive, that an affirmative statement regarding the analysis be made in the solicitation, and that requests for reconsideration be directed to the head of the contracting department or agency. Instead, the Department is amending the provision to require that agencies, to the extent consistent with mission security, ensure that employees covered by a collective bargaining agreement on the predecessor contract have an opportunity prior to the issuance of the solicitation to provide information relevant to the location continuity analysis. Thus, the final rule states that, at the earliest reasonable time in the acquisition planning process, the agency must direct the incumbent contractor to notify any collective bargaining representative(s) for affected employees of the appropriate method to communicate such information (*i.e.*, contact information for a specific member of the agency's acquisition team). The provision includes requirements regarding the methods of the notice that must be provided and model language that contracting agencies may use. While the final rule reflects the Department's decision that a reconsideration process is not necessary at this time, the absence of a formal process from the regulations should not deter interested parties from communicating with contracting agencies or the Department if they believe that a location-continuity decision may have failed to consider important information.¹¹

The Department agrees with the Coalition and the AFL-CIO that it is important to build into the program's procedures "a role for workers and their representatives to provide input"—and for this process to occur before bid solicitation. As the Coalition noted, interested parties "are likely to have information on the benefits of nondisplacement for any given service contract" and "are well positioned to identify any errors or omissions" in the contracting agency's analysis. In

¹¹ For similar reasons, the final rule does not contain the provision discussed in the NPRM that would result in a procedurally deficient contract-location decision being inoperative as a matter of law. However, interested parties who believe that a location-continuity determination was made in a procedurally defective manner—or was not made at all—may communicate this concern to the Department, so that the Department may follow up with the contracting agency or take other appropriate action.

addition, seeking feedback from affected workers accords with the PSC's recognition that workers should have "a fair say in matters of their employment." While the Department declines to adopt the specific timeframes for agency determinations and submissions that the Coalition and the AFL-CIO requested, the requirement that agencies seek information from predecessor employees prior to the solicitation date, if practicable, will help to ensure that the policies of the order are built into solicitations and are not dependent on convincing an agency to reconsider a solicitation it has already issued. Accordingly, the final rule includes revised language in § 9.11(c)(4) requiring pre-solicitation notice, to the extent consistent with mission security, instead of the proposed requirement for notice of a location continuity determination within 5 business days after the solicitation.

In addition to the revised pre-solicitation notice requirement, the Department considered whether to retain the requirement in the proposed rule that incumbent contractors must provide confirmation to contracting agencies that the notification has been made. The Department is not including this requirement, given that § 9.12(f)(2) already requires contractors to maintain evidence of any notices that they provide to employees, or employees' collective bargaining representatives, to satisfy the requirements of the order or these regulations—which includes the pre-solicitation notice regarding location continuity. The Department also considered whether to include specific required sanctions for contractors that fail to provide the notice. The final rule does not include a specific sanction. However, where a contractor fails to provide the notice, even after receiving a timely request from a contracting agency, evidence of this fact could support (in addition to other evidence) a lower past performance rating on the contract or a debarment decision.

(D) Relocation Costs

In the NPRM, the Department proposed language at § 9.11(c)(4) that restated, in part, the language from section 3(b) of the Executive order, which clarifies that nothing in the order should be interpreted as requiring or recommending that contractors, subcontractors, or contracting agencies must pay relocation costs for employees of predecessor contractors hired pursuant to their exercise of their rights under the order. *See* 86 at FR 66398. The Department proposed similar language, directed at contractors and

subcontractors specifically, in § 9.12(b)(6). In the final rule, as noted above, the Department is moving the location continuity procedural safeguards and notice provisions from § 9.11(c)(3) to § 9.11(c)(4). The Department therefore is moving the relocation costs language to § 9.11(c)(5). The Department did not receive any comments seeking to amend this language. Accordingly, the final rule adopts it as proposed.

v. Section 9.11(d) Disclosures

Proposed § 9.11(d) would require that the contracting officer provide the predecessor contractor's list of employees referenced in proposed § 9.12(e)(1) to the successor contractor and that, on request, the list will be provided to employees or their representatives, consistent with the Privacy Act, 5 U.S.C. 552a, and other applicable law. Proposed § 9.12(e)(1) required the predecessor contractor to provide the list of employees to the contracting officer no later than 30 calendar days prior to before completion of the contractor's performance of services on a contract. Under proposed § 9.11(d), the contracting officer would have to provide the predecessor contractor's list of employees to the successor contractor no later than 21 calendar days prior to the beginning of performance on the contract, and if an updated list is provided by the predecessor contractor pursuant to § 9.12(e)(2), the contracting officer would have to provide the updated list to the successor contractor within 7 calendar days of the beginning of performance on the contract. However, if the contract is awarded fewer than 30 days before the beginning of performance, then the predecessor contractor and the contracting agency would be required to transmit the list as soon as practicable.

Although the Department anticipates that contracting officers typically will be able to provide the successor contractor with the seniority list almost immediately after receiving it from the predecessor contractor, there may be circumstances (such as if the contracting officer has questions about the accuracy of the list) in which the contracting officer needs several days to check or verify the list before transmitting it to the successor contractor. The deadlines set forth in proposed § 9.11(d) took such circumstances into account while also providing specific deadlines by which the seniority list must be transmitted to the successor contractor to ensure the successor has sufficient time to provide the workers with the right of first refusal

and to ensure continuity of performance on the contract.

One commenter, PCSI, recommended extending the timeframes in § 9.12(e) and § 9.11(d) to allow the predecessor contractor not less than 90 days to furnish the contracting officer with their certified list of employees and in turn allow contracting officers not less than 60 days before the start of performance to provide this list to successor contractors. PCSI stated that the shorter proposed time frames were too short to provide enough time for successor contractors to ensure they have the employees to perform contracts on their start dates. The Department has considered this comment but declines to extend the timeframes. Longer time frames for furnishing the certified list will decrease the accuracy of the lists and may not always be in accord with procurement schedules. The timeframes, as proposed, best balance the need to provide an accurate and timely certified list of predecessor employees with the need to afford successors time to ensure continuity of performance. The final rule therefore adopts § 9.11(d) without change.

vi. Section 9.11(e) Actions on Complaints

Proposed § 9.11(e) addressed contracting officers' responsibilities regarding complaints of alleged violations of part 9. The proposal stated that the contracting officer would be responsible for reporting complaint information to the WHD within 15 calendar days of WHD's request for such information. The Department believes 15 calendar days is an appropriate timeframe within which to require production of information necessary to evaluate the complaint. The proposed section elaborated that the contracting officer would have to provide to WHD: any complaint of contractor noncompliance with this part; available statements by the employee or the contractor regarding the alleged violation; evidence that a seniority list was issued by the predecessor and provided to the successor; a copy of the seniority list; evidence that the nondisplacement contract clause was included in the contract or that the contract was excepted by the agency; information concerning known settlement negotiations between the parties (if applicable); and any other relevant facts known to the contracting officer or other information requested by WHD. The Department did not receive any comments on this provision; accordingly, the final rule adopts the provision as proposed.

vii. Section 9.11(f) Incorporation of Omitted Contract Clause

Proposed § 9.11(f) provided that when the nondisplacement contract clause is erroneously omitted from a contract, a contracting agency must retroactively incorporate the contract clause on its own initiative or within 15 calendar days of notification by an authorized representative of the Department. Proposed § 9.11(f) explained that there may be circumstances where only prospective, rather than retroactive, application of the contract clause is warranted. For example, solely prospective relief might be warranted where the contracting officer omitted the clause in good faith because the predecessor contractor would be the sole bidder on the contract and the contracting officer erroneously believed that it was not a successor contract for that reason. Proposed § 9.11(f) thus would have permitted the Administrator, at their discretion, to determine that the circumstances warrant prospective, rather than retroactive, incorporation of the contract clause. The NPRM explained that proposed § 9.12(b)(8) set forth the requirements for successor contractors on how to proceed when the nondisplacement clause is retroactively incorporated into a contract after the successor contractor already has begun performance on the contract. As noted in the NPRM, if the erroneous omission of the contract clause from a solicitation is discovered before contract award, proposed § 9.11(f) also would require the contracting agency to amend the solicitation.

The Department did not receive any comments addressing § 9.11(f), but PSC expressed general concern about the disruption to the procurement process where an agency could be forced to reissue a solicitation after "missing a procedural step," which could generate "additional administrative burden and cost." Having considered this comment, the Department is modifying the language of § 9.11(f) to require the Administrator to determine that retroactive incorporation of the nondisplacement contract clause is warranted in a manner consistent with retroactive incorporation of contract clauses and wage determinations under the SCA. Pursuant to 29 CFR 4.5(c), where the Department determines that a contracting agency made an erroneous determination that the SCA did not apply to a particular contract or failed to include an appropriate wage determination in a covered contract, the contracting agency must incorporate into the contract the required

stipulations and/or any applicable wage determination, which, at minimum, apply prospectively. Under 29 CFR 4.5(c), the Administrator may require retroactive application of a wage determination. *See also* 48 CFR 22.1015 (applying the error-correction and retroactivity provisions of 29 CFR 4.5 to contracts awarded under the FAR). This language effectively requires the Administrator to determine that retroactive application is appropriate, considering various factors, including whether there may be an “overly onerous administrative and economic burden” on the contracting agency that may constitute a “severe disruption in the agency’s procurement practices.” *Raytheon Aerospace*, ARB Nos. 03–017, 03–019, 2004 WL 1166284, at *8–11 (May 21, 2004) (identifying three reasonable factors the Administrator appropriately considered in exercising discretion to not apply the SCA retroactively). In this final rule, the Department is amending § 9.11(f) to more closely parallel the language used in 29 CFR 4.5(c), modified to fit the nondisplacement context. The Department believes that such consistency will provide clarity and streamline the incorporation process both for contracting agencies and contractors. As the terms of § 9.11(f) and 29 CFR 4.5(c) are similar, the Department notes that the case law interpreting 29 CFR 4.5(c) would be persuasive regarding retroactive application of the contract clause under § 9.11(f). *See, e.g., Raytheon Aerospace*, 2004 WL 1166284, at *8–11; *FlightSafety Def. Corp.*, ARB Nos. 2021–0071, 2022–0001, 2022 WL 20100986, at *9–10 (Feb. 28, 2022) (holding that the Administrator reasonably declined to retroactively apply the SCA). As such, the final rule states that the Administrator will consider the administrative and economic burdens on contracting agencies, among other factors, when determining whether retroactive application is appropriate in a given case.

The Coalition generally approved of proposed § 9.11 but recommended adding a paragraph that would require contracting agencies to include training on the requirements of § 9.11 to existing acquisition training courses for the Federal acquisition workforce. The Coalition further recommended that compliance with § 9.11 should be a factor considered in evaluations of contractor performance pursuant to 48 CFR 42.1502. The Coalition stated that these steps would promote compliance with Executive Order 14055. While the Department agrees training on the

nondisplacement requirements will be important for promoting compliance and that past performance evaluations appropriately evaluate regulatory compliance (including compliance with labor regulations), these recommendations are outside the scope of this rulemaking.

7. Section 9.12 Contractor Requirements and Prerogatives

As proposed, § 9.12 would implement contractors’ requirements and prerogatives under Executive Order 14055. The proposed section detailed a successor contractor’s general obligation to offer employment to qualified service employees from the predecessor contract, the method of making job offers, exceptions to the nondisplacement requirement, implementation of the nondisplacement requirement in the context of reduced staffing, obligations near the end of the predecessor contract, recordkeeping, and obligations to cooperate with reviews and investigations.

i. Section 9.12(a) General

Proposed § 9.12(a)(1) included the Executive order’s central requirement that employees on a predecessor contract receive offers of employment on the successor contract before any employment openings for service employees on the successor contract are otherwise filled. Specifically, the proposal provided that, unless an exception or exclusion applies, a successor contractor or subcontractor may not fill any employment openings for service employees under the contract prior to making “good faith offers” of employment to employees on the predecessor contract. Employees on the predecessor contract must only receive such offers in positions for which they are qualified, and only if their employment would be terminated as a result of award of the contract or the expiration of the contract under which they were hired. Because the order states that the term *employee* “includes an individual without regard to any contractual relationship alleged to exist between the individual and a contractor or subcontractor,” *see supra* section II.B.2., the contractor would be obligated to make good faith offers to any service employee under the predecessor contract, regardless of whether the service employee was classified as an employee or independent contractor on the predecessor contract. To the extent necessary to meet the successor contractor’s anticipated staffing pattern and in accordance with the requirements of the rule, proposed

§ 9.12(a)(1) would require the successor contractor and its subcontractors to make a bona fide, express offer of employment to each service employee in a position for which the employee is qualified and state the time within which the employee must accept such offer. As discussed in proposed § 9.12(b)(4), although the offer would have to be for a position for which the employee is qualified, it would not necessarily have to be for the same or similar position as the employee held on the predecessor contract. The proposed rule specified that in no case could the contractor or subcontractor give an employee fewer than 10 business days to consider and accept the offer of employment.

Comments received regarding proposed § 9.12(a)(1) are discussed below, in conjunction with related comments received regarding § 9.12(b). To emphasize the relationship between this section and other sections, a notation was added to the text of § 9.12(a)(1) that all offers must be made in accordance with the requirements described in this part. Otherwise, the final rule adopts the language of § 9.12(a)(1) as proposed.

Proposed § 9.12(a)(2) clarified that the successor contractor’s obligation to offer a right of first refusal would exist even if the successor contractor was not provided a list of the predecessor contractor’s employees or if the list did not contain the names of all service employees employed during the final month of contract performance. The Coalition commented in support of the proposed rule’s job protections for employees on the predecessor contract, including under circumstances as described in § 9.12(a)(2). Conversely, an anonymous commenter pointed to circumstances such as those described in § 9.12(a)(2) as part of that commenter’s general contention that the proposed rule would be burdensome to contractors. However, even where a predecessor fails to provide the required list on a timely basis, the successor contractor may still determine which employees should be given offers by relying upon the types of evidence described in § 9.12(a)(3). Moreover, Executive Order 14055 does not make the obligation to provide a right of first refusal contingent upon receipt of a list of predecessor contract employees. Therefore, the final rule adopts the language of § 9.12(a)(2) as proposed.

Proposed § 9.12(a)(3) discussed determining an employee’s eligibility for a job offer even when their name was not included on the certified list of all service employees working under the predecessor’s contract or subcontracts

during the last month of contract performance. As proposed, § 9.12(a)(3) would require a successor contractor to accept other reliable evidence, in addition to the certified list, of an employee's right to receive a job offer. Under the provision as proposed, the successor contractor would be allowed to verify any such information before relying on it as a basis to extend a job offer. For example, even if a person's name did not appear on the list of employees on the predecessor contract, an employee's assertion of an assignment to work on the contract during the predecessor's last month of performance, coupled with contracting agency staff verification, would constitute credible evidence of an employee's entitlement to a job offer. Similarly, an employee could demonstrate eligibility by producing a paycheck stub that identifies the work location and dates worked for the predecessor or that otherwise reflects that the employee worked on the predecessor contract during the last month of performance. The successor contractor could verify the claim with the contracting agency, the predecessor, or another person who worked at the facility, though if the successor contractor were unable to verify the claim, the paycheck stub still would be considered sufficient to demonstrate eligibility absent evidence from the predecessor contractor indicating otherwise.

The Coalition supported the proposed framework of § 9.12(a)(3) because it would provide several ways for an employee to establish eligibility for an offer of employment on the successor contract. The Coalition further encouraged the Department to clarify that the examples provided in the proposed rule are not exclusive and that other reliable data may be provided to determine whether a service employee is eligible to receive an offer of employment on the successor contract. The Department agrees that the examples are not exclusive and believes the proposed regulatory text made that sufficiently clear. Thus, after considering the comments, the final rule adopts the proposed language of § 9.12(a)(3) without change.

Proposed § 9.12(a)(4) clarified that contractors and subcontractors have an affirmative obligation to ensure that any covered contracts they hold contain the contract clause. In keeping with the related requirements at § 9.13(a) (relating to the insertion of required clauses into subcontracts), proposed § 9.12(a)(4) stated that the contractor must notify the contracting officer as soon as possible if the contracting

officer did not incorporate the required contract clause into a covered contract. No comments were received on § 9.12(a)(4) and the final rule adopts § 9.12(a)(4) as proposed.

ii. Section 9.12(b) Method of Job Offer

Proposed § 9.12(b) discussed the method of communicating the job offer. Proposed § 9.12(b)(1) required that, except as otherwise provided elsewhere in part 9, a contractor must make a bona fide, express offer of employment to each qualified employee on the predecessor contract before offering employment on the contract to any other service employee. Under proposed § 9.12(b)(1), in determining whether an employee is entitled to a bona fide, express offer of employment, a contractor could consider the exceptions set forth in proposed § 9.12(c) and the conditions detailed in § 9.12(d). Proposed § 9.12(b)(1) clarified that a contractor could only use employment screening processes (such as drug tests, background checks, security clearance checks, and similar pre-employment screening mechanisms) under certain circumstances. These employment screening processes could only be used when they are specifically provided for by the contracting agency, are conditions of the service contract, and are consistent with Executive Order 14055 and applicable local, state, and Federal laws. Proposed § 9.12(b)(1) also clarified that while the results of such screenings could show that an employee is unqualified for a position and thus not entitled to an offer of employment, a contractor could not use the requirement of an employment screening process by itself to conclude an employee is unqualified because they have not yet completed that screening process. For example, a successor contractor that requires all employees to undergo a background check could not deem predecessor employees unqualified solely because they had not completed the specific background check the successor contractor requires before receiving a job offer. However, the Department has edited § 9.12(b)(1) to clarify that an employee's unreasonable failure to complete a screening process could be grounds to conclude an employee is unqualified. No comments were received regarding § 9.12(b)(1). Other than the clarification already noted, replacing the word "person" with "service employee" to make clear that a successor contractor may make offers of employment to non-service employees (for example, to hire an executive team) before extending offers to qualified employees on the predecessor contract, and replacing the

phrase "by itself" with "solely" for clarity, the final rule adopts § 9.12(b)(1) as proposed.

Proposed § 9.12(b)(2) discussed the time limit in which the employee has a right to accept the offer. Under the proposed language, the contractor has the discretion to determine the time limit for an acceptance, provided that the time limit is not shorter than 10 business days. The obligation to offer employment to a particular employee would cease upon the employee's first refusal of a bona fide offer to employment on the contract. ABC commented that this requirement was burdensome. Similarly, an anonymous commenter stated that in light of § 9.12(a)(1)'s requirement that employees on a predecessor contract receive offers of employment on the successor contract before any employment openings for service employees on the successor contract are otherwise filled, the 10-business-day time period for acceptances might prevent contractors from having a full staff when the contract commences. The commenter noted that in practice, employers may be caught off guard by how many employees do not accept offers and be left with insufficient time to fill vacancies. Conversely, the Coalition supported the inclusion of the requirement that employees be given 10 business days to accept or reject an offer.

Section 3 of the Executive order specifies that "in no case shall the period within which the employee must accept the offer of employment be less than 10 business days." 86 FR at 66398. Therefore, the Department does not have discretion to reduce the amount of time that employees must be given to consider offers of employment, and that time commences at the employee's receipt of the offer. The Department also notes that, given the changes to proposed § 9.12(e)(1) set forth in this final rule, successor contractors will be provided with a list of employees' addresses, lessening any delays contractors might face prior to making and receiving responses to offers. For these reasons, the final rule adopts § 9.12(b)(2) as proposed.

Proposed § 9.12(b)(3) set forth the process for making the job offer. Under the proposed provision, the successor contractor would have had the option of making a specific oral or written employment offer to each employee. Proposed § 9.12(b)(3) would require successor contractors to make reasonable efforts to make the offer in a language each worker understands, to ensure the offer was effectively communicated. Written offers would be

required to be sent by registered or certified mail to the employees' last known address or by any other means normally ensuring delivery. Proposed § 9.12(b)(3) provided examples of such other means, including, but not limited to, email to the last known email address, delivery to the last known address by commercial courier or express delivery service, or personal service to the last known address.

Regarding proposed § 9.12(b)(3), the Coalition suggested the Department require job offers be provided in writing, and not verbally, to lessen disputes between contractors and employees as to the existence and adequacy of offers. The comment noted that requiring offers in writing also would lessen the degree of employees' reliance on the accuracy of contractors' interpreters. AFL-CIO echoed the Coalition's views regarding the benefit of requiring that offers be made in writing.

The Department agrees that requiring offers to be made in writing would reduce the risk of such factual disputes between contractors and employees (including disputes about the accuracy of translations), and for that reason, the final rule amends proposed § 9.12(b)(3), as well as the corresponding recordkeeping requirements of § 9.12(f)(2)(i), to require that offers be made in writing. In regard to translation, the Department notes that, pursuant to § 9.12(e)(3), where the predecessor contractor's workforce is comprised of a significant portion of workers who are not fluent in English, notice of their possible right to an offer of employment on the successor contract must be provided in both English and a language in which the employees are fluent. Therefore, as it relates to the offer of employment to an individual, the Department is removing the requirement to translate the written offer into different languages. The final rule also removes as moot the example related to a bilingual coworker providing interpretation of an oral offer. Under the final rule, if a contractor makes an oral offer of employment, it must accompany such an offer with a communication of the offer in writing (and both the oral and written offers in this example would be subject to the requirement that the employee receive at least 10 business days to consider the offer).

Proposed § 9.12(b)(4) stated that the employment offer may be for a different job position on the successor contract. More specifically, the proposed provision stated that an offer of employment on the successor's contract would generally be presumed to be a bona fide offer of employment, even if it were not for a position similar to the

one the employee previously held, if the offer were for a position for which the employee is qualified. If a question arose concerning an employee's qualifications, that question would be decided based upon the employee's education and employment history, with particular emphasis on the employee's experience on the predecessor contract. Under the proposed language of § 9.12(b)(4), a contractor could only base its decision regarding an employee's qualifications on reliable information provided by a knowledgeable source, such as the predecessor contractor, the local supervisor, the employee, or the contracting agency. For example, an oral or written outline of job duties or skills used in prior employment, school transcripts, or copies of relevant certificates and diplomas would be credible information.

Regarding proposed § 9.12(b)(4), the Coalition commented that the successor should only be able to rely upon information a predecessor kept in the regular course of business to determine an employee's qualifications. In considering this comment, the Department notes that adopting this approach might unnecessarily limit reliance on sources of information that could otherwise lead to employment opportunities for predecessor employees, as well as impose a potentially difficult burden on successors to determine which of its predecessors' records were kept in the "regular course of business." For this reason, the Department declines to adopt this suggestion, and the final rule adopts § 9.12(b)(4) as proposed.

Proposed § 9.12(b)(5) stated that the offer of employment may be to a position providing different terms and conditions of employment than those the employee held with the predecessor contractor, where the difference is not related to a desire that the employee refuse the offer, or a desire that other employees be hired. The Coalition commented that the final regulations should establish a presumption that an offer is not bona fide if positions are available under the successor contract with similar or better terms and conditions for which an employee is qualified, but the successor only makes an employee an offer for a position with worse terms or conditions. However, as discussed below regarding § 9.12(d)(2), when a contractor reduces the number of contract positions in an occupation, that provision already would require the contractor to scrutinize each employee's qualifications "to offer the greatest possible number of predecessor contract employees positions equivalent to those

held under the predecessor contract." Given this framework, the Department believes the rule provides sufficient safeguards as proposed.

The Department also proposed language in § 9.12(b)(5) that addressed terms and conditions related to remote work or telework. Under proposed § 9.12(b)(5), if a successor contractor places limitations on telework or remote work for predecessor employees that it did not consistently place on other, similarly situated workers, that could indicate that those limitations are intended to cause the predecessor employees to refuse the offer, and thus, would likely be impermissible. Accordingly, under proposed § 9.12(b)(5), where the successor contractor had or will have had any employees who work or will work entirely in a remote capacity, and the successor contractor has employment openings on the successor contract in the same or similar occupational classifications as the positions held by those successor employees, the successor contractor's employment offer to qualified predecessor employees for such openings would be required to include the option of remote work under reasonably similar terms and conditions. The proposed language was based on the premise that such employment, where permitted on a successor contract and consistent with security and privacy requirements, would generally assist with workforce carryover, even in circumstances where the location of contract performance is changing.

The Coalition supported the Department's provision in proposed paragraph 9.12(b)(5) regarding remote work, while PSC voiced concerns. PSC commented that the proposed provision should be revised to require offers of remote work only when the successor contractor allows any worker in the same or similar classification to work remotely in performing on the same Federal contract, rather than permitting comparisons with any of the successor's employees who are not working on that contract, because different types of contracts might involve different requirements. PSC further commented that because specific constraints, such as employees working in differing time zones, might interfere with contract performance, remote work should only be offered consistent with the requirements of the contract and its deliverables, and then no more than in proportion to the percentage of employees who worked remotely under predecessor contracts or other successor contracts. In response, the Department notes that where material differences

between employees' job requirements on different contracts result in workers under each contract working in dissimilar occupational classifications, then these employees would (under the language of § 9.12(b)(5) as proposed) not be apt comparators for purposes of determining whether a contractor has limited remote work in order to discourage predecessor employees from accepting an offer. Furthermore, the proposed rule provided that even when the successor is required to offer the option of remote work, the successor's obligation is subject to the qualifier that successor contractors are only required to offer remote work to employees of the predecessor under "reasonably similar terms and conditions." Thus, where a contractor's existing workers are granted remote work only as an accommodation, pursuant to certain preconditions, or subject to limitations that workers will be available during certain hours (defined in relation to a particular time zone), then that contractor could also place the same limitations on the remote working conditions of any predecessor employee—so long as the contractor's intent was not to evade the nondisplacement mandates of the Executive order. Finally, PSC's suggestion that the requirement for remote work be limited to certain percentages of the workforce would allow successor contractors to impose limits on remote work that are inconsistent with the Executive order. Thus, the Department declines to adopt all of PSC's suggested change in the final rule, but has made edits in order to clarify that successor contractors may change remote working arrangements based on a legitimate business rationale.

As already discussed in relation to § 9.11(c), regarding location continuity, remote work plays a recognized role in the efficacy of federal contracting. Given the significance of remote work in avoiding potential workforce disruptions, absent a legitimate operational rationale, a contractor that eliminates the remote working arrangements under which employees successfully performed their jobs during the predecessor contract, or who does not offer employees of the predecessor contractor remote working arrangements available to other employees, should be presumed to be doing so to circumvent the Executive order. This is because, as is evident from the importance placed on location continuity considerations in the Executive order, enabling an employee to work in the same general place where they have worked before (be it in a particular commuting area or in their own home, remotely) is often a

key factor in the retention of an experienced and well-trained workforce. See 86 FR at 66397–99.

Therefore, while largely adopting the final rule language regarding terms and conditions as proposed, the Department amends § 9.12(b)(5) to clarify that a successor may offer different remote working arrangements than those the employee held with the predecessor contractor, so long as the change is not made for the purpose of discouraging acceptance of offers to work on the successor contract. In other words, a successor contractor may not capriciously end a predecessor's remote working arrangements without contravening the requirements of the Executive order and this final rule. Likewise, the final rule reflects that a contractor must generally—absent a legitimate operational rationale to do otherwise—offer remote work to predecessor employees on a reasonably similar basis as it does for its other employees in the same or similar occupational classifications. This use of a rebuttable presumption framework is appropriate because successor contractors possess the information necessary to articulate and substantiate an operational reason for limiting remote working arrangements. Requiring contractors to support and justify their decisions in this context will enable the Department and interested parties to evaluate whether or not declining to offer remote working arrangements was intended to circumvent the nondisplacement requirement.

In § 9.12(b)(6), the Department proposed to repeat, in part, the statement in section 3(b) of Executive Order 14055 that nothing in the order should be interpreted as requiring or recommending that contractors, subcontractors, or contracting agencies pay relocation costs for employees of predecessor contractors hired pursuant to their exercise of their rights under the order. See 86 FR at 66398. The Department proposed similar language, directed at contracting agencies specifically, in § 9.11(c)(3). The Department noted that this language would not forbid the voluntary payment of relocation expenses or the payment of any such expenses if they are otherwise required by contract or law. No comments were received regarding § 9.12(b)(6), and the final rule adopts § 9.12(b)(6) as proposed.

Proposed § 9.12(b)(7) provided that where an employee is terminated under circumstances suggesting the offer of employment may not have been bona fide, the facts and circumstances of the offer and the termination would be

closely examined to determine whether the offer was bona fide. No comments were received regarding § 9.12(b)(7), and the final rule adopts § 9.12(b)(7) as proposed.

Proposed § 9.12(b)(8) provided requirements for successor contractors when the contracting agency retroactively incorporates the nondisplacement clause into a contract after the successor contractor has already begun performance on the contract. Pursuant to proposed § 9.11(f), when the nondisplacement contract clause is erroneously excluded from a contract, contracting agencies may be required to retroactively incorporate it, depending on the circumstances. Upon retroactive incorporation, the successor contractor would be required to offer a right of first refusal of employment to the employees on the predecessor contract in accordance with the requirements of Executive Order 14055 and this part. Proposed § 9.12(b)(8) also provided requirements where the omitted contract clause has been incorporated only prospectively. In such cases, the successor contractor and its subcontractors would only be required to provide employees on the predecessor contract a right of first refusal for any positions that remain open. Regardless of whether incorporation of the contract clause is retroactive or prospective, in the event of an employment opening within 90 calendar days of the first date of contract performance, under proposed § 9.12(b)(8) the successor contractor and its subcontractors would be required to provide the nondisplacement right of first refusal to employees on the predecessor contract. The Department stated that these requirements struck an appropriate balance between the interests of the employees on the predecessor and successor contracts.

In the final rule, the Department slightly modifies the language of § 9.12(b)(8) for clarity and consistency with the final text of § 9.11(f), which is being amended, as discussed in section II.B.7.vii. above. In § 9.12(b)(8), the Department is replacing the proposed phrase "the Administrator has not exercised their discretion and required only prospective incorporation of the contract clause" with the phrase "the Administrator has required only prospective application of the contract clause." The Department has also modified the phrase in the title of this paragraph from "[r]etroactive incorporation of contract clause" to "[p]ost-award incorporation of omitted contract clause" because the paragraph also addresses contractor obligations when the contract clause is incorporated

only prospectively. For clarity and consistency with the definition of “employment opening,” the Department has also replaced the phrase “positions become vacant” with the phrase “of an employment opening.” Other than the modifications described above, the final rule adopts § 9.12(b)(8) as proposed.

iii. Section 9.12(c) Contractor Exceptions

Proposed § 9.12(c) addressed the exceptions to the general obligation to offer employment under Executive Order 14055. As proposed, these exceptions detailed circumstances in which, although a contract or subcontract as a whole is covered by the nondisplacement requirements, a contractor or subcontractor would not need to make a bona fide offer of employment to certain employees. These proposed exceptions were therefore distinct from the “exceptions authorized by agencies” detailed in proposed § 9.5, which explained the circumstances in which contracts as a whole may be excepted from coverage through the actions of a contracting agency. As stated in the NPRM, the contractor bears the burden of proof regarding the appropriateness of claiming any exception in § 9.12(c).

At the outset of § 9.12(c) in the final rule, for clarity, the Department is changing the phrase “[t]he successor contractor is responsible for demonstrating the applicability of the following exceptions to the nondisplacement provisions subject to this part,” to “[t]he successor contractor is responsible for demonstrating the applicability of the following exceptions to the nondisplacement provisions in this part.”

As proposed under § 9.12(c)(1), a successor contractor or subcontractor would not be required to offer employment to any employee of the predecessor whom the predecessor contractor is retaining. However, the successor contractor would be required to presume that all employees working under a predecessor’s Federal service contract would be terminated as a result of the award of the successor contract, unless the successor contractor could demonstrate a reasonable belief to the contrary, based upon reliable information provided by a knowledgeable source, such as the predecessor contractor, the employee, or the contracting agency. No comments were received regarding § 9.12(c)(1). Other than modifying the phrase “hired to work” to “working” to clarify which employees are referenced, the final rule adopts § 9.12(c)(1) as proposed.

Under proposed § 9.12(c)(2), the successor contractor or subcontractor would not be required to offer employment to any worker on the predecessor contract who is not a service employee, as defined by § 9.2. Consistent with proposed § 9.2, this exception would apply to individuals employed on the predecessor contract in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The successor contractor would be required to presume that all workers are service employees if they appear on the list of service employees the predecessor contractor is required to provide by proposed § 9.12(e) (or have demonstrated they should have been included on the list). However, the successor contractor would be permitted to conclude that the list included non-service employees (and thus decline to offer those non-service employees employment) based upon reliable information provided by a knowledgeable source, such as the predecessor contractor, the employee, or the contracting agency. Information regarding the general business practices of the predecessor contractor or the industry would not be considered sufficient for purposes of the proposed exception. No comments were received regarding § 9.12(c)(2), and the final rule adopts it as proposed, other than modifying the phrase “hired to work” to “working” to clarify which employees are referred to.

Consistent with paragraph (b) of the contract clause in section 3(a) of the Executive order, § 9.12(c)(3) of the proposed rule reiterated that a successor contractor or subcontractor would not be required to offer employment to any employee of the predecessor contractor if the contractor or any of its subcontractors reasonably believed, based on reliable evidence of the particular employee’s past performance, that there would be just cause to discharge the employee if employed by the contractor or any subcontractors. See 86 FR at 66398. The proposed rule would require the successor contractor to presume that there was no just cause to discharge any employees, unless the contractor could demonstrate a reasonable belief to the contrary, based upon reliable evidence provided by a knowledgeable source, such as the predecessor contractor, the local supervisor, the employee, or the contracting agency.

For example, under the proposed rule, a successor contractor could demonstrate its reasonable belief that there would be just cause to discharge an employee through reliable written

evidence that the predecessor contractor initiated a process to terminate the employee for conduct warranting termination prior to the expiration of the contract, but the termination process was not completed before the contract expired. Similarly, as the Department explained in the NPRM conclusive evidence that an employee on the predecessor contract engaged in misconduct warranting discharge, such as sexual harassment or serious safety violations, would provide the successor contractor with a reasonable belief that there would be just cause to discharge the employee, even if the predecessor contractor elected to impose discipline rather than discharge the employee. However, under the proposed language, written evidence that the predecessor contractor took disciplinary action against an employee for poor performance but stopped short of recommending termination would not generally constitute reliable evidence of just cause to discharge the employee. The determination that this exception applies would need to be made on an individual basis for each employee. Information regarding the general performance of the predecessor contractor or any subcontractors, or their respective workforces, would not be sufficient for purposes of this exception. The Department sought comment on whether there are other instances that would constitute just cause to discharge an employee that the Department should take into consideration to support the policy reflected in the Executive order.

The Department received several comments on proposed § 9.12(c)(3). Laborers’ International Union of North America, Local Union 572 (LIUNA) suggested that the Department remove proposed § 9.12(c)(3) to exclude any performance-based exception from the final rule, asserting that any such exception is unnecessary and would lead to unfair hiring decisions and abuse, in particular for unionized workforces. The National Air Traffic Controllers Association (NATCA) suggested the Department modify the proposed rule to include a provision that would apply a predecessor contractor’s grievance arbitration and disciplinary action procedures contained in its collective bargaining agreement to the successor contractor when applying the section § 9.12(c)(3) exception.

Several commenters also criticized proposed § 9.12(c)(3), as exemplified by the comment submitted by ABC, taking issue not only with the proposed rule but with the provisions of the Executive order, and arguing that it will be

difficult for incoming contractors to gain reliable information about the past performance of a predecessor's employees, thereby requiring those contractors to hire unsuitable workers. Nakupuna also commented that it would be a challenge for successor contractors to obtain the level of evidence described in the proposed rule, which could result in the successor contractor being required to offer employment to employees with unsatisfactory performance, and asserted that providing information about the performance of current or previous employees could expose an employer to a wide range of legal liabilities. Nakupuna further suggested the Department clarify the definition of reliable evidence, provide specific examples, and establish methods for the successor contractor to obtain such evidence from the predecessor contractor or the contracting agency. PSC, suggesting "anecdotal" evidence should be considered "reliable," commented that predecessors may not always disclose sensitive performance information about their employees, as requiring predecessor contractors to share reliable evidence of just cause to discharge an employee could, in some circumstances, conflict with laws protecting worker privacy.

The Coalition generally supported the proposed exceptions to the obligation to offer a right of first refusal. The Coalition, however, expressed concern that a successor's reliance upon a predecessor contractor's unfinished termination process could be considered "reliable evidence" or "just cause" without requiring the successor to also obtain (in addition to the bare fact that a termination process has commenced) reliable evidence that the predecessor's proposed termination was supported by just cause. AFL-CIO also generally supported the just cause requirement, but similarly commented that the predecessor's mere initiation of a termination process should not be considered sufficient evidence of just cause because additional information can be provided during a termination process that can reduce the discharge to a lesser penalty or eliminate the penalty altogether.

Some commenters, like Nakupuna, ABC, and PSC, suggested a framework that, in effect, would permit successor contractors to decline to offer employment under a highly discretionary standard based on contractors' assessments of past performance. Other commenters, like LIUNA, advocated for elimination of any performance-based exception to the nondisplacement principles. The

Department declines to make changes as suggested by commenters on either side of this question. Instead, the final rule seeks to advance the goals of the Executive order, which explicitly states that such just-cause-based decisions must be based upon reliable evidence, by focusing on the underlying evidence. See 86 FR at 66398. After considering the comments, the Department is modifying the language in proposed § 9.12(c)(3)(ii)(A). The proposed provision stated: "[c]onversely, written evidence of disciplinary action taken for poor performance without a recommendation of termination would generally not constitute reliable evidence of just cause to discharge the employee." The Department is modifying the provision to state that "[w]ritten evidence related to disciplinary action taken without a recommendation of termination may constitute reliable evidence of just cause to discharge the employee, depending on the specific facts and circumstances." This change allows the successor contractor to have greater discretion when considering a predecessor's written disciplinary records in its just cause determination, but still requires the contractor to demonstrate that just cause for termination exists based on reliable evidence. This change in the language is also consistent with the proposed rule's acknowledgement that some forms of misconduct, such as severe sexual harassment, may be just cause for termination even if they did not result in termination of employment by the predecessor contractor.

The Department also declines to require successor contractors to adhere to the due process procedures of their predecessors' collective bargaining agreements in assessing past performance. The Executive order does not direct the imposition of such a requirement, and employees of the predecessor who have been wrongly denied an offer of employment can seek remedies provided consistent with the nondisplacement contract clause, as discussed further in § 9.21, regardless of whether they may have a right or ability to file a grievance under a collective bargaining agreement. The Department notes, however, that a contractor may not rely on Executive Order 14055 or its implementing regulations to circumvent any contractual obligations that it owes its employees, including those under a collective bargaining agreement. Nor does the order or the regulations supersede any obligations that a predecessor or successor contractor may

have under the National Labor Relations Act.

The Department also declines to add further discussion in the regulatory text regarding the meaning of "reliable evidence," as successor employers are generally already aware that any evidence upon which evaluations of past performance are based must, in the event of any review pursuant to §§ 9.22 and 9.34 of the rule, be sufficient to overcome the presumption (already stated explicitly in the proposed rule) that there is no just cause to discharge employees working on the predecessor contract during the last month of performance. As proposed, the language of the rule already permitted that such reliable evidence might come, for example, from the business records of the contracting agency, or from new statements supplied by other employees or other knowledgeable individuals; such evidence is not, as commenters like PSC and Nakupuna implied, only limited to a predecessor's potentially confidential personnel files, thus negating those commenters' calls for a provision protecting predecessor contractors who shared such confidential information. Finally, for greater clarity, the Department is moving the phrase "[t]his determination must be made on an individual basis for each employee. Information regarding the general performance of the predecessor contractor is not sufficient to claim this exception," from § 9.12(c)(3)(ii)(A) to § 9.12(c)(3)(ii), as that instruction applies broadly, and not only to the specific circumstances described in § 9.12(c)(3)(ii)(A).

Pursuant to proposed § 9.12(c)(4), a contractor or subcontractor would not be required to offer employment to any employee who worked under both a predecessor's Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employee was not deployed in a manner that was designed to avoid the purposes of the Executive order. The successor contractor would be required to presume that all employees hired to work under a predecessor's Federal service contract did not work on one or more nonfederal service contracts as part of a single job unless the successor could demonstrate a reasonable belief to the contrary. Under the proposed rule, to be reasonable, such a belief should be based upon reliable evidence provided by a knowledgeable source, such as the predecessor contractor, the local supervisor, the employee, or the contracting agency. Information regarding the general business practices of the predecessor contractor or the

industry would not be sufficient for purposes of this exception. Knowledge that contractors generally deploy workers to both Federal and other clients would not be sufficient for the successor to claim the exception, because such general practices may not have been observed on the particular predecessor contract.

For example, statements from several employees that a janitorial contractor reassigned its workers who previously worked exclusively in a Federal building to both Federal and other private clients as part of a single job may indicate that the predecessor deployed workers to avoid the purposes of the nondisplacement provisions. Conversely, where the employees of the predecessor contractor were traditionally deployed to Federal and nonfederal service work as part of their job, and continued to do so on the predecessor contract, the successor would not be required to offer employment to the workers.

The Coalition requested the Department modify the language in proposed § 9.12(c)(4)(i), regarding nonfederal work, by replacing “working” with “hired to work,” pointing out, among other arguments, that such a change would more consistently track the language of the Executive Order 14055. After consideration of the comment, the final rule adopts § 9.12(c)(4) as proposed, other than changing the phrase “working” to “hired to work,” in accordance with the language used in section 4(b) of the order, as well as substituting the phrase “in a manner” for “in such a way,” in § 9.12(c)(4)(iii) for clarity.

iv. Section 9.12(d) Reduced Staffing

Proposed § 9.12(d) addressed the provision in paragraph (a) of Executive Order 14055’s contract clause that allows the successor contractor to reduce staffing. Proposed § 9.12(d)(1) recognized that the contractor or subcontractor may determine the number of employees necessary for efficient performance of the contract and, for bona fide staffing or work assignment reasons, permitted the successor contractor or subcontractor to elect to employ fewer employees than the predecessor contractor employed in performance of the work. Thus, generally, the successor contractor would not be required to ensure offers of employment on the contract to all employees on the predecessor contract, but would be required to ensure offers of employment to the number of eligible employees the successor contractor believes would be necessary to meet its

anticipated staffing pattern. Where a successor contractor does not offer employment to all the predecessor contract employees, the obligation to offer employment would continue for 90 calendar days after the successor contractor’s first date of performance on the contract. The contractor’s obligation under this part would end either when all of the predecessor contract employees have received a bona fide job offer or when 90 calendar days have passed from the successor contractor’s first date of performance on the contract. The proposed regulation provided several examples to demonstrate the principle.

A successor prime contractor may choose to use a different configuration of subcontractors than the predecessor prime contractor, but any change in the number of subcontractors or the scope of work that particular subcontractors perform would not alter the requirements of Executive Order 14055 and this part. Consistent with proposed § 9.13, a prime contractor would be responsible for ensuring that all qualified service employees working under the predecessor contract (whether they were employed directly by the predecessor prime contractor or by any subcontractors working under the predecessor contract) receive an offer of employment under the successor contract in accordance with the requirements of the Executive order and this part. Where a prime successor contractor chooses to use subcontractors, the prime contractor would be responsible for ensuring that any of its subcontractors and lower-tier subcontractors offer employment to service employees employed under the predecessor contract (including the predecessor subcontracts) in accordance with the requirements of the order and this part. Where a prime successor contractor chooses to subcontract less of the contract work than the prime predecessor contractor did, and instead chooses to employ more workers directly, the prime successor contractor would be required to offer direct employment to the number of eligible service employees employed under the predecessor contract (including workers employed by predecessor subcontractors) necessary to meet the prime successor contractor’s anticipated staffing pattern and as otherwise required by the order and this part. The Department did not receive comments on § 9.12(d)(1) and the final rule adopts § 9.12(d)(1) as proposed.

Proposed § 9.12(d)(2) acknowledged that in some cases a successor contractor may reconfigure the staffing pattern to increase the number of

employees employed in some positions while decreasing the numbers employed in others. In such cases, proposed § 9.12(d)(2) would require the contractor to examine the qualifications of each employee in order to offer the greatest possible number of predecessor contract employees positions equivalent to those they held under the predecessor contract, thereby minimizing displacement. The proposed regulation provided examples to demonstrate this principle.

Nakupuna stated that this provision would impose restrictions on a successor contractor’s ability to reduce staff. Section 9.12(d)(1) allows a successor contractor to determine the number of employees necessary for efficient performance of the contract or subcontract (and, for bona fide staffing or work assignment reasons, to elect to employ fewer employees than the predecessor contractor employed in connection with performance of the work), while § 9.12(d)(2) provides safeguards to ensure that reductions in staff or changes to staffing patterns are made in a way that minimizes the displacement of predecessor contract employees. The Department believes these safeguards are necessary to fulfill the nondisplacement goals of the Executive order, and that they still provide flexibility for a successor contractor to make staffing decisions in pursuit of efficient performance of the contract. Thus, the final rule adopts § 9.12(d)(2) as proposed.

Proposed § 9.12(d)(3) clarified that, subject to provisions of this part and other applicable restrictions (including non-discrimination laws and regulations), the successor contractor would be permitted to determine to whom it will offer employment. Consistent with proposed § 9.1(b), this paragraph is not to be construed to excuse noncompliance with any applicable Executive order, regulation, or Federal, state, or local laws. For example, a contractor could not use this provision to justify unlawful discrimination against any worker. While WHD would not make determinations regarding Federal contractors’ compliance with nondiscrimination requirements administered by other agencies, a finding by the Department’s Office of Federal Contract Compliance Programs, another agency, or a court that a contractor has unlawfully discriminated or retaliated against a worker would be considered in determining whether the contractor’s action or omission also violated the nondisplacement requirements.

Regarding § 9.12(d)(3), the Coalition commented that when all the predecessor employees cannot be hired, the successor contractor's offer of a right of first refusal should be based on seniority and length of service under the current and predecessor contractor for the same or similar service at the same location. The Department declines to adopt this change because the Executive order provides that employment be offered to qualified predecessor employees, without prescribing the criteria to be used when selecting among qualified workers to fill a reduced number of positions. See 86 FR at 66397. Establishing a bright-line requirement that a single criterion (such as seniority) must be used when a contractor is selecting among qualified employees could preclude employers from using a number of other legitimate factors (such as skills, prior experience, and cross-training) that successor contractors may wish to consider in selecting among qualified employees in this context. For this reason, the final rule adopts proposed § 9.12(d)(3) without change.

v. Section 9.12(e) Contractor Obligations Near End of Contract Performance

Proposed § 9.12(e) specified an incumbent contractor's obligations near the end of the contract; these requirements would work in tandem with the requirements at § 9.11(d). As proposed, § 9.12(e)(1) would require a contractor to, no fewer than 30 calendar days before completion of the contractor's performance of services on a contract, furnish the contracting officer a list of the names of all service employees under the contract and its subcontracts at that time. Proposed § 9.12(e)(1) would require this list to also contain the anniversary dates of employment for each service employee on the contract with either the current or predecessor contractors or their subcontractors. A service employee would be considered employed under the contract even if they are in a leave status with the predecessor prime contractor or any of its subcontractors, whether paid or unpaid, and whether for medical or other reasons, during the last month of contract performance. To meet this provision, proposed § 9.12(e)(1) would allow a contractor to use the list it submits or that it plans to submit to satisfy the requirements of the SCA contract clause specified at 29 CFR 4.6(l)(2), assuming there are no changes to the workforce before the contract is completed.

Where changes to the workforce are made after the submission of the 30-day certified list, proposed § 9.12(e)(2)

would require a contractor to furnish the contracting officer with an amended certified list of the names of all service employees working under the contract and its subcontracts during the last month of contract performance not fewer than 10 business days before completion of the contract. Proposed § 9.12(e)(2) would require this list to include the anniversary dates of employment with either the current or predecessor contractors or their subcontractors. The contractor could use the list submitted to satisfy the requirements of the SCA contract clause specified at 29 CFR 4.6(l)(2) to meet this requirement.

The Department received an anonymous comment suggesting that the burden on the incoming contractor could be lessened if they did not have to search for employees employed under the predecessor contract but were instead provided contact information for the employees such as phone numbers, email addresses, or mailing addresses. The Department agrees with that recommendation, especially as the burden of this change on predecessor contractors will be minimal in light of the existing requirement that contractors maintain records of addresses pursuant to 29 CFR 4.6(g)(1)(i). Accordingly, the Department is modifying proposed § 9.12(e)(1) and (e)(2) to require predecessor contractors to list (in addition to names and anniversary dates) mailing addresses, and, if known, email addresses and phone numbers of the employees. The Department is also modifying § 9.12(e)(2) to remove the phrase "and, where applicable, dates of separation" from the information that must be included in the certified list of employees provided 10 days before contract completion, as this phrasing was unclear, and because where an employee is no longer employed by the predecessor 10 days before contract completion, that employee's name would simply not appear on that list. The Department is also inserting "business" before "days" for clarity.

The Department also received an anonymous comment suggesting that bidding on a contract without knowing the seniority level of workers is difficult. The Department notes that under the SCA, successor contractors are specifically provided the list of employees' dates of employment at the commencement of the successor contract pursuant to 29 CFR 4.6(l)(2). The commenter appeared to be suggesting a mandatory timeframe to communicate this information that would be earlier than this established regulation. The final rule does not adopt the suggestion to require earlier

provision of a seniority list, because, for purposes of the Executive order, the provision of the list is meant to facilitate the communication of offers to employees and is not meant to otherwise influence the bidding process or the established rules and timeframes of the SCA. After considering the comments, the final rule adopts § 9.12(e)(1) and (e)(2) as proposed other than the modifications discussed.

Proposed § 9.12(e)(3) would require the predecessor contractor to, before contract completion, provide written notice to service employees employed under the predecessor contract of their possible right to an offer of employment on the successor contract. Such notice would be required to be posted in a conspicuous place at the worksite and/or delivered to employees individually. The text of the proposed notice was set forth in Appendix B to part 9. The Department intends to translate the notice into several common languages and make the English and translated versions available online in a poster format to allow easy access. Language clarifying that another form with the same information could be used was added to the regulatory text. Proposed § 9.12(e)(3) further explained that where the predecessor contractor's workforce is comprised of a significant portion of workers who are not fluent in English, the notice would be required to be provided in both English and a language in which the employees are fluent. Multiple language notices would be required to be provided where significant portions of the workforce speak different languages and there is no common language. If, for example, a significant portion of a workforce speaks Korean and another significant portion of the same workforce speaks Spanish, then the information would need to be provided in English, Korean, and Spanish. If there is a question of whether a portion of the workforce is significant and the Department has a poster in the language common to those workers, the notice should be posted in that language.

The Department solicited comments on whether it should establish a percentage threshold for determining what constitutes a "significant portion of the workforce." In response to this question, the Coalition suggested that the Department impose a requirement consistent with their recommendation regarding § 9.12(b)(3) to provide notice in a language that each worker understands. As this worker-specific requirement would impose costs on the contractor regardless of whether a significant portion of the workforce required such translations, and as the

Department is modifying § 9.12(b)(3) to require that all offers be made in writing (making it possible for members of the workforce to themselves obtain a translation of the offer document), the Department declines this suggested change. Therefore, the final rule adopts § 9.12(e)(3) as proposed, other than, for clarity, changing the heading of § 9.12(e)(3) from “Notices” to the more specific “Notices to employees of possible right to offers of employment on successor contract,” and adding cross references to other employee notice provisions at § 9.5(f) (relating to agency exceptions) and § 9.11(c) (relating to location continuity).

vi. Section 9.12(f) Recordkeeping

Proposed § 9.12(f) addressed recordkeeping requirements. Proposed § 9.12(f)(1) clarified that this part would prescribe no particular order or form of records for contractors, and that the recordkeeping requirements would apply to all records regardless of their format (e.g., paper or electronic). A contractor would be allowed to use records developed for any purpose to satisfy the requirements of part 9, provided the records otherwise meet the requirements and purposes of this part. No comments were received on § 9.12(f)(1), and the final rule adopts § 9.12(f)(1) as proposed.

As proposed, § 9.12(f)(2) specified the records contractors must maintain, including copies of any written offers of employment. Proposed § 9.12(f)(2) also would require contractors to maintain a copy of any record that forms the basis for any exclusion or exception claimed under this part, the employee list provided to the contracting agency, and the employee list received from the contracting agency. In addition, every contractor that makes retroactive payment of wages or compensation under the supervision of WHD pursuant to proposed § 9.23(b) would be required to record and preserve as an entry in the pay records the amount of such payment to each employee, the period covered by the payment, and the date of payment to each employee, and to report each such payment through a method of documentation authorized by WHD. Finally, proposed § 9.12(f)(2) would require contractors to maintain evidence of any notices that they provide to workers, or workers' collective bargaining representatives, to satisfy the requirements of the order or these regulations. These would include records of notices of the possibility of employment on the successor contract required under § 9.12(e)(3) of the regulations; notices of agency exceptions that a contracting agency

requires a contractor to provide to affected workers and their collective bargaining representatives under § 9.5(f) of the regulations and section 6(b) of the Executive order; and notices to collective bargaining representatives of the opportunity to provide information relevant to the contracting agency's location continuity determination in the solicitation for a successor contract, pursuant to § 9.11(c)(4) of the regulations. WHD would use the records that are retained pursuant to § 9.12(f)(2) in determining a contractor's compliance with the order and this part. All contractors would be required to retain the records listed in proposed § 9.12(f)(2) for at least 3 years from the date the records were created and to provide copies of such records upon request of any authorized representative of the contracting agency or the Department.

As discussed above in relation to § 9.12(b)(3), in response to comments recommending all offers be made in writing, the Department is adding such a requirement to § 9.12(b)(3). Therefore, the Department is modifying § 9.12(f)(2)(ii) to remove reference to records related solely to oral offers, including removing the requirement for a contemporaneous written record of any oral offers of employment. The Department is also clarifying that copies of written offers must include the date of the offer. The Coalition was generally supportive of the proposed recordkeeping requirements, commenting that the requirements were similar to other requirements with which contractors are already required to comply. However, the Coalition also commented that the Department should require successor contractors to proactively report the number of employees they retained from the predecessor contract. The Department declines to add another procedural requirement to successor contractors in light of the other mechanisms provided by the rule for employees and the contracting agency to detect noncompliance. Finally, to conform to the final version of § 9.11(c), § 9.12(f)(2) was revised to require keeping records of notices to collective bargaining representatives regarding the provision of information related to the agency's location continuity determination. Additionally, § 9.12(f)(2)(iii) was edited to twice replace the phrase “the employee list” with “any employee list” to clarify that contractors must maintain copies of any applicable list required by § 9.12(e). Other than the modifications discussed above, the final rule adopts § 9.12(f)(2) as proposed.

vii. Section 9.12(g) Investigations

Proposed § 9.12(g) outlined the contractor's obligations to cooperate during any investigation to determine compliance with part 9 and to not discriminate against any person because such person has cooperated in an investigation or proceeding under part 9 or has attempted to exercise any rights afforded under part 9. As proposed, this obligation to cooperate with investigations would not be limited to investigations of the contractor's own actions, but also included investigations related to other contractors (e.g., predecessor and successor contractors) and subcontractors. The Department did not receive any comments regarding this proposed provision and the final rule adopts § 9.12(g) without change.

8. Section 9.13 Subcontracts

Proposed § 9.13(a) discussed the responsibilities and liabilities of prime contractors and subcontractors with respect to subcontractor compliance with the nondisplacement clause. The proposed section stated that prime contractors would be required to ensure the inclusion of the nondisplacement clause contained in Appendix A in any subcontracts and would require any subcontractors to include the nondisplacement clause in any lower-tier subcontracts. Requiring that the contract clause be inserted in all subcontracts, including lower-tier subcontracts, would serve to notify a subcontractor of their obligation to provide employees the right of first refusal and of the enforcement methods WHD may use when a subcontractor is found to be in violation of the Executive order, including the withholding of contract funds.

Proposed § 9.13(a) also explained that the prime contractor would be responsible for the compliance of any subcontractor or lower-tier subcontractor with the contract clause. In the event of a violation of the contract clause, both the prime contractor and any subcontractor(s) responsible would be held jointly and severally liable. The prime contractor's contractual liability for subcontractor violations would be a strict liability that would not require that the prime contractor knew of or should have known of the violations of any subcontractors. The requirements of this proposed section would prevent contractors from circumventing the requirements of part 9 by subcontracting the work to other contractors. Thus, the proposed section would help to ensure that all covered contractors and subcontractors of any tier are aware of and adhere to the requirements of

Executive Order 14055 and this part, and that employees receive the protections of the order and this part regardless of whether they are employed by the prime contractor or a subcontractor of any tier.

Proposed § 9.13(b) explained a prime contractor's responsibility to a subcontractor's employees when it discontinues the services of a subcontractor at any time during the contract and performs those services itself. Specifically, under this proposed section, the prime contractor must offer employment to qualified employees of the subcontractor who would otherwise be displaced.

The Department received one comment from the Coalition regarding proposed § 9.13. The Coalition strongly supported the proposed section, citing concerns about subcontractor oversight. The Coalition stated that holding the prime contractor responsible for the compliance of a subcontractor will increase compliance and promote clarity and consistency because contracting agencies have minimal direct interaction with subcontractors.

The Department agrees with the Coalition's comment that proposed § 9.13 would increase compliance and promote greater clarity and consistency. The final rule adopts § 9.13 as proposed, with minor modifications to reference the FAR contract clause that will be required to be flowed down (instead of the clause in Appendix A) in contracts covered by the FAR.

Subpart C—Enforcement

9. Section 9.21 Complaints

As part of the NPRM, the Department put forth a process for filing complaints in proposed § 9.21. Section 9.21(a) outlined the procedure to file a complaint with any office of WHD. It provided that a complaint may be filed orally or in writing and that WHD would accept a complaint in any language. Section 9.21(b) reiterated the well-established policy of the Department with respect to confidential sources. *See* 29 CFR 4.191(a); 29 CFR 5.6(a)(5). The Department received a few comments related to proposed § 9.21.

The Coalition indicated support for much of the proposed enforcement provisions in the NPRM. NATCA commented that the NPRM did not account for employees of a predecessor contractor who are represented by a union and covered by a collective bargaining agreement that contains grievance and arbitration provisions. Specifically, NATCA requested that the Department amend § 9.21 to include a new provision that would allow an

employee of a predecessor contractor who was covered by a collective bargaining agreement and who was not offered employment by the successor contractor pursuant to proposed § 9.12(c)(3) to raise the matter pursuant to the complaint process under § 9.21(a) or under the predecessor contractor's collective bargaining agreement's negotiated alternative dispute resolution procedure. This proposal is addressed above in the discussion of the "just cause" exception to the nondisplacement requirements in § 9.12(c)(3). The Department declines to impose this requirement in the rule, but notes that a contractor may not rely on Executive Order 14055 or its implementing regulations to circumvent any contractual obligations that it owes its employees, including those under a collective bargaining agreement. Nor do the order or the regulations supersede any obligations that a predecessor or successor contractor may have under the National Labor Relations Act.

After review of the comments, the final rule adopts § 9.21 as proposed.

10. Section 9.22 Wage and Hour Division Investigation

Proposed § 9.22(a) outlined WHD's investigative authority. The Department proposed to permit the Administrator to initiate an investigation either as the result of a complaint or at any time on the Administrator's own initiative. As part of an investigation, the Administrator would be able to inspect the relevant records of the relevant contractors (and make copies or transcriptions thereof) as well as interview representatives and employees of those contractors. The Administrator would additionally be able to interview any of the contractors' workers at the worksite during normal work hours and require the production of any documents or other evidence deemed necessary for inspection to determine whether a violation of this part (including conduct warranting imposition of debarment pursuant to § 9.23(d) of this part) has occurred. The section would also require Federal agencies and contractors to cooperate with authorized representatives of the Department in the inspection of records, in interviews with workers, and in all aspects of an investigation. The proposal was consistent with WHD's investigative authority under other statutes and regulations administered by WHD.

Proposed § 9.22(b) addressed subsequent investigations and would allow the Administrator to conduct a new investigation or issue a new determination if the Administrator

concludes the circumstances warrant additional action. The proposed rule included examples of situations where additional action may be warranted, such as situations where proceedings before an Administrative Law Judge (ALJ) reveal that there may have been violations with respect to other employees of the contractor, where imposition of ineligibility sanctions is appropriate, or where the contractor has failed to comply with an order of the Secretary.

As noted in the preamble discussing § 9.21, the Coalition generally supported the proposed enforcement provisions in the NPRM. The Coalition, however, also recommended that Departmental investigations commence within 15 days of receipt of a complaint and that if the Administrator finds that the complaint was not frivolously brought, that the Administrative Review Board have the ability to order the immediate reinstatement of the employee upon application of the Administrator pending final order on the complaint. The Coalition further requested clarifying language in § 9.22 that workers and their representatives have the same right to inspect and copy relevant contractor records, documents, or evidence as the Department has under proposed § 9.22.

The Department considered these suggestions and the views of those who opined on enforcement provisions. The Department understands commenter concerns but declines to implement these changes. Specifically, the Department will not implement a 15-day requirement for Departmental action following the receipt of a complaint. Nothing in the Executive order requires that investigations commence within 15 days of receipt of a complaint. Such a stringent requirement could negatively affect other enforcement obligations of the Department. The Department believes that the complaint procedure as proposed will ensure effective enforcement of and compliance with the rule's requirements.

The Department also declines to add the suggested provision giving workers and their representatives the right to inspect and copy relevant contractor records, documents, or evidence in the same manner as the Department. The Department recognizes that worker cooperation with Wage and Hour investigations is critical to effective enforcement. The final rule provides procedures in § 9.21 for workers to file complaints and in § 9.32 for complainants to request hearings by an Administrative Law Judge in specified circumstances, which may include

discovery of relevant evidence. The rule also includes an antiretaliation provision at § 9.23(e) to protect workers who file a complaint, cooperate in an investigation, or otherwise pursue any rights under the order. The Department further declines to add the suggested provision giving the Administrative Review Board the ability to reinstate an employee on an expedited basis if the Administrator finds that a complaint was not frivolously brought.

“Reinstatement” for a particular employee may not always be an appropriate remedy, depending on the circumstances. However, § 9.23(a) does afford the Secretary the authority to require a contractor to offer employment in positions for which the employee is qualified, if warranted, and a contractor may be debarred for noncompliance with any order of the Secretary.

The Department believes that the Administrator’s investigation process, as proposed, will achieve effective enforcement of Executive Order 14055. Thus, the Department declines to amend the language in proposed § 9.22(a) to mandate additional procedures and authorities during the investigation process.

The Department did not receive any other comments addressing proposed § 9.22 and the final rule adopts the provision as proposed.

11. Section 9.23 Remedies and Sanctions for Violations of This Part

Proposed § 9.23 discussed remedies and sanctions for violations of *Executive Order 14055* and this part. Proposed § 9.23(a) reiterated the authority granted to the Secretary in section 8 of *Executive Order 14055*, providing the Secretary the authority to issue orders prescribing appropriate sanctions and remedies, including, but not limited to, requiring the contractor to offer employment to employees from the predecessor contract and payment of wages lost.

Proposed § 9.23(b) provided that, in addition to satisfying any costs imposed by an administrative order under proposed §§ 9.34(j) or 9.35(d), a contractor that violates part 9 would be required to take appropriate action to remedy the violation, which could include hiring the affected employee(s) in a position on the contract for which the employee is qualified, together with compensation (including lost wages and interest) and other terms, conditions, and privileges of that employment. Proposed § 9.23(b) also provided that the contractor would be required to pay interest on any underpayment of wages. As explained in the proposed rule, payment of interest is consistent with the instruction in section 8 of the

Executive order that the Secretary will have the authority to issue final orders prescribing appropriate sanctions and remedies. The payment of interest on back-pay is an appropriate remedial measure to make a worker fully whole. The proposed language provided that interest would be calculated from the date of the underpayment or loss, using the interest rate applicable to underpayment of taxes under *26 U.S.C. 6621*, and would be compounded daily. As the proposed rule explained, various OSHA whistleblower regulations use the tax underpayment rate and daily compounding because that accounting best achieves the make-whole purpose of an employee receiving back-pay. See *Procedures for the Handling of Retaliation Complaints Under Section 806 of the Sarbanes-Oxley Act of 2002*, as Amended, Final Rule, *80 FR 11865, 11872* (Mar. 5, 2015). A similar approach is warranted in implementing *Executive Order 14055*.

Proposed § 9.23(c) addressed the withholding of contract funds for noncompliance. Under proposed § 9.23(c)(1), the Administrator would be able to direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld in such amounts as may be necessary to pay unpaid wages or to provide other appropriate relief. Proposed § 9.23(c)(1) permitted the cross-withholding of monies due. The proposed rule explained that cross-withholding is a procedure through which contracting agencies withhold monies due a contractor from contracts other than those on which the alleged violations occurred, and it applies to require withholding regardless of whether the contract on which monies are to be withheld is held by a different agency from the agency that held the contract on which the alleged violations occurred. The provision further provided that where monies are withheld, upon final order of the Secretary that unpaid wages or other monetary relief are due, the Administrator may direct that withheld funds be transferred to the Department for disbursement. Withholding, the proposed rule explained, is a long-established remedy for a contractor’s failure to fulfill its labor standards obligations under the SCA. The SCA provides for withholding to ensure the availability of monies for the payment of back wages to covered workers when a contractor or subcontractor has failed to pay the full amount of required wages. *29 CFR 4.6(i)*. The Department believes that withholding will be an important

enforcement tool to effectively enforce the requirements of *Executive Order 14055*.

Proposed § 9.23(c)(2) similarly provided for the suspension of the payment of funds if the contracting officer or the Administrator finds that the predecessor contractor has failed to provide the required list of service employees working under the contract and its subcontracts as required by § 9.12(e). Proposed § 9.23(c)(3) clarified that if the Administrator directs a contracting agency to withhold funds from a contractor pursuant to § 9.23(c), the Administrator or contracting agency must notify the affected contractor.

Proposed § 9.23(d) provided for debarment from Federal contract work for up to 3 years for noncompliance with any order of the Secretary or for willful violations of *Executive Order 14055* or the regulations in this part. The proposed provision provided that a contractor would have the opportunity for a hearing before an order of debarment is carried out and before the contractor is included on a published list of contractors subject to debarment. The Department explained in the proposed rule that, like withholding, debarment is a long-established remedy for a contractor’s failure to fulfill its labor standard obligations under the SCA. *41 U.S.C. 6706(b)*; *29 CFR 4.188(a)*. The possibility that a contractor will be unable to obtain government contracts for a fixed period of time due to debarment promotes contractor compliance with the SCA, and the Department expects such a remedy will enhance contractor compliance with *Executive Order 14055* as well.

Proposed § 9.23(e) stated that the Administrator may require a contractor to provide any relief appropriate, including employment, reinstatement, promotion, and the payment of lost wages, including interest, when the Administrator finds that a contractor has interfered with the Administrator’s investigation or has in any manner discriminated against any person because they cooperated in the Administrator’s investigation or attempted to exercise any rights afforded them under this part. The Department believes that such a provision will help ensure effective enforcement of *Executive Order 14055*, as effective enforcement requires worker cooperation. Consistent with the Supreme Court’s observation in interpreting the scope of the FLSA’s antiretaliation provision, enforcement of *Executive Order 14055* will depend “upon information and complaints received from employees seeking to

vindicate rights claimed to have been denied.” *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 11 (2011) (internal quotation marks omitted). The antiretaliation provision is to be construed broadly to effectuate its remedial purpose. Importantly, and consistent with the Supreme Court’s interpretation of the FLSA’s antiretaliation provision, the rule, as proposed, would protect workers who file oral as well as written complaints. See *Kasten*, 563 U.S. at 17. The Department’s rule, as proposed, also would protect workers from retaliation for filing complaints—regardless of whether they are filed with their employer, a higher-tier subcontractor or prime contractor, or with the Department or another Federal agency—and from retaliation for otherwise taking reasonable action with the intent to seek compliance with or enforcement of the order.

As explained in the proposed rule, while section 8 of the order authorizes the Secretary to prescribe appropriate sanctions and remedies, the Department does not interpret this affirmative direction to the Secretary to limit contracting agencies from employing any sanctions or remedies otherwise available to them under applicable law or to limit contracting agencies from including noncompliance with nondisplacement contractual or regulatory provisions in past performance reports.

In its comment, the Coalition requested that the Department add liquidated damages in an amount equal to two times the amount of back pay owed as a remedy available to employees under this section. The Coalition explained that this suggestion is modeled, in part, on the remedies provision in the FLSA and that the possibility of treble damages will deter employer noncompliance and help cover the added expenses workers may incur. The Department believes that the remedies under this section, which include the payment of interest on back pay, reinstatement, withholding, debarment, and the suspension of the payment of contract funds, are sufficient to both make a worker whole and deter employers from noncompliance. For this reason, the Department declines to implement the Coalition’s suggestion to add liquidated damages as a remedy available to employees under this section. The Department did not receive any additional comments, and the final rule adopts § 9.23 as proposed.

Subpart D—Administrator’s Determination, Mediation, and Administrative Proceedings

12. Section 9.31 Determination of the Administrator

Proposed § 9.31(a) provided that when an investigation is completed, the Administrator would issue a written determination of whether a violation occurred. A written determination would contain a statement of the investigation findings that would address the appropriate relief and the issue of debarment where appropriate. Notice of the determination would be sent by registered or certified mail to the parties’ last known address or by any other means normally ensuring delivery. Examples of such other means include, but are not limited to, email to the last known email address, delivery to the last known address by commercial courier and express delivery services, or personal service to the last known address. As highlighted during the COVID–19 pandemic, while registered or certified mail may generally be a reliable means of delivery, in some circumstances other delivery methods may be just as reliable or even more successful at ensuring delivery. This flexibility would allow the Department to choose methods to ensure that the necessary notifications are effectively delivered to the parties.

Proposed § 9.31(b)(1) explained that where the Administrator concludes that relevant facts are in dispute, the notice of determination would advise that the Administrator’s determination becomes the final order of the Secretary and is not appealable in any administrative or judicial proceeding unless a request for a hearing is sent within 20 calendar days of the date of the Administrator’s determination, in accordance with proposed § 9.32(b)(1). Determining when a request for a hearing or any other notification under this section was sent would depend on the means of delivery, such as by the date stamp on an email or the delivery confirmation provided by a commercial delivery service. This proposed section also stated that such a request may be sent by letter or by any other means normally ensuring delivery and that a detailed statement of the reasons why the Administrator’s determination is in error, including the facts alleged to be in dispute, if any, must be submitted with the request for hearing. The proposed regulation further explained that the Administrator’s determination not to seek debarment is not appealable.

The Department explained that proposed § 9.31(b)(2) would apply to situations where the Administrator has

concluded that there are no relevant facts in dispute. In such cases, the Administrator would advise the parties and their representatives, if any, that the Administrator has concluded that no relevant facts are in dispute and that the determination would become the final order of the Secretary and would not be appealable in any administrative or judicial proceeding unless a petition for review is properly filed within 20 days of the date of the determination with the Administrative Review Board (ARB). The Administrator’s determination would also advise that if an aggrieved party disagrees with the Administrator’s factual findings or believes there are relevant facts in dispute, the party may advise the Administrator of the disputed facts and request a hearing by letter or by any other means normally ensuring delivery sent within 20 calendar days of the date of the Administrator’s determination. Upon such a request, the Administrator would either refer the request for a hearing to the Chief ALJ or notify the parties and their representatives of the Administrator’s determination that there are still no relevant issues of fact and that a petition for review may be filed with the ARB in accordance with proposed § 9.32(b)(2).

The Department received one comment on this proposal, from the Coalition, which generally supported the proposed administrative process provisions in the proposed rule. However, the Coalition recommended that the Department amend § 9.31(b) to provide that the Administrator’s decision not to seek debarment be appealable. The Department considered this recommendation but declines to make this change. The Department believes that the Administrator’s decision not to seek debarment should not be appealable, as the Administrator must consider several factors that are particularly within their purview when determining if debarment is warranted, such as whether pursuing debarment is the best use of Departmental resources under the particular circumstances. Moreover, the Administrator’s decision not to pursue debarment should be left to the Administrator’s discretion, particularly given that the Administrator would necessarily be required to participate in such an appeal, that debarment cases are resource-intensive, and that debarment does not provide individual relief to a particular employee. These factors render debarment a distinct form of relief and warrant special consideration. The Department believes that this provision, as proposed, will achieve effective enforcement of Executive

Order 14055. Thus, the Department does not adopt the recommendation to make the Administrator's decision not to debar appealable.

The Department did not receive any other comments addressing proposed § 9.31, and the final rule adopts the provisions as proposed.

13. Section 9.32 Requesting Appeals

Proposed § 9.32 provided procedures for requesting appeals. Proposed § 9.32(a) provided that any party desiring review of the Administrator's determination, including judicial review, must first request a hearing with an ALJ or file a petition for review with the ARB, as appropriate, in accordance with the requirements of proposed § 9.31(b) of this part.

Proposed § 9.32(b)(1)(i) stated that any aggrieved party may request a hearing by an ALJ within 20 days of the determination of the Administrator. To request a hearing, the aggrieved party must send the request to the Chief ALJ of the Office of Administrative Law Judges by letter or by any other means normally ensuring delivery and the request must include a copy of the Administrator's determination. The proposal also would require that the party send a copy of the request for a hearing to the complainant(s) or successor contractor, their representatives, if any, as appropriate, and to the Administrator and the Associate Solicitor. The final rule includes the complete address, adding Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, to the regulatory text.

Proposed § 9.32(b)(1)(ii) provided that a complainant or any other interested party may request a hearing where the Administrator determines that there is no basis for a finding that the employer has committed violations(s), or where the complainant or other interested party believes that the Administrator has ordered inadequate monetary relief. The proposal explained that in such a proceeding, the party requesting the hearing would be the prosecuting party and the employer would be the respondent. The Administrator may intervene in the proceeding as a party or as *amicus curiae* at any time at the Administrator's discretion.

Proposed § 9.32(b)(1)(iii) provided that the employer or any other interested party may request a hearing where the Administrator determines, after investigation, that the employer has committed violation(s). The proposal explained that in such a proceeding, the Administrator would be

the prosecuting party and the employer would be the respondent.

Proposed § 9.32(b)(2)(i) explained that any aggrieved party desiring a review of the Administrator's determination in which there were no relevant facts in dispute or of an ALJ's decision must file a petition for review with the ARB within 20 calendar days of the date of the determination or decision. The petition must be served on all parties, including the Chief ALJ if the case involves an appeal from an ALJ's decision.

Proposed § 9.32(b)(2)(ii)(A)–(B) stated that a petition for review must refer to the specific findings of fact, conclusion of law, or order at issue and that copies of the petition and all briefs filed by the parties must be served on the Administrator and the Associate Solicitor. The final rule includes the complete address, adding Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, to the regulatory text.

Proposed § 9.32(b)(2)(ii)(C) provided that if a timely request for a hearing or petition for review is filed, the Administrator's determination or the ALJ's decision, as appropriate, would be inoperative unless and until the ARB issues an order affirming the determination or decision, or the determination or decision otherwise becomes a final order of the Secretary. If a petition for review concerns only the imposition of ineligibility sanctions, however, the remainder of the decision would be immediately effective. The proposal stated that no judicial review would be available to parties unless a petition for review to the ARB is first filed.

The Coalition recommended the Department amend § 9.32(b)(ii) by removing the word "monetary," thereby allowing the complainant or other interested party to appeal an Administrator determination if the complainant or other interested party believes the Administrator has ordered inadequate nonmonetary relief, such as reinstatement. The Department considered this suggestion and declines to make this change. The requirements of proposed § 9.32(b)(ii) are identical to the approach the Department took in implementing Executive Order 13495, and the Department believes that such an approach aided in achieving effective enforcement of Executive Order 13495. Further, nothing in Executive Order 14055 indicates that a different approach was expected or is warranted in implementing Executive Order 14055. In addition, just as the Administrator's decision of whether to

pursue debarment of a contractor involves discretion, the Administrator's decision of whether to seek reinstatement of a worker involves discretion. The Administrator may consider a variety of factors when considering whether to pursue reinstatement, including whether reinstatement may result in the termination of employment of another employee who is currently performing on the contract. Thus, it would not be appropriate to allow a complainant or other interested party to seek review where the Administrator has determined that reinstatement is not warranted. As another example, the Administrator might not order reinstatement and instead pursue front pay for the employee. In such an instance, it would add a level of complexity and inefficiency if the employee could seek reinstatement at the same time. For these reasons, the Department does not believe that it would be practicable for a complainant or other interested party to be able to request a hearing if they believe the Administrator has ordered inadequate nonmonetary relief.

PSC also commented on proposed § 9.32 and requested that the Administrator—and not the contractor—be the respondent in appeals of the Administrator's determinations. PSC believes the proposed provision unfairly punishes contractors by creating the functional equivalent of a private right of action against the contractor. In particular, PSC believes that contractors should not incur the cost and burden to defend a challenge to the Administrator's finding that the contractor did not commit a violation. The Department does not agree that permitting aggrieved and interested parties to seek review is unfair or unduly burdensome, and the final rule reaffirms that the employer is the appropriate respondent in appeals brought under this section, as the employer is best suited to represent its own interests in such appeals and may well wish to participate in such appeals to defend the legality of its actions. The Department also notes that Executive Order 14055 does not contemplate a private right of action, nor does the final rule provide a private right of action. The Department considered the comments received, and the final rule adopts the proposed language without change.

14. Section 9.33 Mediation

To resolve disputes by efficient and informal alternative dispute resolution methods to the extent practicable, proposed § 9.33 generally encouraged

parties to use settlement judges to mediate settlement negotiations pursuant to the procedures and requirements of 29 CFR 18.13. Proposed § 9.33 also provided that the assigned ALJ must approve any settlement agreement reached by the parties consistent with the procedures and requirements of 29 CFR 18.71. The Department did not receive any comments related to § 9.33. The final rule accordingly adopts the provision as proposed.

15. Section 9.34 Administrative Law Judge Hearings

Proposed § 9.34(a) provided for the OALJ to hear and decide, in its discretion, appeals concerning questions of law and fact regarding determinations of the Administrator issued under proposed § 9.31. The ALJ assigned to the case would act fully and finally as the authorized representative of the Secretary, subject to any appeal filed with the ARB, and subject to certain limits.

Proposed § 9.34(a)(2) detailed the limits on the scope of review for proceedings before the ALJ. Proposed § 9.34(a)(2)(i) would exclude from the ALJ's authority any jurisdiction to pass on the validity of any provision of part 9. Proposed § 9.34(a)(2)(ii) provided that the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. 504, would not apply to proceedings under part 9 because the proceedings proposed in subpart D are not required by an underlying statute to be determined on the record after an opportunity for an agency hearing. Therefore, an ALJ would have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the EAJA for any proceeding under part 9.

Proposed § 9.34(b) stated that absent a stay to attempt settlement, the ALJ would notify the parties and any representatives within 15 calendar days following receipt of the request for hearing of the day, time, and place for hearing. The hearing would be held within 60 days from the date of receipt of the hearing request under proposed § 9.34(b).

Proposed § 9.34(c) provided that the ALJ may dismiss a party's challenge to a determination of the Administrator if the party or the party's representative requests a hearing and fails to attend the hearing without good cause. Proposed § 9.34(c) also provided that the ALJ may dismiss a challenge to a determination of the Administrator if a party fails to comply with a lawful order of the ALJ.

Proposed § 9.34(d) stated that the Administrator would have the right, at

the Administrator's discretion, to participate as a party or as amicus curiae at any time in the proceedings. This would include the right to petition for review of an ALJ's decision in a case in which the Administrator has not previously participated. The Administrator would be required to participate as a party in any proceeding in which the Administrator has determined that part 9 has been violated, except where the proceeding only concerns a challenge to the amount of monetary relief awarded.

Under proposed § 9.34(e), a Federal agency that is interested in a proceeding would be able to participate as amicus curiae at any time in the proceedings. The proposed paragraph also stated that copies of all pleadings in a proceeding must be served on the interested Federal agency at the request of such Federal agency, even if the Federal agency is not participating in the proceeding.

Proposed § 9.34(f) provided that copies of the request for hearing under this part would be sent to the WHD Administrator and the Associate Solicitor of Labor, regardless of whether the Administrator is participating in the proceeding.

With certain exceptions, proposed § 9.34(g) stated that it would apply the rules of practice and procedure for administrative hearings before the OALJ at 29 CFR part 18, subpart A, to administrative proceedings under part 9. The exceptions in proposed § 9.34(g) provided that part 9 would be controlling to the extent it provides any rules of special application that may be inconsistent with the rules in part 18, subpart A. In addition, proposed § 9.34(g) provided that the Rules of Evidence at 29 CFR part 18, subpart B, would be inapplicable to administrative proceedings under this part. The proposed paragraph would clarify that rules or principles designed to ensure production of the most probative evidence available would be applied, and that the ALJ may exclude immaterial, irrelevant, or unduly repetitive evidence.

Proposed § 9.34(h) would require ALJ decisions (containing appropriate findings, conclusions, and an order) to be issued within 60 days after completion of the proceeding and to be served upon all parties to the proceeding.

Proposed § 9.34(i) stated that, upon the issuance of a decision that a violation had occurred, the ALJ would order the successor contractor to take appropriate action to remedy the violation. The remedies could include ordering the successor contractor to hire each affected employee in a position on

the contract for which the employee is qualified, together with compensation (including lost wages), terms, conditions, and privileges of that employment. If the Administrator has sought debarment, the order would also be required to address whether debarment is appropriate.

Proposed § 9.34(j) would allow the ALJ to assess against a successor contractor a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by the aggrieved employee(s) in the proceeding when an order finding the successor contractor violated part 9 is issued. This amount would be awarded in addition to any unpaid wages or other relief due. The Coalition suggested amending proposed § 9.34(j) to make reasonable expenses incurred by an employee's representative in connection with ALJ hearings under this paragraph recoverable. However, § 9.34(j) is not intended to be an open-ended provision for the recovery of costs incurred by anyone other than the aggrieved employee. The Department clarifies that labor costs incurred by an aggrieved employee's representative would not be recoverable under this provision. However, the Department views costs for postage, photo copying, or messenger delivery, for example, that are initially incurred by the aggrieved employee's representative could be "costs incurred by the aggrieved employee" if they are ultimately charged to the employee. Such costs, therefore, could be recoverable under this provision if they are reasonable and otherwise meet the criteria for the recovery of costs under this paragraph. Therefore, the final rule does not expand the amount awarded to an aggrieved employee to include reasonable expenses incurred by an employee's representative in connection with ALJ hearings and adopts the provision as proposed.

Proposed § 9.34(k) provided that the ALJ's decision would become the final order of the Secretary, unless a timely appeal is filed with the ARB.

With exception of one comment related to § 9.34(j), the Department did not receive any comments on proposed § 9.34 and the final rule adopts § 9.34 as proposed.

16. Section 9.35 Administrative Review Board Proceedings

Proposed § 9.35 described the ARB's jurisdiction and provided the procedures for appealing an ALJ decision to the ARB under Executive Order 14055.

Proposed § 9.35(a)(1) stated the ARB has jurisdiction to hear and decide, in

its discretion, appeals from the Administrator's determinations issued under § 9.31 and from ALJ decisions issued under § 9.34.

Proposed § 9.35(a)(2) identified the limitations on the ARB's scope of review, including a restriction on passing on the validity of any provision of part 9, a general prohibition on receiving new evidence in the record (because the ARB is an appellate body and must decide cases before it based on substantial evidence in the existing record), and a bar on granting attorney fees or other litigation expenses under the EAJA.

Proposed § 9.35(b) provided that the ARB would issue a final decision within 90 days following receipt of the petition for review and would serve the decision by mail on all parties at their last known address, and on the Chief ALJ if the case were to involve an appeal from an ALJ's decision.

Proposed § 9.35(c) would require the ARB's order to mandate action to remedy the violation if the ARB concludes a violation occurred. Under the proposed rule, such action may include hiring each affected employee in a position on the contract for which the employee is qualified, together with compensation (including lost wages), terms, conditions, and privileges of that employment. If the Administrator seeks debarment, the ARB would be required to determine whether debarment would be appropriate. Proposed § 9.35(c) also provided that the ARB's order would be subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 or any successor to that order. *See* Secretary of Labor's Order, 01–2020 (Feb. 21, 2020), 85 FR 13186 (Mar. 6, 2020).

Proposed § 9.35(d) would allow the ARB to assess against a successor contractor a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by the aggrieved employee(s) in the proceeding. This amount would be awarded in addition to any lost wages or other relief due under § 9.23(b) of this part.

Proposed § 9.35(e) provided that the ARB's decision would become the Secretary's final order in the matter in accordance with Secretary's Order 01–2020 (or any successor to that order), which provides for discretionary review of such orders by the Secretary. *See id.*

The Department did not receive any comments related to § 9.35. The final rule accordingly adopts the provision as proposed.

17. Section 9.36 Severability

Section 10 of Executive Order 14055 states that if any provision of the order, or the application of any such provision to any person or circumstance, is held to be invalid, the remainder of the order and the application will not be affected. *See* 86 FR at 66400. Consistent with this directive, the Department proposed to include a severability clause in part 9. Proposed § 9.36 explained that each provision would be capable of operating independently from one another. If any provision of part 9 were held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the Department intended that the remaining provisions would remain in effect.

The Department did not receive any comments related to § 9.36. The final rule accordingly adopts the provision as proposed.

18. Nonsubstantive Changes

The Plain Writing Act of 2010 (Pub. L. 111–274, 124 Stat. 2861) requires Federal agencies to write documents in a clear, concise, well-organized manner. The Department has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885). Consistent with this practice, technical edits have been made throughout the regulations such as replacing the term “shall” with “will” or “must,” and replacing the term “assure” with “ensure.” Such changes are not intended to reflect a change in the substance of these sections.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, the information collections' practical utility, the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. Under the PRA, an agency may not collect or sponsor an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. *See* 5 CFR 1320.8(b)(3)(vi). OMB has assigned control number 1235–0021 to the information collection which gathers information from complainants alleging violations of the labor standards that WHD administers and enforces, and the Department

requested a new control number be assigned to the new information collection required as part of this rule. In accordance with the PRA, the Department solicited public comments on the proposed changes to the information collection under control number 1235–0021 and the creation of the new information collection in the NPRM, as discussed below. *See* 87 FR 42552 (July 15, 2022). The Department also submitted a contemporaneous request for OMB review of the proposed revisions to the existing information collection and the creation of a new information collection in accordance with 44 U.S.C. 3507(d). On August 16, 2022, OMB issued a notice that assigned the new information collection control number 1235–0033 and on August 18, 2022, issued a notice that continued the previous approval of the information collection under 1235–0021 under the existing terms of clearance. Both notices ask the Department to resubmit the requests upon promulgation of the final rule and after consideration of the public comments received.

Circumstances Necessitating this Collection: This rulemaking implements Executive Order 14055, Nondisplacement of Qualified Workers Under Service Contracts, signed by President Joseph R. Biden, Jr. on November 18, 2021. The Department administers and enforces these regulations that implement Executive Order 14055.

Executive Order 14055 generally requires Federal service contracts and subcontracts that succeed a contract for performance of the same or similar work, and solicitations for such contracts and subcontracts, to include a clause requiring the successor contractor and its subcontractors to offer service employees employed under the predecessor contract and its subcontracts whose employment will be terminated as a result of the award of the successor contract a right of first refusal of employment in positions for which those employees are qualified. Section 5 of Executive Order 14055 contains exclusions, directing that the order will not apply to contracts under the simplified acquisition threshold as defined in 41 U.S.C. 134 or employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employees were not deployed in a manner that was designed to avoid the purposes of the Executive order. Section 6 of the Executive order permits agencies to except certain contracts from the requirements of the Executive order in certain circumstances. Section 8 of

Executive Order 14055 grants the Secretary authority to investigate potential violations of, and obtain compliance with, the order.

This final rule, which implements Executive Order 14055, contains several provisions that could be considered to entail collections of information: (1) the requirement in § 9.12(b)(3) requiring successor contractors to make employment offers in writing; (2) the notice provision in § 9.11(c)(4) that requires contractors to provide notice to employees' representatives on a contract of the method and opportunity to provide information to the contracting agency relevant to the location continuity determination; (3) the notice provision described in § 9.5(f) that requires contractors to provide notice to workers of contracting agency decisions to except contracts from the nondisplacement requirements; (4) the requirement in § 9.12(e) that predecessor contractors submit a list of the names, mailing addresses, and, if known, phone numbers and email addresses of all service employees working under the contract and its subcontracts to the contracting officer before contract completion and the requirement to provide service employees with written notice of their possible right to an offer of employment on a successor contract; (5) disclosure and recordkeeping requirements for covered contractors described in § 9.12(f); (6) the requirement in § 9.13(a) for the contractor to insert the nondisplacement contract clause into any lower-tier subcontracts; (7) the complaint process described in § 9.21; and (8) the administrative proceedings described in subpart D. These requirements are essential to the Department's ability to implement and enforce the requirements of Executive Order 14055 and this final rule.

Section 9.12 states compliance requirements for contractors covered by Executive Order 14055. As discussed above, under proposed § 9.12(b)(3) the successor contractor would have had the option of making a specific oral or written employment offer to each qualified employee on the predecessor contract. The final rule modifies the language of proposed § 9.12(b)(3), as well as the corresponding recordkeeping requirements of § 9.12(f)(2)(i), to require contractors to make offers of employment in writing. As all offers must be in writing, the final rule does not include the requirement that these offers be translated, as employees may obtain their own translations of the written offer documents in their possession.

Section 9.12(e) details contractor obligations near the end of contract performance. Sections 9.12(e)(1) and (e)(2) require a contractor to furnish the contracting officer with a certified list of the names, mailing addresses, and, if known, phone numbers and email addresses of all service employees working under the contract and its subcontracts during the last month of contract performance. Additionally, § 9.12(e)(3) requires a contractor to provide service employees with written notice of their possible right to an offer of employment on a successor contract. Finally, as noted in § 9.12(e)(3), contractors are also required to provide additional notices to workers by the provisions in § 9.5(f) (relating to agency exceptions) and § 9.11(c)(4) (relating to location continuity).

To verify compliance with the requirements in part 9, § 9.12(f) requires contractors to maintain for 3 years copies of certain records that are subject to OMB clearance under the PRA, including (1) any written offers of employment; (2) any record that forms the basis for any exclusion or exception claimed from the nondisplacement requirements; and (3) a copy of the employee list received from the contracting agency and the employee list provided to the contracting agency. *See* 44 U.S.C. 3502(3), 3518(c)(1); 5 CFR 1320.3(c), 1320.4(a)(2), 1320.4(c). Additionally, § 9.12(f)(2) requires contractors to maintain evidence of any notices that they have provided to workers, or workers' collective bargaining representatives, to satisfy the requirements of the order or these regulations. These include records of notices of the possibility of employment on the successor contract that are required under § 9.12(e)(3) of the regulations; notices of agency exceptions that a contracting agency requires a contractor to provide under section 6(b) of the order and as described in § 9.5(f) of the regulations; and notices to collective bargaining representatives of the opportunity to provide information relevant to the contracting agency's location continuity determination in the solicitation for a successor contract, pursuant to § 9.11(c)(4) of the regulations.

Section 9.13(a) requires the contractor or subcontractor to insert in any lower-tier subcontracts the nondisplacement contract clause in Appendix A or the FAR, as appropriate. As explained in the preamble to that section, this requirement notifies subcontractors of their obligation to provide employees the right of first refusal and of the enforcement methods WHD may use when subcontracts are found to be in

violation of the Executive order. The Department has estimated additional burden hours for this requirement, but believes that this additional burden will be minimal, because the clause will be easily accessible to contractors and subcontractors who may simply copy and insert the clause into the lower-tier subcontract.

Section 9.21 details the procedure for filing complaints of violations of the Executive order or part 9. WHD obtains PRA clearance under control number 1235–0021 for an information collection covering complaints alleging violations of various labor standards that the agency already administers and enforces. WHD submitted an Information Collection Request (ICR) to revise the approval under 1235–0021 to incorporate the regulatory citations in this rule and to adjust burden estimates to reflect an increase in the number of complaints filed.

Subpart D establishes administrative proceedings to resolve investigation findings. Particularly with respect to hearings, the rule imposes information collection requirements. The Department notes that information exchanged between the target of a civil or administrative action and the agency to resolve the action is exempt from PRA requirements. *See* 44 U.S.C. 3518(c)(1)(B); 5 CFR 1320.4(a)(2). This exemption applies throughout the civil or administrative action (such as an investigation and any related administrative hearings). Therefore, the Department has determined the administrative requirements contained in subpart D of this final rule are exempt from needing OMB approval under the PRA.

Information and technology: There is no particular order or form of records prescribed by the regulations. A respondent may meet the requirements of this final rule using paper or electronic means. WHD, to reduce burden caused by the filing of complaints that are not actionable by the agency, uses a complaint filing process in which complainants discuss their concerns with WHD professional staff. This process allows agency staff to refer complainants raising concerns that are not actionable under wage and hour laws and regulations to an agency that may be able to assist.

Public comments: The Department invited public comment on its analysis that the rule would create a slight increase in the paperwork burden associated with ICR 1235–0021 and on the burden related to the new ICR 1235–0033. The Department did not receive comments on the ICRs themselves or any comments submitted regarding the

PRA analysis in particular. However, commenters addressed aspects of the information collections while commenting on the text of the proposed rule.

For example, ABC commented that the 10-day time frame in which predecessor contractors must furnish to the contracting officer an updated list of employees working on the predecessor contract under § 9.12(e)(2) is both impractical and unworkable, arguing that 10 days is an inadequate time frame for the successor contractor to inform, interview, and evaluate the displaced workers prior to the commencement of the successor contract. Relatedly, an anonymous commenter suggested that the burden on the successor contractor to offer employment to qualified employees on the predecessor contract may be lessened if the successor contractor is provided with contact information for the employees such as phone numbers, email addresses, or mailing addresses. To address ABC's concern that the 10-day time frame may make it impractical for the successor contractor to inform, interview, and evaluate employees prior to the commencement of the successor contract, the Department is adopting the anonymous commenter's suggestion that the successor contractor be provided with employee contact information. Accordingly, as explained in the preamble to § 9.12, the Department is modifying proposed § 9.12(e)(1) and (e)(2) to require predecessor contractors to list (in addition to names and anniversary dates) mailing addresses, and, where known, email addresses and phone numbers of the employees. The Department believes that the burden of this change on contractors will be minimal in light of the existing requirement that contractors maintain records of addresses pursuant to 29 CFR 4.6(g)(1)(i).

The Coalition commented on the requirements for successor contractors in § 9.12(b)(3) when making the required job offers to employees on the predecessor contract. The Coalition suggested the Department require job offers be provided in writing, and not verbally, to lessen disputes between contractors and employees as to the existence and adequacy of offers. The Coalition further noted that requiring offers in writing would lessen the degree of employees' reliance on the accuracy of contractors' translators. AFL-CIO echoed the Coalition's sentiments regarding offers being made in writing. The Department agrees that requiring offers to be made in writing would lessen such factual disputes between contractors and employees,

including disputes about the fidelity of linguistic translations. For that reason, the Department is amending proposed § 9.12(b)(3), as well as the corresponding recordkeeping requirements of § 9.12(f)(2), to require that offers be in writing, thus removing the option for successor contractors to make offers orally. Because this change removes the requirement for a contemporaneous written record of any oral offers of employment and simply retains the requirement that contractors maintain copies of any written offers of employment, this change does not require contractors to maintain additional information. Thus, the Department has not estimated additional recordkeeping burden hours or costs associated with this change. However, because this change requires contractors to provide written offers of employment to predecessor contract employees, the Department estimates additional burden hours and costs associated with this requirement.

Total burden for the subject information collections, including the burdens that will be unaffected by this final rule and any changes, is summarized as follows:

Type of review: Revision to currently approved information collections.

Agency: Wage and Hour Division, Department of Labor.

Title: Employment Information Form.

OMB control number: 1235–0021.

Affected public: Private sector, businesses or other for-profits and Individuals or Households.

Estimated number of respondents: 27,010 (10 from this rulemaking).

Estimated number of responses: 27,010 (10 from this rulemaking).

Frequency of response: On occasion.

Estimated annual burden hours: 9,003 (3 burden hours due to this rulemaking).

Capital/start-up costs: \$0 (\$0 from this rulemaking).

Title: Nondisplacement of Qualified Workers Under Service Contracts.

OMB control number: 1235–0033.

Affected public: Private sector, businesses or other for-profits and Individuals or Households.

Estimated number of respondents: 137,463 (all from this rulemaking).

Estimated number of responses: 3,042,829 (all from this rulemaking).

Frequency of response: on occasion.

Estimated annual burden hours: 205,332 (all from this rulemaking).

Estimated annual burden costs: \$13,307,567.00

Capital/start-up costs: \$0 (\$0 from this rulemaking).

IV. Executive Order 12866, Regulatory Planning and Review; Executive Order 13563, Improved Regulation and Regulatory Review

Under Executive Order 12866, as amended by Executive Order 14094, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive order and OMB review.¹² OIRA has determined that this rule is a "significant regulatory action" under section 3(f)(1) of Executive Order 12866.

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The analysis below outlines the impacts that the Department anticipates could result from this rule and was prepared pursuant to the above-mentioned executive orders.

A. Introduction

On November 18, 2021, President Joseph R. Biden, Jr. issued Executive Order 14055, "Nondisplacement of Qualified Workers Under Service Contracts." 86 FR 66397 (Nov. 23, 2021). This order explains that "[w]hen a service contract expires, and a follow-on contract is awarded for the same or similar services, the Federal Government's procurement interests in economy and efficiency are best served when the successor contractor or subcontractor hires the predecessor's employees, thus avoiding displacement of these employees." Accordingly, Executive Order 14055 provides that contractors and subcontractors performing on covered Federal service contracts must in good faith offer service employees employed under the predecessor contract a right of first refusal of employment. The order applies only to contracts that are covered by the SCA.

¹² See 88 FR 21879 (Apr. 11, 2023); 58 FR 51735, 51741 (Oct. 4, 1993).

This rule requires that contracting agencies incorporate into every covered Federal service contract the contract clause included in Executive Order 14055. That clause requires a successor contractor and its subcontractors to make bona fide, express offers of employment to service employees employed under the predecessor contract whose employment would be terminated with the change of contract. The required contract clause also forbids successor contractors or subcontractors from filling contract employment openings prior to making such good faith offers of employment to employees of the predecessor contractor or subcontractor. See section II.B. for an in-depth discussion of the provisions of the Executive order.

B. Number of Potentially Affected Contractor Firms and Workers

1. Number of Potentially Affected Contractor Firms

To determine the number of firms that could potentially be affected by this rulemaking, the Department estimated a range of potentially affected firms. The more narrowly defined population (firms actively holding SCA-covered contracts) includes 119,700 firms (Table 1). The broader population (including those bidding on SCA contracts but without active contracts, or those considering bidding in the future) includes 442,761 firms.

i. Firms Currently Holding SCA Contracts

USASpending.gov—the official source for spending data for the U.S. Government—contains Government award data from the Federal Procurement Data System Next Generation (FPDS-NG), which is the system of record for Federal procurement data. The Department used these data to identify the number of firms that currently hold SCA contracts.^{13 14} Although more recent

data are available, the Department used data from 2019 to avoid any shifts in the data associated with the COVID-19 pandemic in 2020. Because many Federal employees were working remotely throughout 2020 and 2021, reliance on service contracts for Federal buildings may have been reduced during those years and may not reflect the level of employment on and incidence of SCA contracts going forward.¹⁵

To identify firms with SCA contracts, the Department included all firms with the “Labor Standards” element equal to “Y” for any of their contracts, meaning that the contracting agency flagged the contract as covered by the SCA. However, because this flag is often listed as “not applicable” and appears at times to be reported with error, the Department also included some other firms. Of the contracts not flagged as SCA, the Department excluded (1) those for the purchase of goods¹⁶ and (2) those covered by the DBA.¹⁷ The Department also excluded (1) awards for financial assistance such as direct payments, loans, and insurance; and (2) contracts performed outside the U.S. because SCA coverage is limited to the 50 states, the District of Columbia, and certain U.S. territories. The firms for the remaining contracts are included as potentially impacted by this rulemaking.

In 2019, there were 86,000 unique prime contractors in *USASpending.gov* that fit the parameters discussed above, and the Department has used this number as an estimate of prime contractors with active SCA contracts. However, subcontractors are also impacted by this rule. The Department examined 5 years of *USASpending.gov* data (2015 through 2019) and identified 33,708 unique subcontractors that did not hold contracts as prime contractors

an overestimate of the number of contractors that are actually affected.

¹³ The Department estimated the number of prime contractors using the 2021 *USASpending.gov* data and found that there were fewer contractors in 2021 than in 2019. The number of prime contractors in 2019 was 85,987 and the number of prime contractors in 2021 was 78,347. This finding is in line with our hypothesis that remote work for Federal employees could have reduced the demand for SCA contractors in 2021.

¹⁶ For example, the Government purchases pencils; however, a contract solely to purchase pencils is not covered by the SCA and so would not be covered by the Executive order. Contracts for goods were identified in the *USASpending.gov* data if the product or service code begins with a number (the code for services begins with a letter).

¹⁷ Contracts covered by DBA were identified in the *USASpending.gov* data where the “Construction Wage Rate Requirements” element for a contract is marked “Y,” meaning that the contracting agency flagged that the contract is covered by the DBA.

in 2019.¹⁸ The Department used 5 years of data for the count of subcontractors to compensate for lower-tier subcontractors that may not be included in *USASpending.gov*.

In total, the Department estimates 119,700 firms currently hold SCA contracts and could potentially be affected by this rulemaking under the narrow definition. Table 1 shows these firms by 2-digit NAICS code.^{19 20}

ii. All Potentially Affected Contractors

The Department also cast a wider net to identify other potentially affected contractors, both those directly affected (*i.e.*, holding contracts) and those that plan to bid on SCA-covered contracts in the future. To determine the number of these firms, the Department identified firms registered in the GSA’s System for Award Management (SAM) since all entities bidding on Federal procurement contracts as a prime contractor or applying for grants must register in SAM. The Department believes that firms registered in SAM represent those that may be affected if they decide to bid on an SCA contract as a prime contractor in the future. However, it is also possible that some firms that are not already registered in SAM could decide to bid on SCA-covered contracts after this rulemaking; these firms are not included in the Department’s estimate. The rule could also impact such firms if they are awarded a future contract.

Because SAM provides a more recent snapshot of data, the Department used October 2022 SAM data and identified 409,053 registered firms.²¹ The Department excluded firms with expired registrations, firms only applying for grants,²² government

¹⁸ For subcontractors, the Department was unable to make restrictions to limit the data to SCA contracts because none of the necessary variables are available in the *USASpending.gov* database (*i.e.*, the Labor Standards variable, the Construction Wage Rate Requirements variable, or the product or service code variable).

¹⁹ The North American Industry Classification System (NAICS) is a method by which Federal statistical agencies classify business establishments in order to collect, analyze, and publish data about certain industries. Each industry is categorized by a sequence of codes ranging from 2 digits (most aggregated level) to 6 digits (most granular level). <https://www.census.gov/naics/>.

²⁰ In the data, a NAICS code is assigned to the contract and identifies the industry in which the contract work is typically performed. If a firm has contracts in several NAICS, the Department has assigned it to only one NAICS based on the ordering of the contracts in the data (this approximates a random assignment to one NAICS).

²¹ Data released in monthly files. See GSA, SAM.gov, available at: <https://www.sam.gov/SAM/pages/public/extracts/samPublicAccessData.jsf>.

²² Entities registering in SAM are asked if they wish to bid on contracts. If the firm answers “yes,” then they are included as “All Awards” in the “Purpose of Registration” column in the SAM data.

¹³ The Department recognizes that some SCA-covered contracts that would be covered by this rule are not reflected in *USASpending.gov* (*i.e.*, they are SCA-covered contracts that are not procuring services directly for the Federal Government, including certain licenses, permits, cooperative agreements, and concessions contracts, such as, for example, delegated leases of space on a military base from an agency to a contractor whereby the contractor operates a barber shop). However, the Department estimates that the number of firms holding such SCA-covered nonprocurement contracts is a small fraction of the number of firms identified based on *USASpending.gov*.

¹⁴ The Department also acknowledges that prime contracts that are less than \$250,000 and their subcontracts would not be covered by this regulation, but the Department has not made an adjustment for these contracts in the estimation of covered contractors. Therefore, this estimate may be

entities (such as city or county governments),²³ foreign organizations, and companies that only sell products and do not provide services. SAM includes all prime contractors and some subcontractors (those that are also prime

contractors or that have otherwise registered in SAM). However, the Department is unable to determine the number of subcontractors that are not in the SAM database. Therefore, the Department added the subcontractors

identified in *USASpending.gov* to this estimate. Adding these 33,708 firms identified in *USASpending.gov* to the number of firms in SAM results in 442,761 potentially affected firms.

TABLE 1—RANGE OF NUMBER OF POTENTIALLY AFFECTED FIRMS

Industry	NAICS	Lower-bound estimate			Upper-bound estimate		
		Total	Primes from <i>USASpending.gov</i>	Subcontractors from <i>USASpending.gov</i>	Total	Firms from SAM	Subcontractors from <i>USASpending.gov</i>
Agriculture, forestry, fishing and hunting	11	2,482	2,482	0	5,769	5,769	0
Mining	21	145	102	43	959	916	43
Utilities	22	1,596	1,541	55	2,485	2,430	55
Construction	23	13,708	5,457	8,251	56,126	47,875	8,251
Manufacturing	31–33	13,958	5,637	8,321	51,299	42,978	8,321
Wholesale trade	42	1,205	564	641	18,092	17,451	641
Retail trade	44–45	344	317	27	7,979	7,952	27
Transportation and warehousing	48–49	3,387	2,998	389	17,921	17,532	389
Information	51	4,061	3,735	326	13,350	13,024	326
Finance and insurance	52	475	429	46	3,365	3,319	46
Real estate and rental and leasing	53	2,822	2,821	1	19,439	19,438	1
Professional, scientific, and technical services	54	37,739	26,103	11,636	115,007	103,371	11,636
Management of companies and enterprises	55	3	3	0	604	604	0
Administrative and waste services	56	15,120	11,509	3,611	36,187	32,576	3,611
Educational services	61	3,609	3,359	250	17,600	17,350	250
Health care and social assistance	62	7,004	6,987	17	36,758	36,741	17
Arts, entertainment, and recreation	71	916	915	1	5,172	5,171	1
Accommodation and food services	72	3,037	3,031	6	10,474	10,468	6
Other services	81	8,084	7,997	87	24,175	24,088	87
Total private .....	.....	119,695	85,987	33,708	442,761	409,053	33,708

2. Number of Potentially Affected Workers

There are no readily available data on the number of workers working on SCA contracts; therefore, to estimate the number of these workers, the Department employed the approach used in the 2021 final rule, “Increasing the Minimum Wage for Federal Contractors,” which implements Executive Order 14026.²⁴ That methodology is based on the 2016 rulemaking implementing Executive Order 13706’s (Establishing Paid Sick Leave for Federal Contractors) paid sick leave requirements, which contained an updated version of the methodology used in the 2014 rulemaking for

Executive Order 13658 (Establishing a Minimum Wage for Contractors).²⁵ Using this methodology, the Department estimated the number of workers who work on SCA contracts, representing the number of “potentially affected workers,” is 1.4 million. This number is likely an overestimate because some workers will be in positions not covered by this rule (e.g., high-level management, non-service employees). One commenter also posited that this estimate could be an overestimate because many of these workers are already covered under collective bargaining agreements that may ensure them continued employment.

The Department estimated the number of potentially affected workers

in two parts. First, the Department estimated employees and self-employed workers working on SCA contracts in the 50 States and the District of Columbia. Second, the Department estimated the number of SCA workers in the U.S. territories.

i. Workers on SCA Contracts in the 50 States and the District of Columbia

SCA contract employees on covered contracts were estimated by taking the ratio of covered Federal contracting expenditures to total output, by industry. Total output is the market value of the goods and services produced by an industry. This ratio is then applied to total private employment in that industry (Table 2).

$$\text{Potentially Affected Employees} = \frac{\text{Expenditures}}{\text{Total Output}} \times \text{Employment}$$

To estimate SCA contracting expenditures, the Department used *USASpending.gov* data and the same methodology as used above for estimating affected firms. The

Department included all contracts with the “Labor Standards” element equal to “Y,” meaning that the contracting agency flagged the contract as covered by SCA. Of the contracts not flagged as

SCA, the Department excluded (1) those for the purchase of goods and (2) those covered by DBA.²⁶ The firms for the remaining contracts are also included as potentially impacted by this

The Department included only firms with a value of “Z2,” which denotes “All Awards.”

²³ While there are certain circumstances in which state and local government entities act as contractors that enter into contracts covered by the SCA, the number of such entities is relatively

minimal and including all government entities would result in an inappropriate overestimation.

²⁴ See 86 FR 67126, 67194 (Nov. 24, 2021).

²⁵ See 81 FR 67598 (Sept. 30, 2016) and 79 FR 60634 (Oct. 7, 2014).

²⁶ Identified when the “Construction Wage Rate Requirements” element is “Y,” meaning that the contracting agency flagged that the contract is covered by DBA.

rulemaking. The Department also excluded (1) awards for financial assistance such as direct payments, loans, and insurance; and (2) contracts performed outside the U.S. because SCA coverage is limited to the 50 states, the District of Columbia, and certain U.S. territories.

To determine the share of all output associated with SCA contracts, the Department divided contracting expenditures by gross output, in each 2-digit NAICS code.²⁷ This results in 0.93 percent of output being covered by SCA contracts (Table 2). The Department then multiplied the ratio of covered-to-gross output by private sector employment for each NAICS code to estimate the share of employees working on SCA contracts. The Department's private sector employment number is primarily comprised of employment from the May 2019 Occupational Employment and Wage Statistics (OEWS) data, formerly Occupational Employment Statistics.²⁸ However, the OEWS excludes unincorporated self-employed workers, so the Department supplemented OEWS data with data from the 2019 Current Population Survey Merged Outgoing Rotation

Group (CPS MORG) to include unincorporated self-employed workers in the estimate of workers.

According to this methodology, the Department estimates there are 1.4 million workers on SCA covered contracts in the 50 States and the District of Columbia (see Table 2 below). This methodology represents the number of year-round-equivalent potentially affected workers who work exclusively on SCA contracts. Thus, when the Department refers to potentially affected employees in this analysis, the Department is referring to this conceptual number of people working exclusively on covered contracts. The total number of potentially affected workers will likely exceed this number because not all workers work exclusively on SCA contracts. However, some of the total number of potentially affected workers may not be covered by this rulemaking.

ii. Workers on SCA Contracts in the U.S. Territories

The methodology used to estimate potentially affected workers in certain U.S. territories (American Samoa, the Commonwealth of the Northern Mariana

Islands, Guam, Puerto Rico, and the U.S. Virgin Islands) is similar to the methodology used above for the 50 States and the District of Columbia. The primary difference is that data on gross output in the U.S. territories are not available, and so the Department had to make some additional assumptions. The Department approximated gross output in the U.S. territories by calculating the ratio of gross output to Gross Domestic Product (GDP) for the U.S. (1.5), then multiplying that ratio by GDP in each territory to estimate total gross output.^{29,30} The other difference is the analysis is not performed by NAICS because the GDP data are not available at that level of disaggregation.

The rest of the methodology follows the methodology for the 50 States and the District of Columbia. To determine the share of all output associated with SCA contracts, the Department divided contract expenditures from *USASpending.gov* for each territory by gross output. The Department then multiplied the ratio of covered contract spending to gross output by private sector employment (from the OEWS) to estimate the number of workers working on covered contracts (9,900).³¹

TABLE 2—NUMBER OF POTENTIALLY AFFECTED WORKERS

NAICS	Total private output (billions) ^a	Covered contracting output (millions) ^b	Share output from covered contracting (%)	Private sector workers (1,000s) ^c	Workers on SCA contracts (1,000s) ^d
11	\$450	\$431	0.10	1,168	1
21	577	104	0.02	699	0
22	498	2,350	0.47	547	3
23	1,662	7,218	0.43	9,100	40
31–33	6,266	42,023	0.67	12,958	87
42	2,098	183	0.01	5,955	1
44–45	1,929	331	0.02	16,488	3
48–49	1,289	14,288	1.11	6,215	69
51	1,942	10,308	0.53	2,971	16
52	3,161	12,474	0.39	6,180	24
53	4,143	968	0.02	2,699	1
54	2,487	151,809	6.10	10,581	646
55	675	0	0.00	2,470	0
56	1,141	36,238	3.18	10,158	323
61	381	4,140	1.09	3,271	36
62	2,648	11,130	0.42	20,791	87
71	382	82	0.02	2,949	1
72	1,192	1,019	0.09	14,303	12
81	772	2,699	0.35	5,260	18
Territories	156	1,501	(^e)	963	9.9

²⁷ Bureau of Economic Analysis (BEA). Table 8. Gross Output by Industry Group. 2020, available at: <https://www.bea.gov/news/2020/gross-domestic-product-industry-fourth-quarter-and-year-2019>. The BEA provides the definition: "Gross output of an industry is the market value of the goods and services produced by an industry, including commodity taxes. The components of gross output include sales or receipts and other operating income, commodity taxes, plus inventory change.

Gross output differs from value added, which measures the contribution of the industry's labor and capital to its gross output."

²⁸ Bureau of Labor Statistics Occupational Employment and Wage Statistics. May 2019. Available at: <https://www.bls.gov/oes/>.

²⁹ GDP is limited to personal consumption expenditures and gross private domestic investment.

³⁰ For example, in Puerto Rico, personal consumption expenditures plus gross private domestic investment equaled \$73.4 billion. Therefore, Puerto Rico gross output was calculated as \$73.4 billion × 1.5 = \$110.1 billion.

³¹ For the U.S. territories, the unincorporated self-employed are excluded because CPS data are not available on the number of unincorporated self-employed workers in U.S. territories.

TABLE 2—NUMBER OF POTENTIALLY AFFECTED WORKERS—Continued

NAICS	Total private output (billions) ^a	Covered contracting output (millions) ^b	Share output from covered contracting (%)	Private sector workers (1,000s) ^c	Workers on SCA contracts (1,000s) ^d
Total	33,691	297,794	0.88	134,761	1,376

^a Bureau of Economic Analysis, NIPA Tables, Gross output. 2019. For territories, gross output is estimated by multiplying total GDP for the territory by the ratio of total gross output to total GDP for the U.S.

^b *USASpending.gov*. Contracting expenditures for covered contracts in 2019.

^c OEWS May 2019. Excludes Federal U.S. Postal service employees, employees of government hospitals, and employees of government educational institutions. For non-territories, added to the OWES employee estimates were unincorporated self-employed workers from the 2019 CPS MORG data.

^d Assumes share of expenditures on contracting is same as share of employment. Assumes employees work exclusively, year-round on Federal contracts. Thus, this may be an underestimate if some employees are not working entirely on Federal contracts.

^e Varies based on U.S. territory.

Because there is no readily available data source on workers on SCA contracts, and employment is spread throughout many industries, the Department was unable to provide any estimates of demographic information for potentially affected workers. In the proposed rule, the Department asked for comments regarding any data sources that would allow it to analyze the demographic composition of SCA contract workers, so that it could better assess any equity impacts of this rulemaking. In their comment, the Center for American Progress (CAP) noted that women and people of color are overrepresented in many of the service industries that the Federal government contracts out. CAP, along with multiple other commenters, cited their analysis which looked at industries with significant Federal contracting spending and found that women and people of color were overrepresented in industries such as building services, administrative services, security services, nursing care, and meat and food processing.³² In their comment, the American Federation of State, County, and Municipal Employees (AFSCME) also noted that “[c]overed workers under the SCA comprise a disproportionate share of women, people of color, LGBTQ individuals, people with disabilities, and veterans compared to the workforce as a whole.” They stated that this rule will help reduce historical inequities in the effects of job displacement for these groups.

C. Costs

1. Rule Familiarization Costs

This rule would impose direct costs on some covered contractors that will

review the regulations to understand their responsibilities. Both firms that currently hold contracts that may be awarded to a successor contractor in the future and firms that are considering bidding on an SCA contract may be interested in reviewing this rule, so the Department used the upper-bound estimate of 442,761 potentially affected firms to calculate rule familiarization costs. This is an overestimate, because not all of the firms that are registered in SAM currently hold contracts or will bid on an SCA contract. Those that do not hold contracts and are not interested in bidding would not need to review the rule.

The Department estimates that, on average, 30 minutes of a human resources staff member’s time will be spent reviewing the rulemaking. Some firms will spend more time reviewing the rule, but as discussed above, many others will spend less or no time reviewing the rule, so the Department believes that this average estimate is appropriate. Many firms will also just rely on the content of the contract clause itself as incorporated into a solicitation, third-party summaries of the rule, or the comprehensive compliance assistance materials published by the Department. This rule is also substantially similar to the 2011 final rule implementing Executive Order 13495 (Nondisplacement of Qualified Workers Under Service Contracts), with which many firms are already familiar. Thus, this regulation is not introducing an entirely novel policy that would require substantially more time for rule familiarization. This time estimate only represents the cost of reviewing the rule; any implementation costs are calculated separately below. The cost of this time is the median loaded wage for a Compensation, Benefits, and Job Analysis Specialist of \$50.25 per hour.³³

Therefore, the Department has estimated regulatory familiarization costs to be \$11,124,370 (\$50.25 per hour × 0.5 hour × 442,761 contractors). The Department has included all regulatory familiarization costs in Year 1.

2. Implementation Costs

This rule contains various requirements for contractors. The rule includes a contract clause provision requiring contracting agencies to ensure that service contracts and subcontracts that succeed a contract for performance of the same or similar work, and solicitations for such contracts and subcontracts, include the nondisplacement contract clause. This provision comes directly from Executive Order 14055, and the Department estimated that it will take an average of 30 minutes total for contractors to incorporate the contract clause into their covered subcontracts. This estimate is similar to the one used in the Executive Order 13495 final rule. A contractor must provide notices to affected workers and their collective bargaining representatives, if any, in writing of the agency’s determination to grant an exception and of the opportunity to provide information relevant to an agency’s location continuity determination. Additionally, predecessor contractors are required to provide written notice to service employees employed under the contract of their possible right to an offer of employment on the successor contract. Contractors may also be required to retroactively incorporate a contract clause into subcontracts when it was not initially incorporated. In the NPRM, the Department estimated that these requirements would take an average of 30 minutes for each contractor. The Department explained that this average

³² Center for American Progress, “Federal Contracting Doesn’t Go Far Enough to Protect American Workers,” November 19, 2020. Available at: <https://www.americanprogressaction.org/article/federal-contracting-doesnt-go-far-enough-protect-american-workers/>.

³³ This includes the median base wage of \$30.83 from the 2021 OEWS plus benefits paid at a rate of 46 percent of the base wage, as estimated from the

BLS’s Employer Costs for Employee Compensation (ECEC) data, and overhead costs of 17 percent. OEWS data available at: <https://www.bls.gov/news.release/ocwage.t01.htm>.

estimate is appropriate because some of these requirements would not apply to all potentially affected contractors. For example, the requirement that a contractor send an agency exception notice would only apply when an agency grants an exception. In this final rule, the Department has increased this estimate to an average of 45 minutes for each contractor. This increase is to account for the change to the location-continuity notice procedure in the final rule, which now requires contractors to provide collective bargaining representatives with notice of an opportunity to provide information regarding location continuity determinations where a location change is possible. Under this amended procedure, location-continuity notices still will not be required for all predecessor contracts; but they will be required wherever a location change is possible, whereas under the NPRM, the provision required notice only after contracting agencies determine not to require location continuity. The increase is also to account for the time it takes a successor contractor to issue an offer letter (to a predecessor employee) in circumstances where the successor contractor otherwise may not have needed to issue an offer letter to staff the successor contract.

For these cost estimates, the Department used the lower-bound of potentially affected firms (119,695), because only the firms that will have a covered contract would incur these implementation costs. The cost of this time is the median loaded wage for a Compensation, Benefits, and Job Analysis Specialist of \$50.25 per hour. Therefore, the Department has estimated the cost of these requirements to be \$7,518,342 ($\$50.25 \text{ per hour} \times 1.25 \text{ hour} \times 119,695 \text{ contractors}$). This estimate is likely an overestimate because many SCA contracts can last for several years. Therefore, only a fraction of these firms would need to include the required contract clause in subcontracts each year since the clause only needs to be included in new contracts (which under Executive Order 14055 and this rule do not include options or other extensions) and their subcontracts.

Under this rule, contracting agencies will, among other things, be required to ensure contractors provide notice to employees on predecessor contracts of their possible right to an offer of employment. Contracting agencies will also be required to consider whether performance of the work in the same locality or localities in which a predecessor contract is currently being performed is reasonably necessary to ensure economical and efficient

provision of services. Contracting agencies would also be required to provide the list of employees on the predecessor contract to the successor contractor, to forward complaints and other pertinent information to WHD, and to incorporate the contract clause post-award when it was not initially incorporated. Please see section II.B. for a more in-depth discussion of contracting agency requirements. The Department estimates that it will take the contracting agencies an extra 2.5 hours of work on average on each covered contract, and that the work will be performed by a GS 14, Step 1 Federal employee contracting officer, with a fully loaded hourly wage of \$97.04.³⁴ This includes the median base wage of \$52.17 from Office of Personnel Management salary tables,³⁵ plus benefits paid at a rate of 69 percent of the base wage,³⁶ and overhead costs of 17 percent. Using the USASpending data mentioned above, the Department estimated that there were 576,122 contracts. In order to estimate the share of these contracts that are new in a given year, the Department has used 20 percent (115,224), because SCA contracts tend to average about 5 years. Therefore, the estimated cost to contracting agencies is \$27,953,342 ($\$97.04 \text{ per hour} \times 2.5 \text{ hours} \times 115,224 \text{ contracts}$).

3. Recordkeeping Costs

This rule will require a predecessor contractor to, no less than 30 calendar days before completion of the contractor's performance of services on a contract, furnish the contracting officer a list of the names of all service employees under the contract and its subcontracts at that time. This list must also contain the anniversary dates of employment for each service employee on the contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. If changes to the workforce are made after the submission of this certified list, this rule will also require a contractor to furnish the contracting officer a certified list of the names of all service employees working

under the contract and its subcontracts during the last month of contract performance not less than 10 business days before completion of the contract.

This rule also specifies the records successor contractors would be required to maintain, including copies of or documentation of any written offers of employment and copies of the written notices that have been posted or delivered. The rule will also require contractors to maintain a copy of any record that forms the basis for any exclusion or exception claimed, the employee list provided to the contracting agency, and the employee list received from the contracting agency.

The Department estimates that the extra time associated with keeping and providing these records, including the list of employees, to be an average of 1 hour per firm per year, and that the work will be completed by a Compensation, Benefits, and Job Analysis Specialist, at a rate of \$50.25 per hour. The estimated recordkeeping cost is \$6,014,674 ($\$50.25 \text{ per hour} \times 1 \text{ hour} \times 119,695$).

4. Summary of Costs

Costs in Year 1 consist of \$11,124,370 in rule familiarization costs, \$35,471,685 in implementation costs (\$7,518,342 for contractors and \$27,953,342 for contracting agencies), and \$6,014,674 in recordkeeping costs. Therefore, total Year 1 costs are \$52,610,728. Costs in the following years consist only of implementation and recordkeeping costs and amount to \$41,486,358. Average annualized costs over 10 years are \$43 million using a 7 percent discount rate, and \$52 million using a 3 percent discount rate.

5. Other Potential Impacts

This rule requires successor contractors and subcontractors to make a bona fide, express offer of employment to each employee to a position for which the employee is qualified, and to state the time within which the employee must accept such offer. To match employees with suitable jobs under this rule, successor contractors will have to spend time evaluating the predecessor contract employees and available positions. However, those successor contractors that currently hire new employees for a contract already must recruit workers and evaluate their qualifications for positions on the contract. Thus, successor contractors will likely spend at most an equal amount of time determining job suitability under this final rule as under current practices. To the extent that, in the absence of this rule, a successor

³⁴ Because the work of the contracting agency may be split among different positions, the Department has used the wage of a more senior position for the estimate.

³⁵ The Department has used the 2021 Rest of United States salary table to estimate salary expenses. See https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/21Tables/html/RUS_h.aspx.

³⁶ Based on a 2017 study from CBO. Congressional Budget Office, "Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015," April 25, 2017, <https://www.cbo.gov/publication/52637>.

contractor would need to hire an entirely new workforce when it is awarded a contract, the requirement for it to make offers of employment to the predecessor contractor's workforce could save the contractor time if the predecessor contract employees hold the same positions that the successor contractor is looking to fill. It may be easier to determine job suitability for workers already working in those positions on the contract than it would be for workers who are new to both the contract and the successor contractor.

Many successor contractors may already be keeping the predecessor contractor's employees on the contract, so the Executive order and this rule would not impact any existing hiring practices for these firms.

There may be some cases in which the successor contractor had existing employees that it planned to assign to a newly awarded contract, but the requirement to offer employment to predecessor contract workers would make the successor contractor's existing employees redundant. In this situation, if the successor contractor truly could not find another position for the employee on the new contract or on any of their other existing projects, the continued employment of a predecessor contract worker could be offset by the successor contract worker being laid off. While this could potentially happen in certain circumstances immediately following the publication of this regulation, the Department expects that this situation would become relatively uncommon in the future once contractors are familiar with the requirements of the rule and can plan their staffing accordingly. Furthermore, these workers may themselves also be protected by the Executive order. If they are currently working on a covered contract which is then awarded to another contractor, they would receive offers of employment from the successor contractor.

This rule will not affect wages that contractors will pay employees, because other applicable laws already establish the minimum wage rate for each occupation to be incorporated into the contract. This rule does not require successor contractors to pay wages higher than the rate required by the SCA, Executive Order 14026 (Increasing the Minimum Wage for Federal Contractors), or Executive Order 13658 (Establishing a Minimum Wage for Contractors). Executive Order 14055 and this rule also do not require the successor contractor to pay workers the same wages that they were paid on the predecessor contract. Although workers' wages may increase or decrease with the

changing of contracts, any change will not be a result of this rule. What this rule will do is help ensure that these workers have continued employment, saving them the costs of finding a new job. The requirement for successor contractors to make bona fide offers of employment could also prevent unemployment and increase job security for predecessor contract workers. This, in turn, could reduce reliance on social safety net programs and improve well-being for such workers. In their comment, NELP agreed that displaced workers may suffer financial hardship and communities could see an increased need for social insurance programs.³⁷ As discussed above, the benefits of increased job security and prevention of unemployment could be offset in some cases in which the successor contractor has existing employees for whom it is unable to find positions because of the requirements of this rule. The Department did not receive any comments discussing this scenario.

D. Benefits

Executive Order 14055 states that using a carryover workforce reduces disruption in the delivery of services during the period of transition between contractors, maintains physical and information security, and provides the Federal Government with the benefits of an experienced and well-trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements. A 2020 report from IBM estimated that data breaches in the public sector cost about \$1.6 million per breach, and about 28 percent of data breaches are due to human error.³⁸ Maintaining the same staff on a Federal Government contract could reduce the occurrence of these costly data breaches. The Coalition agreed that the rule will promote physical and information security. They note, "Whether through building security, janitorial services provided in a secure facility, or CMS call center representatives addressing callers' personal health information, federal service contract workers regularly provide physical security and work with or adjacent to classified, sensitive, or private personal information. Retaining those workers across service contracts

limits the need for costly training and vetting[.]" They also note that the requirements of this rule will lead to cost savings for new contractors and the Federal Government, because of the extensive security clearance process required to enter Federal buildings. They stated that, "[a]ccording to the Defense Counterintelligence and Security Agency, prices for new background investigations and clearances for fiscal year 2023 will range from \$140 each at the lowest level of vetting, to \$400 for a secret clearance, and then up to \$5,140 for a top-secret clearance."³⁹ If successor contractors hire predecessor contractor employees who already have the necessary security clearances, it could lead to cost savings.

The requirements of the Executive order and this rule also will help reduce training costs, which can be costly for firms and therefore for the agency that contracts with them. Training costs are a component of turnover costs. One study found a modest cost associated with employee turnover, finding 10 percent turnover is about as costly as a 0.6 percent wage increase.⁴⁰ Another paper conducted an analysis of case studies and found that turnover costs represent 39.6 percent of a position's annual wage.⁴¹ Multiple commenters also agreed that this rule would help reduce turnover, and they provided additional sources showing the high cost of turnover in multiple industries. The Economic Policy Institute (EPI) cited research showing that "worker turnover can cost employers approximately one-fifth of a job's salary to fill each vacancy, plus an average of nearly \$1,300 in training expenditures for each new hire."⁴² Other commenters

³⁹ U.S. Dep't of Def., Def. Counterintel. & Sec. Agency, DCSA Products & Services Billing Rates for Fiscal Years 2023 and 2024 (June 30, 2022), available at https://www.dcsa.mil/Portals/91/Documents/pv/GovHRSec/FINs/FY22/FIN_22-01_FY23-FY24-Billing-Rates_30June2022.pdf; Lindsey Kyzer, *How Much Does It Cost to Obtain a Clearance—FY 2022/23 Costs Go Down*, ClearanceJobs (Sept. 7, 2021), available at <https://news.clearancejobs.com/2021/09/07/how-much-does-it-cost-to-obtain-a-clearance-fy-2022-23-costs-go-down/>.

⁴⁰ Kuhn, Peter and Lizi Yu. 2021. "How Costly is Turnover? Evidence from Retail." *Journal of Labor Economics* 39(2), 461–496.

⁴¹ Bahn, Kate and Carmen Sanchez Cumming. 2020. "Improving U.S. labor standards and the quality of jobs to reduce the costs of employee turnover to U.S. companies." Washington Center for Equitable Growth Issue Brief. <https://equitablegrowth.org/improving-u-s-labor-standards-and-the-quality-of-jobs-to-reduce-the-costs-of-employee-turnover-to-u-s-companies/>.

⁴² Heather Boushey and Sarah Jane Glynn, *There Are Significant Business Costs to Replacing Employees*, Center for American Progress, November 2012. <https://www.americanprogress.org/article/there-are-significant-business-costs-to-replacing-employees/>.

Continued

³⁷ In support of their analysis, NELP cited a study in an academic journal. See Jennie E. Brand, "The Far-Reaching Impact of Job Loss and Unemployment." *Annual Review of Sociology*. Aug 2015. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4553243/>.

³⁸ See Ben Miller, *IBM: Government Data Breaches Becoming Less Costly* (Aug. 18, 2020), <https://www.govtech.com/data/ibm-government-data-breaches-becoming-less-costly.html>.

cited literature showing that turnover impacts organizational performance and customer service.^{43 44} This rule will lead to staffing continuity from the perspective of the customer (both the Federal government and its clients) and could therefore lead to improved service.

E. Comments Received Relating to the Economic Analysis

The Department received various other comments on the impacts discussed in this economic analysis. For example, both ABC and PSC generally contended that the Department did not provide evidentiary support that the rule would actually achieve greater efficiency in federal procurement. The Department notes that section IV.D. discusses various ways in which the rule is expected to promote increased efficiency, such as through reduced turnover and by maintaining information security. Additionally, PSC said that the Department did not offer any analysis or studies concluding that the potential benefits would outweigh the administrative costs that the rule would impose on contractors and contracting agencies. They also noted that the Department only included studies about the costs of turnover in the retail sector, so in light of this comment, the Department has included a discussion of additional literature provided by other commenters in the above section. Moreover, as noted above, Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify. The cost of data security breaches is such a cost, with individual data security breaches having the potential for widespread private costs where confidential personal information may be involved or very difficult to quantify public costs where

data breaches may involve national security. *See, e.g., Protecting Against Nat'l Sec. Threats to the Comm'n's Supply Chain Through FCC Programs*, 34 F.C.C. Rcd. 11423, 11466–67 (2019) (noting that such national security-related benefits of data security are particularly hard to quantify).

One commenter asserted that the true costs of implementing this rule are unknown. They state that the cost estimate does not include the time it will take successor contractors to track down the predecessor contractor's employees. The Department believes that because the rule requires the predecessor contractor to provide the successor contractor with a list of its employees and their contact information, it will not take successor contractors a significant amount of time to get in contact with employees. The commenter also stated that the cost estimate does not include the "resources needed for contractors (and subcontractors) to onboard the predecessor's SCA employees at the last minute." The Department believes that any cost to onboard predecessor contract employees will be alleviated because these workers are already familiar with the work of the contract. The successor contractor will therefore save on training costs.

V. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their rules on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 604.

A. Need for, and Objectives of, the Rule

On November 18, 2021, President Joseph R. Biden, Jr. issued Executive Order 14055, "Nondisplacement of Qualified Workers Under Service Contracts." 86 FR 66397 (Nov. 23, 2021). This order explains that when a service contract expires, and a follow-on contract is awarded for the same or similar services, the Federal

Government's procurement interests in economy and efficiency are best served when the successor contractor or subcontractor hires the predecessor's employees, thus avoiding displacement of these employees. The Department is issuing this final rule to implement the directives of the Executive order.

B. Comments Received in Response to the Initial Regulatory Flexibility Analysis

The Department received a few comments regarding the rule's impact on small businesses. For example, ABC stated that the proposed rule would disincentivize small businesses from engaging in federal contracting. They requested that DOL provide additional flexibility to small business contractors and provide businesses with a Small Entity Compliance Guide. Following issuance of this rule, the Department will publish a Small Entity Compliance Guide, which will help small entities comply with the requirements of Executive Order 14055 and these implementing regulations. The Department will also publish subregulatory guidance and offer technical assistance to help businesses understand and comply with the rule. In its comment, PSC stated that "[w]hile small business employees may be retained by successor contractors, small businesses themselves may suffer from employee attrition to follow-on successors." While predecessor contractors of all sizes could see some employee attrition if their current employees chose to remain on the contract, the Department notes that this rule can be expected to benefit small businesses who are successor contractors, because they will gain employees who are already familiar with the work of the contract.

The Chief Counsel for Advocacy of the Small Business Administration did not provide a comment on the proposed rulemaking.

C. Estimating the Number of Small Businesses Affected by the Rulemaking

In order to determine the number of small businesses that will be affected by the rulemaking, the Department followed the same methodology laid out in section IV.B.1. of the economic analysis.⁴⁵ For the data from USASpending.gov, the business determination was based on the

⁴⁵ The Department also acknowledges that prime contracts that are less than \$250,000 and their subcontracts would not be covered by this regulation but has not made an adjustment for these contracts in the estimation of covered contractors. Therefore, this estimate may be an overestimate of the number of contractors that are actually affected.

replacing-employees/. Lorri Freifeld, "2020 Training Industry Report," Training Magazine, November 17, 2020. <https://pubs.royle.com/publication/?m=20617&i=678873&p=30&ver=html5>.

⁴³ TaeYoun Park and Jason Shaw, "Turnover Rates and Organizational Performance: A Meta-Analysis," *Journal of Applied Psychology*, 98 (2) (2013): 268–309. https://leeds-faculty.colorado.edu/dahe7472/Park%20and%20Shaw%20Turnover%20rates%20and%20organizational%20performance_%20A%20meta-analysis%202013.pdf.

⁴⁴ Mahesh Subramony and Brook Holtom, "The Long-Term Influence of Service Employee Attrition on Customer Outcomes and Profits," *Journal of Service Research*, 15 (4) (2012): 460–473. https://www.researchgate.net/publication/258158753_The_Long-Term_Influence_of_Service_Employee_Attrition_on_Customer_Outcomes_and_Profits.

inclusion of “small” or “SBA” in the business type. For GSA’s System for Award Management (SAM) for February 2022, if a company qualified as a small

business in any reported NAICS, they were classified as “small.” Table 3 shows the range of potentially affected small firms by industry. The total

number of potentially affected small firms ranges from 74,097 to 329,470.

TABLE 3—RANGE OF POTENTIALLY AFFECTED SMALL FIRMS

Industry	NAICS	Lower-bound estimate			Upper-bound estimate		
		Total	Small primes from USASpending.gov	Small subcontractors from USASpending.gov	Total	Small firms from SAM	Small subcontractors from USASpending.gov
Agriculture, forestry, fishing and hunting	11	2,198	2,198	0	3,849	3,849	0
Mining	21	94	72	22	888	866	22
Utilities	22	374	358	16	1,601	1,585	16
Construction	23	8,290	4,348	3,942	45,683	41,741	3,942
Manufacturing	31–33	6,621	4,243	2,378	39,631	37,253	2,378
Wholesale trade	42	516	411	105	15,810	15,705	105
Retail trade	44–45	227	222	5	7,500	7,495	5
Transportation and warehousing	48–49	2,120	1,989	131	14,854	14,723	131
Information	51	2,352	2,218	134	11,208	11,074	134
Finance and insurance	52	179	154	25	2,299	2,274	25
Real estate and rental and leasing	53	2,068	2,068	0	7,654	7,654	0
Professional, scientific, and technical services	54	24,371	20,164	4,207	90,547	86,340	4,207
Management of companies and enterprises	55	0	0	0	290	290	0
Administrative and waste services	56	10,251	9,060	1,191	30,932	29,741	1,191
Educational services	61	2,224	2,123	101	11,800	11,699	101
Health care and social assistance	62	4,060	4,054	6	16,904	16,898	6
Arts, entertainment, and recreation	71	546	546	0	3,944	3,944	0
Accommodation and food services	72	2,102	2,098	4	9,321	9,317	4
Other services	81	5,504	5,479	25	14,755	14,730	25
Total private .....	.....	74,097	61,805	12,292	329,470	317,178	12,292

D. Compliance Requirements of the Rule, Including Reporting and Recordkeeping

The rule includes a contract clause provision requiring contracting agencies to ensure that service contracts and subcontracts that succeed a contract for performance of the same or similar work, and solicitations for such contracts and subcontracts, include the nondisplacement contract clause. The rule also requires contracting agencies to incorporate the nondisplacement contract clause in applicable contracts; ensure contractors provide notices to employees on predecessor contracts of their possible right to an offer of employment, of agency decisions to except a successor contract from nondisplacement requirements, and of employees’ opportunity to provide information relevant to the location continuity analysis; and to consider whether performance of the work in the same locality or localities in which a predecessor contract is currently being performed is reasonably necessary to ensure economical and efficient provision of services. Contracting agencies will also be required, among other things, to provide the list of employees on the predecessor contract to the successor, to forward complaints and other pertinent information to WHD, and to incorporate the contract clause when it was not initially incorporated. See Section II.B. for a

more in-depth discussion of contracting agency requirements.

This rule requires a contractor, no less than 30 calendar days before completion of the contractor’s performance of services on a contract, to furnish the contracting officer a list of the names and contact information of all service employees under the contract and its subcontracts at that time. This list must also contain the anniversary dates of employment for each service employee on the contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. If changes to the workforce are made after the submission of this certified list, this rule also requires a contractor to furnish the contracting officer a certified list of the names and contact information of all service employees working under the contract and its subcontracts during the last month of contract performance not less than 10 business days before completion of the contract. See section II.B. for a more in-depth discussion of requirements for contractors.

E. Calculating the Impact of the Rule on Small Business Firms

This rule could result in costs for small business firms in the form of rule familiarization costs, implementation costs, and recordkeeping costs. See section IV.C. for an in-depth discussion of these costs.

For rule familiarization costs, the Department estimates that on average,

30 minutes of a human resources staff member’s time will be spent reviewing the rulemaking. Some firms will spend more time reviewing the rule, but many others will spend less or no time reviewing the rule, so the Department believes that this average estimate is appropriate. This rule is also substantially similar to the 2011 final rule implementing Executive Order 13495, with which many firms were already familiar. The cost of this time is the median loaded wage for a Compensation, Benefits, and Job Analysis Specialist of \$50.25 per hour.⁴⁶ Therefore, the Department has estimated regulatory familiarization costs to be \$25.13 per small firm (\$50.25 per hour × 0.5 hour).

For implementation costs, the Department estimates that it will take an average of 30 minutes total for contractors to incorporate the contract clause into their covered subcontracts, and another 45 minutes for the other contractor requirements discussed in Section IV.C.2. The cost of this time is the median loaded wage for a Compensation, Benefits, and Job Analysis Specialist of \$50.25 per hour. Therefore, the Department has estimated the cost of including the required

⁴⁶ This includes the median base wage of \$32.30 from the 2020 OEWS plus benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS’s Employer Costs for Employee Compensation (ECEC) data, and overhead costs of 17 percent. OEWS data available at: <https://www.bls.gov/oes/current/oes131141.htm>.

contract clause to be \$62.81 per small firm (\$50.25 per hour × 1.25 hour).

For recordkeeping costs, the Department estimates that the extra time associated with keeping and providing these records to be an average of 1 hour and be completed by Compensation, Benefits, and Job Analysis Specialist of \$50.25 per hour. The estimated recordkeeping cost is \$50.25 per firm.

Therefore, the small firms that are impacted by this rule could each have additional costs of \$138.19 in Year 1 (\$25.13 + \$62.81 + \$50.25).

As discussed in section IV.C.5., the Department does not expect there to be additional costs for successor contracts associated with evaluating predecessor contract employees and available positions beyond what they already would have incurred. In absence of this rule, the successor contractor would incur costs associated with hiring a new workforce and assigning them to positions on the contract. The benefits discussed in section IV.D. would also apply to small firms.

F. Regulatory Alternatives and the Impact on Small Entities

The Department is issuing a rulemaking to implement Executive Order 14055 and cannot deviate from the language of the Executive order. Therefore, there are limited instances in which there is discretion to offer regulatory alternatives. However, in the proposed rule, the Department discussed a few specific provisions in which limited alternatives could have been possible.

First, the Department has some discretion in defining the specific analysis that must be completed by contracting agencies regarding location continuity. The Department considered whether to require contracting officers to analyze additional factors when determining whether to decline to require location continuity. In the final rule, the Department has limited this language to provide a list of factors for consideration only when a location change is a possibility, and the rule suggests the factors that generally should be considered but does not mandate their consideration. In the final rule, the Department also has eliminated the proposed requirement that a location continuity determination must be made in writing by the Senior Procurement Executive, and declined to adopt reconsideration procedures suggested by commenters that could have increased the contract administration responsibilities of agencies related to location continuity determinations. The Department also proposed, but did not adopt, a

reconsideration procedure for agency exceptions that could have had a similar effect. The Department's decisions not to include such requirements and procedures reduces the impact of the rule on small entities.

There are also a few places in this rule where the Department has developed additional requirements beyond what is set forth in Executive Order 14055. For example, Executive Order 14055 does not address the issue of remote work or telework, including whether it is permissible for a successor contractor to allow its incumbent employees in similar positions to use remote work or telework but not offer remote work or telework to predecessor employees in similar positions. However, based on the Department's previous enforcement experience, lack of clarity on this issue leads to confusion on the part of stakeholders and difficulties in enforcement when trying to determine whether the successor contractor has offered different employment terms and conditions to predecessor employees to discourage them from accepting employment offers. Accordingly, the Department has added the requirement that the successor contractor must generally offer employees of the predecessor contractor the option of remote work under reasonably similar terms and conditions, where the successor contractor has or will have any employees in the same or similar occupational classifications who work or will work entirely in a remote capacity. The Department believes that these clarifications will help small businesses comply with the rulemaking.

VI. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing any unfunded Federal mandate that may result in excess of \$100 million (adjusted annually for inflation) in expenditures in any one year by State, local, and tribal governments in the aggregate, or by the private sector. This rulemaking is not expected to impose unfunded mandates that exceed that threshold. *See* section V. for an assessment of anticipated costs and benefits.

VII. Executive Order 13132, Federalism

The Department has reviewed this final rule in accordance with Executive Order 13132 regarding federalism and determined that it does not have federalism implications. The final rule will not have substantial direct effects

on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

VIII. Executive Order 13175, Indian Tribal Governments

This final rule will not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The final rule will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 29 CFR Part 9

Employment, Federal buildings and facilities, Government contracts, Law enforcement, Labor.

For the reasons set out in the preamble, the Department of Labor amends Title 29 of the Code of Federal Regulations by adding part 9

PART 9—NONDISPLACEMENT OF QUALIFIED WORKERS UNDER SERVICE CONTRACTS

Sec.

Subpart A—General

- 9.1 Purpose and scope.
- 9.2 Definitions.
- 9.3 Coverage.
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- 9.5 Exceptions authorized by Federal agencies.

Subpart B—Requirements

- 9.11 Contracting agency requirements.
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- 9.21 Complaints.
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Subpart D—Administrator's Determination, Mediation, and Administrative Proceedings

- 9.31 Determination of the Administrator.
 - 9.32 Requesting appeals.
 - 9.33 Mediation.
 - 9.34 Administrative Law Judge hearings.
 - 9.35 Administrative Review Board proceedings.
 - 9.36 Severability.
- Appendix A to Part 9—Contract Clause
Appendix B to Part 9—Notice to Service Contract Employees

Authority: 5 U.S.C. 301; section 6, E.O. 14055, 86 FR 66397; Secretary of Labor's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014).

Subpart A—General

§ 9.1 Purpose and scope.

(a) *Purpose.* This part contains the Department of Labor's (Department) rules relating to the administration of Executive Order 14055 (Executive order or the order), "Nondisplacement of Qualified Workers Under Service Contracts," and implements the enforcement provisions of the Executive order. The Executive order assigns enforcement responsibility for the nondisplacement requirements to the Department.

(b) *Policy.* (1) The Executive order states that the Federal Government's procurement interests in economy and efficiency are served when the successor contractor or subcontractor hires the predecessor's employees. A carryover workforce minimizes disruption in the delivery of services during a period of transition between contractors, maintains physical and information security, and provides the Federal Government the benefit of an experienced and well-trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements. Accordingly, Executive Order 14055 sets forth a general position of the Federal Government that requiring successor service contractors and subcontractors performing on Federal contracts to offer a right of first refusal to suitable employment (*i.e.*, a job for which the employee is qualified) under the contract to those employees under the predecessor contract and its subcontracts whose employment will be terminated as a result of the award of the successor contract will lead to improved economy and efficiency in Federal procurement.

(2) The Executive order provides that executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, must, to the extent permitted by law, ensure that service contracts and subcontracts that succeed a contract for performance of the same or similar work, and solicitations for such contracts and subcontracts, include a clause that requires the contractor and its subcontractors to offer a right of first refusal of employment to service employees employed under the predecessor contract and its subcontracts whose employment would be terminated as a result of the award of the successor contract in positions for which the employees are qualified. Nothing in Executive Order 14055 or this part will be construed to permit a contractor or subcontractor to fail to comply with any provision of any other

Executive order, regulation, or law of the United States.

(c) *Scope.* Neither Executive Order 14055 nor this part creates or changes any rights under the Contract Disputes Act, 41 U.S.C. 7101 *et seq.*, or any private right of action that may exist under other applicable laws. The Executive order provides that disputes regarding the requirement of the contract clause prescribed by section 3 of the order, to the extent permitted by law, must be disposed of only as provided by the Secretary of Labor in regulations issued under the order. The order, however, does not preclude review of final decisions by the Secretary in accordance with the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701 *et seq.* Additionally, the Executive order also provides that it is to be implemented consistent with applicable law and subject to the availability of appropriations.

§ 9.2 Definitions.

For purposes of this part:
Administrative Review Board (ARB) means the Administrative Review Board, U.S. Department of Labor.
Administrator means the Administrator of the Wage and Hour Division and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.
Agency means an executive department or agency, including an independent establishment subject to the Federal Property and Administrative Services Act.

Associate Solicitor means the Associate Solicitor for Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

Business day means Monday through Friday, except the legal public holidays specified in 5 U.S.C. 6103, any day declared to be a holiday by Federal statute or executive order, or any day with respect to which the U.S. Office of Personnel Management has announced that Federal agencies in the Washington, DC, area are closed.

Contract or service contract means any contract, contract-like instrument, or subcontract for services entered into by the Federal Government or its contractors that is covered by the Service Contract Act (SCA). Contract or contract-like instrument means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services

and another party to pay for them. The term *contract* includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, temporary interim contracts, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing, to the extent such contracts and subcontracts are subject to the SCA. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications.

Contracting officer means an agency official with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. This term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

Contractor means any individual or other legal entity that is awarded a Federal Government service contract or subcontract under a Federal Government service contract. Unless the context of the provision reflects otherwise, the term "contractor" refers collectively to a prime contractor and all of its subcontractors of any tier on a service contract with the Federal Government. The term "employer" is used interchangeably with the terms "contractor" and "subcontractor" in various sections of this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of the Executive order.

Employee means a service employee as defined in the Service Contract Act, 41 U.S.C. 6701(3), and its implementing regulations.

Employment opening means any vacancy in a position on the contract, including any vacancy caused by replacing an employee from the predecessor contract with a different employee.

Federal Government means an agency or instrumentality of the United States that enters into a contract pursuant to

authority derived from the Constitution or the laws of the United States. This definition does not include the District of Columbia or any Territory or possession of the United States.

Month means a period of 30 consecutive calendar days, regardless of the day of the calendar month on which it begins.

Office of Administrative Law Judges means the Office of Administrative Law Judges, U.S. Department of Labor.

Same or similar work means work that is either identical to or has primary characteristics that are alike in substance to work performed on another service contract.

Secretary means the U.S. Secretary of Labor or an authorized representative of the Secretary.

Service Contract Act means the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.*, and the implementing regulations in this subtitle.

Solicitation means any request to submit offers, bids, or quotations to the Federal Government.

United States means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including non-appropriated fund instrumentalities. When used in a geographic sense, the United States means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island.

Wage and Hour Division means the Wage and Hour Division, U.S. Department of Labor.

§ 9.3 Coverage.

(a) This part applies to any contract or solicitation for a contract with an agency issued or entered on or after the applicability date of this part, provided that:

(1) It is a contract for services covered by the Service Contract Act; and

(2) The prime contract is equal to or exceeds the simplified acquisition threshold as defined in 41 U.S.C. 134.

(b) Contracts and solicitations that satisfy the requirements of paragraph (a) of this section, and that succeed a contract for performance of the same or similar work, must contain the contract clause described in § 9.11(a), and

contractors on such contracts must comply with all the requirements of § 9.12 unless the contract is excluded or excepted under this part.

(c) Contracts and solicitations that satisfy the requirements of paragraph (a) of this section, but do not succeed a contract for performance of the same or similar work, must contain the contract clause described in § 9.11(a), and all contractors on such contracts must comply with the requirements of § 9.12(a)(4), (e), (f), and (g), unless the contract is excluded or excepted under this part.

§ 9.4 Exclusions.

(a) *Small contracts*—(1) *General*. The requirements of this part do not apply to prime contracts under the simplified acquisition threshold set by the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 134), and any subcontracts of any tier under such prime contracts.

(2) *Application to subcontracts*. The amount of the prime contract determines whether a subcontract is excluded from the requirements of this part. If a prime contract is under the simplified acquisition threshold, then each subcontract under that prime contract will also be excluded from the requirements of this part. If a prime contract meets or exceeds the simplified acquisition threshold and meets the other coverage requirements of § 9.3, then each subcontract for services under that prime contract will also be subject to the requirements of this part, even if the value of an individual subcontract is under the simplified acquisition threshold.

(b) *Federal service work constituting only part of employee's job*. This part does not apply to employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employees were not deployed in a manner that was designed to avoid the purposes of Executive Order 14055.

§ 9.5 Exceptions authorized by Federal agencies.

(a) A contracting agency may waive the application of some or all of the provisions of this part as to a prime contract, if the senior procurement executive within the agency issues a written determination that at least one of the following circumstances exists with respect to that contract:

(1) Adhering to the requirements of Executive Order 14055 or this part would not advance the Federal Government's interest in achieving

economy and efficiency in Federal procurement;

(2) Based on a market analysis, adhering to the requirements of the order or this part would:

(i) Substantially reduce the number of potential bidders so as to frustrate full and open competition, and

(ii) Not be reasonably tailored to the agency's needs for the contract; or

(3) Adhering to the requirements of the order or this part would otherwise be inconsistent with statutes, regulations, Executive Orders, or Presidential Memoranda.

(b) Any agency determination to exercise its exception authority under section 6 of the Executive order and paragraph (c)(1) of this section must include a specific written explanation, including the facts and reasoning supporting the determination, and must be issued no later than the solicitation date. Any agency determination to exercise its exception authority under section 6 of the Executive order and paragraph (c)(1) of this section made after the solicitation date or without a specific written explanation will be inoperative. In such a circumstance, the agency must take action, consistent with § 9.11(f), to incorporate the contract clause set forth in Appendix A of this part into the relevant solicitation or contract. Where an agency determines that a prime contract is excepted under this section, the nondisplacement requirements will also not apply to any subcontracts under the excepted prime contract. For indefinite-delivery-indefinite-quantity (IDIQ) contracts, an exception must be granted prior to the solicitation date if the basis for the exception cited would apply to all orders. Otherwise, exceptions must be granted for each order by the time of the notice of the intent to place an order.

(c) In exercising the authority to grant an exception for a contract because adhering to the requirements of the order or this part would not advance economy and efficiency, the agency's written analysis must, among other things, compare the anticipated outcomes of hiring predecessor contract employees with those of hiring a new workforce. The consideration of cost and other factors in exercising the agency's exception authority must reflect the general findings in section 1 of the Executive order that the Federal Government's procurement interests in economy and efficiency are normally served when the successor contractor hires the predecessor's employees and must specify how the particular circumstances support a contrary conclusion. General assertions or presumptions of an inability to procure

services on an economical and efficient basis using a carryover workforce are insufficient.

(1) Factors that the agency may consider include, but are not limited to, the following:

(i) Whether factors specific to the contract at issue suggest that the use of a carryover workforce would greatly increase disruption to the delivery of services during the period of transition between contracts (e.g., the carryover workforce in its entirety would not be an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements as pertinent to the contract at issue and would require extensive training to learn new technology or processes that would not be required of a new workforce).

(ii) Emergency situations, such as a natural disaster or an act of war, that physically displace incumbent employees from the location of the service contract work and make it impossible or impracticable to extend offers to hire as required by the Executive order.

(iii) Situations where the senior procurement executive reasonably believes, based on the predecessor employees' past performance, that the entire predecessor workforce failed, individually as well as collectively to perform suitably on the job and that it is not in the interest of economy and efficiency to provide supplemental training to the predecessor's workers.

(2) Factors the senior procurement executive may not consider in making an exception determination related to economy and efficiency include any general assumption that the use of carryover workforces usually or always greatly increase disruption to the delivery of services during the period of transition between contracts; the job performance of the predecessor contractor (unless a determination has been made that the entire predecessor workforce failed, individually as well as collectively); the seniority of the workforce; and the reconfiguration of the contract work by a successor contractor. The agency also may not consider wage rates and fringe benefits of service employees in making an exception determination except in the following exceptional circumstances:

(i) In emergency situations, such as a natural disaster or an act of war, that physically displace incumbent employees from the locations of the service contract work and make it impossible or impracticable to extend offers to hire as required by the Executive order;

(ii) When a carryover workforce in its entirety would not constitute an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements but rather would require extensive training to learn new technology or processes that would not be required of a new workforce; or

(iii) Other, similar circumstances in which the cost of employing a carryover workforce on the successor contract would be prohibitive.

(d) In exercising the authority to grant an exception to a contract because adhering to the requirements of the order or this part would substantially reduce the number of potential bidders so as to frustrate full and open competition, the contracting agency must carry out a market analysis. Where an incumbent contractor's employees are covered by a collective bargaining agreement, the contracting agency must, to the extent consistent with mission security, include the employees' representative in any market-research-related exchanges with industry that are specific to the nondisplacement requirement. A likely reduction in the number of potential offerors indicated by market analysis is not, by itself, sufficient to except a contract from coverage under this authority unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price and adhering to the requirements of the order would not be reasonably tailored to the agency's needs. When determining whether a fair and reasonable price can be achieved, the agency must consider current market conditions and the extent to which price fluctuations may be attributable to factors other than the nondisplacement requirements (e.g., costs of labor or materials, supply chain costs). In finding that inclusion of the contract clause would not be reasonably tailored to the agency's needs, the agency must specify how it intends to more effectively achieve the benefits that would have been provided by a carryover workforce, including physical and information security and a reduction in disruption of services.

(e) Before exercising the authority to grant an exception to a contract because adhering to the requirements of the order or this part would otherwise be inconsistent with statutes, regulations, Executive orders, or Presidential Memoranda, the contracting agency must consult with the Department of Labor, unless the agency has regulatory authority for implementing and interpreting the statute at issue, or the Department has already issued guidance

finding an exception on the basis at issue to be appropriate.

(f) Section 6 of Executive Order 14055 requires that, to the extent permitted by law and consistent with national security and executive branch confidentiality interests, each agency must publish, on a centralized public website, descriptions of the exceptions it has granted under this section. Each agency must also ensure that the contractor notifies affected workers and their collective bargaining representatives, if any, in writing of the agency's determination to grant an exception. Each agency also must, on a quarterly basis, report to the Office of Management and Budget descriptions of the exceptions granted under this section.

Subpart B—Requirements

§ 9.11 Contracting agency requirements.

(a) *Contract clause.* The contract clause set forth in Appendix A of this part must be included in covered service contracts, and solicitations for such contracts, that succeed contracts for performance of the same or similar work, except for procurement contracts subject to the Federal Acquisition Regulation (FAR). The contract clause in Appendix A affords employees who worked on the prior contract a right of first refusal pursuant to Executive Order 14055. For procurement contracts subject to the FAR, contracting agencies must use the clause set forth in the FAR developed to implement this section. Such clause will accomplish the same purposes as the clause set forth in appendix A of this part and be consistent with the requirements set forth in this section.

(b) *Notices.* Where a contract will be awarded to a successor for the same or similar work, the contracting officer must take steps to ensure that the predecessor contractor provides written notice to service employees employed under the predecessor contract of their possible right to an offer of employment, consistent with the requirements in § 9.12(e)(3), and, where relevant, notice to employees' representatives consistent with the provisions of § 9.11(c)(4) (relating to the location continuity analysis), and § 9.5(f) (relating to agency exceptions).

(c) *Location continuity.* (1) When an agency prepares a solicitation for a service contract that succeeds a contract for performance of the same or similar work, the agency must consider whether performance of the work in the same locality or localities in which the contract is currently being performed is reasonably necessary to ensure

economical and efficient provision of services.

(2) If an agency determines that performance of the contract in the same locality or localities is reasonably necessary to ensure economical and efficient provision of services, then the agency must, to the extent consistent with law, include a requirement or preference in the solicitation for the successor contract that it be performed in the same locality or localities.

(3) When there is a possibility that the successor contract could be performed in a locality other than where the predecessor contract has been performed, and a location change is under consideration, an agency's location-continuity analysis should generally include, but not be limited to, the following considerations:

(i) Whether factors specific to the contract at issue suggest that the employment of a new workforce at a new location would increase the potential for disruption to the delivery of services during the period of transition between contracts (e.g., the large size of workforce to be replaced or the relatively significant level of experience or training of the predecessor workforce);

(ii) Whether factors specific to the contract at issue suggest that the employment of a new workforce at a new location would unnecessarily increase physical or informational security risks on the contract (e.g., whether workers on the contract have had and will have access to sensitive, privileged, or classified information);

(iii) Whether the workforce on the predecessor contract has demonstrated prior successful performance of contract objectives so as to warrant a preference to retain as much of the current workforce as possible; and

(iv) Whether program-specific statutory or regulatory requirements govern the method through which the location of contract performance must be determined or evaluated, or other contract-specific factors favor the performance of the contract in a particular location.

(4) Agencies must complete the location-continuity analysis required under paragraph (c)(1) of this section prior to the date of issuance of the solicitation. Where an incumbent contractor's employees are covered by a collective bargaining agreement and a contract location change is possible and under consideration, the agency must, to the extent consistent with mission security, provide the employees with an opportunity prior to the issuance of the solicitation to submit information relevant to this analysis. Under such

circumstances, the agency must, at the earliest reasonable time in the acquisition planning process, direct the incumbent contractor to notify the collective bargaining representative(s) for the affected employees of the appropriate method to communicate such information.

(i) *Method of notice.* Agencies must direct the incumbent contractor to provide notice in the manner set forth in this paragraph. The contractor must provide written notice directly to the employees' representative in the same manner customarily used by the contractor to communicate with the representative.

(ii) *Model notice.* Agencies may use the following sample language as a basis in preparing their own notices regarding location continuity: Notice to Employees Regarding Location Continuity of Federal Contract Services. The contract for [insert type of service] services currently performed by [insert name of incumbent contractor] is scheduled to expire on [insert date]. [Insert name of contracting agency] is currently preparing a [insert type of solicitation] for a new contract for the provision of these services. As part of the acquisition planning process, [insert name of contracting agency] is considering whether to require or include a preference that these services continue to be performed in the same locality. If you have information regarding the provision of these services that would be relevant to this location continuity analysis, please contact [insert name of contracting agency contact] at [insert email address]. Before completion of the [insert name of incumbent contractor] contract, a subsequent notice will be provided to employees regarding the rights of certain service employees on the current contract to an offer of employment on any successor contract that is awarded. For additional information, contact the Wage and Hour Division of the United States Department of Labor at 1-866-4US-WAGE (1-866-487-9243), <https://www.dol.gov/agencies/whd>. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

(5) If the successor contract will be performed in a new locality, nothing in this part requires the contracting agency or the successor contractor to pay the relocation costs of employees who exercise their right to work for the successor contractor or subcontractor under the contract clause.

(d) *Disclosures.* The contracting officer must provide the incumbent contractor's list of employees referenced in § 9.12(e) to the successor contractor

no later than 21 calendar days prior to the start of performance on the successor's contract and, on request, the predecessor contractor must provide the employee list to employees or their representatives, consistent with the Privacy Act, 5 U.S.C. 552a, and other applicable law. When the incumbent contractor provides the contracting agency with an updated employee list pursuant to § 9.12(e)(2), the contracting agency will provide the updated list to the successor contractor no later than 7 calendar days prior to the start of performance on the successor contract. However, if the contract is awarded less than 30 days before the beginning of performance, then the predecessor contractor and the contracting agency must transmit the list as soon as practicable.

(e) *Actions on complaints*—(1) *Reporting*—(i) *Reporting time frame.* Within 15 calendar days of receiving a complaint or being contacted by the Wage and Hour Division with a request for the information in paragraph (e)(1)(ii) of this section, the contracting officer will forward all information listed in paragraph (e)(1)(ii) of this section to the local Wage and Hour office.

(ii) *Report contents:* The contracting officer will forward to the Wage and Hour Division any:

(A) Complaint of contractor noncompliance with this part;

(B) Available statements by the employee or the contractor regarding the alleged violation;

(C) Evidence that a seniority list was issued by the predecessor and provided to the successor;

(D) A copy of the seniority list;

(E) Evidence that the nondisplacement contract clause was included in the contract or that the contract was excepted by the contracting agency;

(F) Information concerning known settlement negotiations between the parties, if applicable;

(G) Any other relevant facts known to the contracting officer or other information requested by the Wage and Hour Division.

(2) [Reserved]

(f) *Incorporation of omitted contract clause.* Where the Department or the contracting agency discovers or determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that Executive Order 14055 or this part did not apply to a particular contract and/or failed to include the applicable contract clause in a contract to which the Executive order applies, the contracting agency will

incorporate the contract clause in the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination). Such incorporation must happen either on the initiative of the contracting agency or within 15 calendar days of notification by an authorized representative of the Department of Labor. Where the circumstances so warrant, the Administrator may require retroactive application of the contract clause to the commencement of performance under the contract or other date the Administrator determines to be appropriate. In determining whether retroactive application is appropriate, the Administrator will consider, among other factors, whether retroactive application would result in an overly onerous administrative or economic burden on the contracting agency that may constitute a severe disruption in the agency's procurement practices.

§ 9.12 Contractor requirements and prerogatives.

(a) *General*—(1) *No filling of employment openings prior to right of first refusal.* Except as provided under the exclusion listed in § 9.4(b) or the exceptions listed in paragraph (c) of this section, a successor contractor or subcontractor must not fill any employment openings for positions subject to the SCA under the contract prior to making good faith offers of employment (*i.e.*, a right of first refusal to employment on the contract), in positions for which the employees are qualified, to those employees employed under the predecessor contract whose employment will be terminated as a result of award of the successor contract or the expiration of the contract under which the employees were hired. To the extent necessary to meet its anticipated staffing pattern and in accordance with the requirements described in this part, the contractor and its subcontractors must make a bona fide, express offer of employment to each employee to a position for which the employee is qualified and must state the time within which the employee must accept such offer. In no case may the contractor or subcontractor give an employee fewer than 10 business days to consider and accept the offer of employment.

(2) *Right of first refusal exists when no seniority list is available.* The successor contractor's obligation to offer a right of first refusal exists even if the successor contractor has not been provided a list

of the predecessor contractor's and subcontractor(s)' employees or if the list does not contain the names of all persons employed during the final month of contract performance.

(3) *Determining eligibility.* While a person's entitlement to a job offer under this part usually will be based on whether the person is named on the certified list of all service employees working under the predecessor's contract or subcontracts during the last month of contract performance, a contractor must also accept other reliable evidence of an employee's entitlement to a job offer under this part. For example, even if a person's name does not appear on the list of employees on the predecessor contract, an employee's assertion of an assignment to work on the predecessor contract during the predecessor's last month of performance, coupled with contracting agency staff verification, could constitute reliable evidence of an employee's entitlement to a job offer under this part. Similarly, an employee could demonstrate eligibility by producing a paycheck stub identifying the work location and dates worked or otherwise reflecting that the employee worked on the predecessor contract during the last month of performance.

(4) *Obligation to ensure proper placement of contract clause.* A contractor or subcontractor has an affirmative obligation to ensure its covered contract contains the contract clause. The contractor or subcontractor must notify the contracting officer as soon as possible if the contracting officer did not incorporate the required contract clause into a contract.

(b) *Method of job offer*—(1) *Bona-fide offers to qualified employees.* Except as otherwise provided in this part, a contractor must make a bona fide, express offer of employment to each qualified employee on the predecessor contract before offering employment on the contract to any other service employee. In determining whether an employee is entitled to a bona fide, express offer of employment, a contractor may consider the exceptions set forth in paragraph (c) of this section and the conditions detailed in paragraph (d) of this section. A contractor may only use employment screening processes (*e.g.*, drug tests, background checks, security clearance checks, and similar pre-employment screening mechanisms) when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with the Executive order. While the results of such screenings may show that an employee is unqualified for a position

and thus not entitled to an offer of employment, a contractor may not use the requirement of an employment screening process to conclude an employee is unqualified solely because, despite an employee's reasonable efforts to do so, they have not yet completed that screening process.

(2) *Establishing time limit for employee response.* The contractor must state the time within which an employee must accept an employment offer. In no case may the period in which the employee has to accept the offer be less than 10 business days. The obligation to offer employment under this part will cease upon the employee's first refusal of a bona fide offer of employment on the contract.

(3) *Process.* The successor contractor must, in writing, offer employment to each employee. See also paragraph (f) of this section, Recordkeeping. Where written offers are not delivered in person, the offers should be sent by registered or certified mail to the employees' last known address or by any other means normally ensuring delivery. Examples of such other means include, but are not limited to, email to the last known email address, delivery to the last known address by commercial courier or express delivery services, or by personal service to the last known address.

(4) *Different job position.* As a general matter, an offer of employment on the successor's contract will be presumed to be a bona fide offer of employment, even if it is not for a position similar to the one the employee previously held, so long as it is one for which the employee is qualified. If a question arises concerning an employee's qualifications, that question must be decided based upon the employee's education and employment history, with particular emphasis on the employee's experience on the predecessor contract. A contractor must base its decision regarding an employee's qualifications on credible information provided by a knowledgeable source, such as the predecessor contractor, the local supervisor, the employee, or the contracting agency.

(5) *Different employment terms and conditions.* An offer of employment to a position on the contract under different employment terms and conditions than the employee held with the predecessor contractor is permitted provided that the offer is still bona fide, *i.e.*, the different employment terms and conditions are not offered to discourage the employee from accepting the offer. This would include offers with changes to pay, benefits, or terms and conditions

such as the option of remote work, provided that these changes were not made to discourage acceptance of the offer. Where the successor contractor has or will have any employees in the same or similar occupational classifications during the course of the contract who work or will work entirely in a remote capacity, the successor contractor generally must offer employees of the predecessor contractor the option of remote work under reasonably similar terms and conditions.

(6) *Relocation costs.* If the successor contract will be performed in a new locality, nothing in this part requires or recommends that contractors or subcontractors pay the relocation costs of employees who exercise their right to work for the successor contractor or subcontractor under this part.

(7) *Termination after contract commencement.* Where an employee is terminated by the successor contractor under circumstances suggesting the offer of employment may not have been bona fide, the facts and circumstances of the offer and the termination will be closely examined during any compliance action to determine whether the offer was bona fide.

(8) *Post-award incorporation of omitted contract clause modifies contractor's obligations.* Pursuant to § 9.11(f), in a situation where the contracting agency retroactively incorporates the contract clause, if the successor contractor already hired employees to perform on the contract at the time the clause was retroactively incorporated, the successor contractor will be required to offer a right of first refusal of employment to the predecessor's employees in accordance with the requirements of Executive Order 14055 and this part. Where, pursuant to § 9.11(f), the Administrator has required only prospective incorporation of the contract clause from the date of incorporation, the successor contractor must provide the employees on the predecessor contract a right of first refusal for any positions that remain open. In the event of an employment opening within 90 calendar days of the first date of contract performance, the successor contractor must provide the employees of the predecessor contractor the right of first refusal as well, regardless of whether incorporation of the contract clause is retroactive or prospective.

(c) *Exceptions.* The successor contractor is responsible for demonstrating the applicability of the following exceptions to the nondisplacement provisions in this part.

(1) *Nondisplaced employees.* (i) A successor contractor or subcontractor is not required to offer employment to any employee of the predecessor contractor who will be retained by the predecessor contractor.

(ii) The successor contractor must presume that all employees working under a predecessor's Federal service contract will be terminated as a result of the award of the successor contract, unless it can demonstrate a reasonable belief to the contrary based upon reliable information provided by a knowledgeable source, such as the predecessor contractor, the employee, or the contracting agency.

(2) *Predecessor contract's non-service workers.* (i) A successor contractor or subcontractor is not required to offer employment to any person working on the predecessor contract who is not a service employee as defined in § 9.2 of this part.

(ii) The successor contractor must presume that all employees working under a predecessor's Federal service contract are service employees, unless it can demonstrate a reasonable belief to the contrary based upon reliable information provided by a knowledgeable source, such as the predecessor contractor, the employee, or the contracting agency. Information regarding the general business practices of the predecessor contractor or the industry is not sufficient to claim this exception.

(3) *Employee's past performance.* (i) A successor contractor or subcontractor is not required to offer employment to an employee of the predecessor contractor if the successor contractor or any of its subcontractors reasonably believes, based on reliable evidence of the particular employee's past performance, that there would be just cause to discharge the employee if employed by the successor contractor or any subcontractor.

(ii) A successor contractor must presume that there would be no just cause to discharge any employees working under the predecessor contract in the last month of performance, unless it can demonstrate a reasonable belief to the contrary that is based upon reliable evidence provided by a knowledgeable source, such as the predecessor contractor and its subcontractors, the local supervisor, the employee, or the contracting agency. This determination must be made on an individual basis for each employee. Information regarding the general performance of the predecessor contractor is not sufficient to claim this exception.

(A) For example, a successor contractor may demonstrate its

reasonable belief that there would be just cause to discharge an employee through reliable written evidence that the predecessor contractor initiated a process to terminate the employee for conduct clearly warranting termination prior to the expiration of the contract, but the termination process was not completed before the contract expired. Written evidence related to disciplinary action taken without a recommendation of termination may constitute reliable evidence of just cause to discharge the employee, depending on the specific facts and circumstances.

(B) [Reserved].

(4) *Nonfederal work.* (i) A successor contractor or subcontractor is not required to offer employment to any employee hired to work under a predecessor's Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employee was not deployed in a manner that was designed to avoid the purposes of this part.

(ii) The successor contractor must presume that no employees who worked under a predecessor's Federal service contract also worked on one or more nonfederal service contracts as part of a single job, unless the successor can demonstrate a reasonable belief based on reliable evidence to the contrary. The successor contractor must demonstrate that its belief is reasonable and is based upon reliable evidence provided by a knowledgeable source, such as the predecessor contractor, the local supervisor, the employee, or the contracting agency. Information regarding the general business practices of the predecessor contractor or the industry is not sufficient.

(iii) A successor contractor that makes a reasonable determination that a predecessor contractor's employee also performed work on one or more nonfederal service contracts as part of a single job must also make a reasonable determination that the employee was not deployed in a manner that was designed to avoid the purposes of this part. The successor contractor must demonstrate that its belief is reasonable and is based upon reliable evidence that has been provided by a knowledgeable source, such as the employee or the contracting agency.

(d) *Reduced staffing—(1) Contractor determines how many employees.* (i) A successor contractor or subcontractor will determine the number of employees necessary for efficient performance of the contract or subcontract and, for bona fide staffing or work assignment reasons, may elect to employ fewer employees than the predecessor contractor employed in connection with

performance of the work. Thus, the successor contractor need not offer employment on the contract to all employees on the predecessor contract, but must offer employment only to the number of eligible employees the successor contractor believes necessary to meet its anticipated staffing pattern, except that:

(ii) Where, in accordance with this authority to employ fewer employees, a successor contractor does not offer employment to all the predecessor contract employees, the obligation to offer employment will continue for 90 calendar days after the successor contractor's first date of performance on the contract. The contractor's obligation under this part will end when all of the predecessor contract employees have received a bona fide job offer, as described in § 9.12(b), or when the 90-day window of obligation has expired. The following three examples demonstrate the principle.

(A) A contractor with 18 employment openings and a list of 20 employees from the predecessor contract must continue to offer employment to individuals on the list until 18 of the employees accept the contractor's employment offer or until the remaining employees have rejected the offer. If an employee quits or is terminated from the successor contract within 90 calendar days of the first date of contract performance, the contractor must first offer that employment opening to any remaining eligible employees of the predecessor contract.

(B) A successor contractor originally offers 20 jobs to predecessor contract employees on a contract that had 30 positions under the predecessor contractor. The first 20 predecessor contract employees the successor contractor approaches accept the employment offer. Within a month of commencing work on the contract, the successor determines that it must hire seven additional employees to perform the contract requirements. The first three predecessor contract employees to whom the successor offers employment decline the offer; however, the next four predecessor contract employees accept the offers. In accordance with the provisions of this section, the successor contractor offers employment on the contract to the three remaining predecessor contract employees who all accept; however, two employees on the contract quit 5 weeks later. The successor contractor has no further obligation under this part to make a second employment offer to the persons who previously declined an offer of employment on the contract.

(C) A successor contractor reduces staff on a successor contract by two positions from the predecessor contract's staffing pattern. Each predecessor contract employee the successor approaches accepts the employment offer; therefore, employment offers are not made to two predecessor contract employees. The successor contractor terminates an employee five months later. The successor contractor has no obligation to offer employment to the two remaining employees from the predecessor contract because more than 90 calendar days have passed since the successor contractor's first date of performance on the contract.

(2) *Changes to staffing pattern.* Where a contractor reduces the number of employees in any occupation on a contract with multiple occupations, resulting in some displacement, the contractor must scrutinize each employee's qualifications in order to offer the greatest possible number of predecessor contract employees positions equivalent to those they held under the predecessor contract. Example: A successor contract is awarded for a food preparation and services contract with Cook II, Cook I, and dishwasher positions. The Cook II position requires a higher level of skill than the Cook I position. The successor contractor reconfigures the staffing pattern on the contract by increasing the number of persons employed as Cook IIs and Dishwashers and reducing the number of Cook I employees. The successor contractor must examine the qualifications of each Cook I to determine whether they are qualified for either a Cook II or Dishwasher position. Conversely, were the contractor to increase the number of Cook I employees, decrease the number of Cook II employees, and keep the same number of Dishwashers, the contractor would generally be able to offer Cook I positions to some Cook II employees, because the Cook II performs a higher-level occupation.

(3) *Contractor determines which employees.* The contractor, subject to provisions of this part and other applicable restrictions (including non-discrimination laws and regulations), will determine to which employees it will offer employment. See § 9.1(b) regarding compliance with requirements of other Executive orders, regulations, or Federal, state, or local laws.

(e) *Contractor obligations near end of contract performance—(1) Certified list of employees provided 30 calendar days before contract completion.* The contractor will, not less than 30 calendar days before completion of the

contractor's performance of services on a contract, furnish the contracting officer with a list of the names, mailing addresses, and if known, phone numbers and email addresses of all service employees working under the contract and its subcontracts at the time the list is submitted. The list must also contain anniversary dates of employment of each service employee on the contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Assuming there are no changes to the workforce before the contract is completed, the contractor may use the list submitted, or to be submitted, to satisfy the requirements of the contract clause specified at 29 CFR 4.6(l)(2) to meet this provision but must also include the mailing address, and if known, phone numbers and email addresses of the workers.

(2) *Certified list of employees provided 10 business days before contract completion.* Where changes to the workforce are made after the submission of the certified list described in paragraph (e)(1) of this section, the contractor will, not less than 10 business days before completion of the contractor's performance of services on a contract, furnish the contracting officer with a certified list of the names, mailing addresses, and if known, phone numbers and email addresses of all service employees employed within the last month of contract performance. The list must also contain anniversary dates of employment of each service employee on the contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. The contractor may use the list submitted to satisfy the requirements of the contract clause specified at 29 CFR 4.6(l)(2) to meet this provision but must also include the mailing addresses, and if known, phone numbers and email addresses of the workers.

(3) *Notices to employees of possible right to offers of employment on successor contract.* Before contract completion, the contractor must provide written notice to service employees employed under the contract of their possible right to an offer of employment on the successor contract. Such notice will be either posted in a conspicuous place at the worksite or delivered to the employees individually. Where the workforce on the predecessor contract is comprised of a significant portion of workers who are not fluent in English, the notice will be provided in both English and a language in which the employees are fluent. Multiple language notices are required where significant

portions of the workforce speak different languages and there is no common language. Contractors may provide the notice set forth in Appendix B to this part in either a physical posting at the job site, or in another manner that effectively provides individual notice such as individual paper notices or effective email notification to the affected employees. Another form with the same information can be used. To be effective, email notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice. Any particular determination of the adequacy of a notification, regardless of the method used, will be fact-dependent and made on a case-by-case basis. These notice requirements are in addition to the notice provisions listed at § 9.5(f) (relating to agency exceptions) and § 9.11(c) (relating to location continuity).

(f) *Recordkeeping*—(1) *Form of records*. This part prescribes no particular order or form of records for contractors. A contractor may use records developed for any purpose to satisfy the requirements of this part, provided the records otherwise meet the requirements and purposes of this part and are fully accessible. The requirements of this part will apply to all records regardless of their format (e.g., paper or electronic).

(2) *Records to be retained*. (i) The contractor must maintain copies of any written offers of employment, including the date of the offer.

(ii) The contractor must maintain a copy of any record that forms the basis for any exclusion or exception claimed under this part.

(iii) The contractor must maintain a copy of any employee list received from the contracting agency and any employee list provided to the contracting agency. See paragraph (e) of this section, contractor obligations near end of contract performance.

(iv) Every contractor that makes retroactive payment of wages or compensation under the supervision of the Administrator pursuant to § 9.23(b), must:

(A) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(B) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour Division, and

(1) Preserve a copy as part of the records,

(2) Deliver a copy to the employee, and

(3) File the original, as evidence of payment by the contractor and receipt by the employee, with the Administrator within 10 business days after payment is made.

(v) The contractor must maintain evidence of any notices that they have provided to workers, or workers' collective bargaining representatives, to satisfy the requirements of the order or these regulations, including notices of the possibility of employment on the successor contract as required under § 9.12(e)(3); notices of agency exceptions that a contracting agency requires a contractor to provide under § 9.5(f) and section 6(b) of the order; and notices to workers and their representatives of the opportunity to provide information relevant to the contracting agency's location-continuity determination in the solicitation for a successor contract pursuant to § 9.11(c)(4).

(3) *Records retention period*. The contractor must retain records prescribed by § 9.12(f)(2) of this part for not less than a period of 3 years from the date the records were created.

(4) *Disclosure*. The contractor must provide copies of such documentation upon request of any authorized representative of the contracting agency or Department of Labor.

(g) *Investigations*. The contractor must cooperate in any review or investigation conducted pursuant to this part and must not interfere with the investigation or intimidate, blacklist, discharge, or in any other manner discriminate against any person because such person has cooperated in an investigation or proceeding under this part or has attempted to exercise any rights afforded under this part. This obligation to cooperate with investigations is not limited to investigations of the contractor's own actions, and also includes investigations related to other contractors (e.g., predecessor and successor contractors) and subcontractors.

§ 9.13 Subcontracts.

(a) *Subcontractor liability*. The contractor or subcontractor must insert in any subcontracts the nondisplacement contract clause contained in Appendix A or the FAR, as appropriate. The contractor or subcontractor must also insert a clause in any subcontracts to require the subcontractor to include the Appendix A or FAR contract clause in any lower-tier subcontracts. The prime contractor is responsible for the compliance of any subcontractor or lower-tier

subcontractor with the contract clause. In the event of any violations of the contract clause, the prime contractor and any subcontractor(s) responsible will be jointly and severally liable for any unpaid wages and pre-judgment and post-judgment interest, and may be subject to debarment, as appropriate.

(b) *Discontinuation of subcontractor services*. When a prime contractor that is subject to the nondisplacement requirements of this part discontinues the services of a subcontractor at any time during the contract and performs those services itself, the prime contractor must offer employment on the contract to the subcontractor's employees who would otherwise be displaced and would otherwise be qualified in accordance with this part.

Subpart C—Enforcement

§ 9.21 Complaints.

(a) *Filing a complaint*. Any employee of the predecessor contractor who believes the successor contractor has violated this part, or their authorized representative, may file a complaint with the Wage and Hour Division (WHD) within 120 days from the first date of contract performance. The employee or authorized representative may file a complaint directly with any office of the WHD. No particular form of complaint is required. A complaint may be filed orally or in writing. The WHD will accept the complaint in any language.

(b) *Confidentiality*. It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would tend to reveal the individual's identity, will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual. Disclosure of such statements will be governed by the provisions of the Freedom of Information Act (5 U.S.C. 552, *see* 29 CFR part 70) and the Privacy Act of 1974 (5 U.S.C. 552a).

§ 9.22 Wage and Hour Division investigation.

(a) *Initial investigation*. The Administrator may initiate an investigation under this part either as the result of a complaint or at any time on the Administrator's own initiative. The Administrator may investigate potential violations of, and obtain compliance with, the Executive Order.

As part of the investigation, the Administrator may conduct interviews with the predecessor and successor contractors, as well as confidential interviews with the relevant contractors' workers at the worksite during normal work hours; inspect the relevant contractors' records; make copies and transcriptions of such records; and require the production of any documents or other evidence deemed necessary to determine whether a violation of this part, including conduct warranting imposition of debarment pursuant to § 9.23(d), has occurred. Federal agencies and contractors must cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all aspects of investigations.

(b) *Subsequent investigations.* The Administrator may conduct a new investigation or issue a new determination if the Administrator concludes circumstances warrant, such as where the proceedings before an Administrative Law Judge reveal that there may have been violations with respect to other employees of the contractor, where imposition of debarment is appropriate, or where the contractor has failed to comply with an order of the Secretary.

§ 9.23 Remedies and Sanctions for Violations of This Part.

(a) *Authority.* Executive Order 14055 provides that the Secretary will have the authority to issue final orders prescribing appropriate sanctions and remedies, including but not limited to requiring the contractor to offer employment, in positions for which the employees are qualified, to employees from the predecessor contract and the payment of wages lost.

(b) *Unpaid wages or other relief due.* In addition to satisfying any costs imposed under §§ 9.34(j) or 9.35(d) of this part, a contractor that violates any provision of this part must take appropriate action to abate the violation, which may include hiring each affected employee in a position on the contract for which the employee is qualified, together with compensation (including lost wages) and other terms, conditions, and privileges of that employment. The contractor will pay interest on any underpayment of wages and on any other monetary relief due under this part. Interest on any back wages or monetary relief provided for in this part will be calculated using the percentage established for the underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(c) *Withholding of funds—(1) Unpaid wages or other relief.* The Administrator may additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld in such amounts as may be necessary to pay unpaid wages or to provide other appropriate relief due under this part. Upon the final order of the Secretary that such monies are due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(2) *List of employees.* If the contracting officer or the Administrator finds that the predecessor contractor has failed to provide a list of the names of service employees working under the contract and its subcontracts during the last month of contract performance in accordance with § 9.12(e), the contracting officer may, at their discretion, and must upon request by the Administrator, take such action as may be necessary to cause the suspension of the payment of contract funds until such time as the list is provided to the contracting officer.

(3) *Notification to a contractor of the withholding of funds.* If the Administrator directs a contracting agency to withhold funds from a contractor pursuant to § 9.23(c)(1), the Administrator or contracting agency must notify the affected contractor.

(d) *Debarment.* Where the Secretary finds that a contractor has failed to comply with any order of the Secretary or has committed willful violations of Executive Order 14055 or this part, the Secretary may order that the contractor and its responsible officers, and any firm in which the contractor has a substantial interest, will be ineligible to be awarded any contract or subcontract of the United States for a period of up to 3 years. Neither an order for debarment of any contractor or subcontractor from further government contracts under this section nor the inclusion of a contractor or subcontractor on a published list of noncomplying contractors will be carried out without affording the contractor or subcontractor an opportunity for a hearing.

(e) *Antiretaliation.* When the Administrator finds that a contractor has interfered with an investigation of the Administrator under this part or has in any manner discriminated against any person because such person has cooperated in such an investigation or has attempted to exercise any rights afforded under this part, the Administrator may require the contractor to provide any relief to the

affected person as may be appropriate, including employment, reinstatement, promotion, and the payment of lost wages, including interest.

Subpart D—Administrator's Determination, Mediation, and Administrative Proceedings

§ 9.31 Determination of the Administrator.

(a) *Written determination.* Upon completion of an investigation under § 9.22, the Administrator will issue a written determination of whether a violation has occurred. The determination will contain a statement of the investigation findings and conclusions. A determination that a violation occurred will address appropriate relief and the issue of debarment where appropriate. The Administrator will notify any complainant(s); employee representative(s); contractors, including the prime contractor if a subcontractor is implicated; contractor representative(s); and the contracting officer by registered or certified mail to the last known address or by any other means normally ensuring delivery, of the investigation findings.

(b) *Notice to parties and effect—(1) Relevant facts in dispute.* If the Administrator concludes that relevant facts are in dispute, the Administrator's determination will so advise the parties and their representatives, if any. It will further advise that the notice of determination will become the final order of the Secretary and will not be appealable in any administrative or judicial proceeding unless an interested party requests a hearing within 20 calendar days of the date of the Administrator's determination, in accordance with § 9.32(b)(1). Such a request may be sent by mail or by any other means normally ensuring delivery to the Chief Administrative Law Judge of the Office of the Administrative Law Judges. A detailed statement of the reasons why the Administrator's determination is in error, including facts alleged to be in dispute, if any, must be submitted with the request for a hearing. The Administrator's determination not to seek debarment will not be appealable.

(2) *Relevant facts not in dispute.* If the Administrator concludes that no relevant facts are in dispute, the parties and their representatives, if any, will be so advised. They will also be advised that the determination will become the final order of the Secretary and will not be appealable in any administrative or judicial proceeding unless an interested party files a petition for review with the Administrative Review Board pursuant

to § 9.32(b)(2) within 20 calendar days of the date of the determination of the Administrator. The determination will further advise that if an aggrieved party disagrees with the factual findings or believes there are relevant facts in dispute, the aggrieved party may advise the Administrator of the disputed facts and request a hearing by mail or by any other means normally ensuring delivery. The request must be sent within 20 calendar days of the date of the determination. The Administrator will either refer the request for a hearing to the Chief Administrative Law Judge or notify the parties and their representatives, if any, of the determination of the Administrator that there is no relevant issue of fact and that a petition for review may be filed with the Administrative Review Board within 20 calendar days of the date of the notice, in accordance with the procedures at § 9.32(b)(2).

§ 9.32 Requesting appeals.

(a) *General.* If any party desires review of the determination of the Administrator, including judicial review, a request for an Administrative Law Judge hearing or petition for review by the Administrative Review Board must first be filed in accordance with § 9.31(b).

(b) *Process*—(1) *For Administrative Law Judge hearing*—(i) *General.* Any aggrieved party may request a hearing by an Administrative Law Judge by sending a request to the Chief Administrative Law Judge of the Office of the Administrative Law Judges within 20 days of the determination of the Administrator. The request for a hearing may be sent by mail or by any other means normally ensuring delivery and must be accompanied by a copy of the determination of the Administrator. At the same time, a copy of any request for a hearing will be sent to the complainant(s) or successor contractor, and their representatives, if any, as appropriate; the Administrator of the Wage and Hour Division; and the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

(ii) *By the complainant.* The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that the employer has not committed violation(s), or where the complainant or other interested party believes that the Administrator has ordered inadequate monetary relief. In such a proceeding, the party requesting the hearing will be the prosecuting party

and the employer will be the respondent; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(iii) *By the contractor.* The employer or any other interested party may request a hearing where the Administrator determines, after investigation, that the employer has committed violation(s). In such a proceeding, the Administrator will be the prosecuting party and the employer will be the respondent.

(2) *For Administrative Review Board review*—(i) *General.* Any aggrieved party desiring review of a determination of the Administrator in which there were no relevant facts in dispute, or of an Administrative Law Judge's decision, must file a petition for review with the Administrative Review Board within 20 calendar days of the date of the determination or decision. The petition must be served on all parties and, where the case involves an appeal from an Administrative Law Judge's decision, the Chief Administrative Law Judge. See also § 9.32(b)(1).

(ii) *Contents and service*—(A) *Contents.* A petition for review must refer to the specific findings of fact, conclusions of law, or order at issue.

(B) *Service.* Copies of the petition and all briefs must be served on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

(C) *Effect of filing.* If a timely request for hearing or petition for review is filed, the determination of the Administrator or the decision of the Administrative Law Judge will be inoperative unless and until the Administrative Review Board issues an order affirming the determination or decision, or the determination or decision otherwise becomes a final order of the Secretary. If a petition for review concerns only the imposition of ineligibility sanctions, however, the remainder of the decision will be effective immediately. No judicial review will be available unless a timely petition for review to the Administrative Review Board is first filed.

§ 9.33 Mediation.

The parties are encouraged to resolve disputes by using settlement judges to mediate settlement negotiations pursuant to the procedures and requirements of 29 CFR 18.13 or any successor to the regulation. Any settlement agreement reached must be approved by the assigned

Administrative Law Judge consistent with the procedures and requirements of 29 CFR 18.71.

§ 9.34 Administrative Law Judge hearings.

(a) *Authority*—(1) *General.* The Office of Administrative Law Judges has jurisdiction to hear and decide appeals pursuant to § 9.31(b)(1) concerning questions of law and fact from determinations of the Administrator issued under § 9.31. In considering the matters within the scope of its jurisdiction, the Administrative Law Judge will act as the authorized representative of the Secretary and will act fully and, subject to an appeal filed under § 9.32(b)(2), finally on behalf of the Secretary concerning such matters.

(2) *Limit on scope of review.* (i) The Administrative Law Judge will not have jurisdiction to pass on the validity of any provision of this part.

(ii) The Equal Access to Justice Act, as amended, does not apply to hearings under this part. Accordingly, an Administrative Law Judge will have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Scheduling.* If the case is not stayed to attempt settlement in accordance with § 9.33(a), the Administrative Law Judge to whom the case is assigned will, within 15 calendar days following receipt of the request for hearing, notify the parties and any representatives, of the day, time, and place for hearing. The date of the hearing will not be more than 60 days from the date of receipt of the request for hearing.

(c) *Dismissing challenges for failure to participate.* The Administrative Law Judge may, at the request of a party or on their own motion, dismiss a challenge to a determination of the Administrator upon the failure of the party requesting a hearing or their representative to attend a hearing without good cause; or upon the failure of the party to comply with a lawful order of the Administrative Law Judge.

(d) *Administrator's participation.* At the Administrator's discretion, the Administrator has the right to participate as a party or as *amicus curiae* at any time in the proceedings, including the right to petition for review of a decision of an Administrative Law Judge in which the Administrator has not previously participated. The Administrator will participate as a party in any proceeding in which the Administrator has found any violation of this part, except where the complainant or other interested party

challenges only the amount of monetary relief. See also § 9.32(b)(2)(i)(C).

(e) *Agency participation.* A Federal agency that is interested in a proceeding may participate as amicus curiae at any time in the proceedings. At the request of such Federal agency, copies of all pleadings in a case must be served on the Federal agency, whether or not the agency is participating in the proceeding.

(f) *Hearing documents.* Copies of the request for hearing under this part and documents filed in all cases, whether or not the Administrator is participating in the proceeding, must be sent to the Administrator, Wage and Hour Division, and to the Associate Solicitor.

(g) *Rules of practice.* The rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18, subpart A, will be applicable to the proceedings provided by this section. This part is controlling to the extent it provides any rules of special application that may be inconsistent with the rules in 29 CFR part 18, subpart A. The Rules of Evidence at 29 CFR 18, subpart B, will not apply. Rules or principles designed to ensure production of the most probative evidence available will be applied. The Administrative Law Judge may exclude evidence that is immaterial, irrelevant, or unduly repetitive.

(h) *Decisions.* The Administrative Law Judge will issue a decision within 60 days after completion of the proceeding. The decision will contain appropriate findings, conclusions, and an order and be served upon all parties to the proceeding.

(i) *Orders.* Upon the conclusion of the hearing and the issuance of a decision that a violation has occurred, the Administrative Law Judge will issue an order that the successor contractor take appropriate action to remedy the violation. This may include hiring the affected employee(s) in a position on the contract for which the employee is qualified, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Where the Administrator has sought debarment, the order must also address whether such sanctions are appropriate.

(j) *Costs.* If an order finding the successor contractor violated this part is issued, the Administrative Law Judge may assess against the contractor a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by the aggrieved employee(s) in the proceeding. This amount will be

awarded in addition to any unpaid wages or other relief due under § 9.23(b).

(k) *Finality.* The decision of the Administrative Law Judge will become the final order of the Secretary, unless a petition for review is timely filed with the Administrative Review Board as set forth in § 9.32(b)(2).

§ 9.35 Administrative Review Board proceedings.

(a) *Authority—(1) General.* The ARB has jurisdiction to hear and decide in its discretion appeals pursuant to § 9.31(b)(2) concerning questions of law and fact from determinations of the Administrator issued under § 9.31 and from decisions of Administrative Law Judges issued under § 9.34. In considering the matters within the scope of its jurisdiction, the ARB acts as the authorized representative of the Secretary and acts fully on behalf of the Secretary concerning such matters.

(2) *Limit on scope of review.* (i) The ARB will not have jurisdiction to pass on the validity of any provision of this part. The ARB is an appellate body and will decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The ARB will not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, for any proceeding under this part, the Administrative Review Board will have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

(b) *Decisions.* The ARB's final decision will be issued within 90 days of the receipt of the petition for review and will be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the ARB concludes that the contractor has violated this part, the final order will order action to remedy the violation, which may include hiring each affected employee in a position on the contract for which the employee is qualified, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Where the Administrator has sought imposition of debarment, the ARB will determine whether an order imposing debarment is appropriate. The ARB's order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

(d) *Costs.* If a final order finding the successor contractor violated this part is issued, the ARB may assess against the contractor a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by the aggrieved employee(s) in the proceeding. This amount will be awarded in addition to any unpaid wages or other relief due under § 9.23(b).

(e) *Finality.* The decision of the Administrative Review Board will become the final order of the Secretary in accordance with Secretary's Order 01–2020 (or any successor to that order), which provides for discretionary review of such orders by the Secretary.

§ 9.36 Severability.

If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision is to be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding will be one of utter invalidity or unenforceability, in which event the provision will be severable from this part and will not affect the remainder thereof.

Appendix A to Part 9—Contract Clause

The following clause must be included by the contracting agency in every contract and solicitation to which Executive Order 14055 applies, except for procurement contracts subject to the Federal Acquisition Regulation (FAR):

Nondisplacement of Qualified Workers

(a) The contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer service employees (as defined in the Service Contract Act of 1965, as amended, 41 U.S.C. 6701(3)) employed under the predecessor contract and its subcontracts whose employment would be terminated as a result of the award of this contract or the expiration of the contract under which the employees were hired, a right of first refusal of employment under this contract in positions for which those employees are qualified. The contractor and its subcontractors shall determine the number of employees necessary for efficient performance of this contract and may elect to employ more or fewer employees than the predecessor contractor employed in connection with performance of the work solely on the basis of that determination. Except as provided in paragraph (b) of this clause, there shall be no employment opening under this contract or subcontract, and the contractor and any subcontractors shall not offer employment under this contract to any person prior to having complied fully with the obligations described in this clause. The contractor and its subcontractors shall make an express offer of employment to each employee as provided

herein and shall state the time within which the employee must accept such offer, but in no case shall the period within which the employee must accept the offer of employment be less than 10 business days.

(b) Notwithstanding the obligation under paragraph (a) of this clause, the contractor and any subcontractors:

(1) Are not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act of 1965, as amended, 41 U.S.C. 6701(3); and

(2) Are not required to offer a right of first refusal to any employee(s) of the predecessor contractor for whom the contractor or any of its subcontractors reasonably believes, based on reliable evidence of the particular employees' past performance, that there would be just cause to discharge the employee(s) if employed by the contractor or any subcontractors.

(c) The contractor shall, not less than 10 business days before the earlier of the completion of this contract or of its work on this contract, furnish the contracting officer a certified list of the names, mailing addresses, and if known, phone numbers and email addresses of all service employees working under this contract and its subcontracts during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts either with the current or predecessor contractors or their subcontractors. The contracting officer shall provide the list to the successor contractor, and the list shall be provided on request to employees or their representatives, consistent with the Privacy Act, 5 U.S.C. 552(a), and other applicable law.

(d) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, the Secretary may impose appropriate sanctions against the contractor or its subcontractors, as provided in Executive Order 14055, the regulations implementing that order, and relevant orders of the Secretary, or as otherwise provided by law.

(e) In every subcontract entered into in order to perform services under this contract, the contractor shall include provisions that ensure that each subcontractor shall honor the requirements of paragraphs (a) and (b) of this clause with respect to the employees of a predecessor subcontractor or subcontractors working under this contract, as well as of a predecessor contractor and its subcontractors. The subcontract shall also include provisions to ensure that the subcontractor shall provide the contractor with the information about the employees of the subcontractor needed by the contractor to comply with paragraph (c) of this clause. The contractor shall take such action with respect to any such subcontract as may be directed by the Secretary as a means of enforcing such provisions, including the imposition of sanctions for noncompliance: provided, however, that if the contractor, as a result of

such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the contractor may request that the United States enter into such litigation to protect the interests of the United States.

(f)(1) The contractor must, not less than 30 calendar days before completion of the contractor's performance of services on a contract, furnish the contracting officer with a certified list of the names, mailing addresses, and if known, phone numbers and email addresses of all service employees working under the contract and its subcontracts at the time the list is submitted. The list must also contain anniversary dates of employment of each service employee under the contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Where changes to the workforce are made after the submission of the certified list described in this paragraph (f)(1) of this clause, the contractor must, in accordance with paragraph (c) of this clause, not less than 10 business days before completion of the contractor's performance of services on a contract, furnish the contracting officer with an updated certified list of the names, mailing addresses, and if known, phone numbers and email addresses of all service employees employed within the last month of contract performance. The updated list must also contain anniversary dates of employment of each service employee under the contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Only contractors experiencing a change in their workforce between the 30- and 10-day periods will have to submit a list in accordance with paragraph (c) of this clause.

(2) The contracting officer must upon their own action or upon written request of the Administrator withhold or cause to be withheld as much of the accrued payments due on either the contract or any other contract between the contractor and the Government that the Department of Labor representative requests or that the contracting officer decides may be necessary to pay unpaid wages or to provide other appropriate relief due under 29 CFR part 9. Upon the final order of the Secretary that such moneys are due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement. If the contracting officer or the Administrator finds that the predecessor contractor has failed to provide a list of the names and mailing addresses of service employees working under the contract and its subcontracts during the last month of contract performance in accordance with 29 CFR part 9, the contracting officer may, at their discretion, and must upon request by the Administrator, take such action as may be necessary to cause the suspension of the payment of contract funds until such time as the list is provided to the contracting officer.

(3) Before contract completion, the contractor must provide written notice to service employees employed under the contract of their possible right to an offer of employment on the successor contract. Such notice will be either posted in a conspicuous

place at the worksite or delivered to the employees individually. Where the workforce on the predecessor contract is comprised of a significant portion of workers who are not fluent in English, the notice will be provided in both English and a language in which the employees are fluent. The contractor further agrees to provide notifications to employees under the contract, and their representatives, if any, in the timeframes and methods requested by the contracting agency, to notify employees of any agency determination to except a successor contract from the nondisplacement requirements of 29 CFR part 9, and to notify them of the opportunity to provide information relevant to the contracting agency's location-continuity determination in the solicitation for a successor contract.

(g) The contractor and subcontractors must maintain records of their compliance with this clause for not less than a period of 3 years from the date the records were created. These records may be maintained in any format, paper or electronic, provided the records meet the requirements and purposes of 29 CFR part 9 and are fully accessible. The records maintained must include the following:

(1) Copies of any written offers of employment.

(2) A copy of any record that forms the basis for any exclusion or exception claimed under this part.

(3) A copy of the employee list(s) provided to or received from the contracting agency.

(4) An entry on the pay records of the amount of any retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division to each employee, the period covered by such payment, and the date of payment, and a copy of any receipt form provided by or authorized by the Wage and Hour Division. The contractor must also deliver a copy of the receipt to the employee and file the original, as evidence of payment by the contractor and receipt by the employee, with the Administrator within 10 days after payment is made.

(h) The contractor must cooperate in any review or investigation by the contracting agency or the Department of Labor into possible violations of the provisions of this clause and must make records requested by such official(s) available for inspection, copying, or transcription upon request.

(i) Disputes concerning the requirements of this clause will not be subject to the general disputes clause of this contract. Such disputes will be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: the contractor, the contracting agency, the U.S. Department of Labor, and the employees under the contract or its predecessor contract.

(j) Nothing in this clause will relieve a contractor or subcontractor of any obligation under the HUBZone program statute, 15 U.S.C. 657a, the Javits-Wagner-O'Day Act, 41 U.S.C. 8501–8506, the Randolph-Sheppard Act, 20 U.S.C. 107. The provisions of those laws must be satisfied in tandem with and,

if necessary, prior to, the requirements of Executive Order 14055, 29 CFR part 9, and this clause. Thus, any contractor or subcontractor operating under a contract awarded on the basis of a HUBZone preference, 41 U.S.C. 657a(c); operating pursuant to the Javits-Wagner-O'Day Act, 41 U.S.C. 8501–8506; or operating pursuant to agreements for vending facilities entered into pursuant to the regulations establishing a priority for individuals who are blind issued under the Randolph-Sheppard Act, 20 U.S.C. 107, must ensure that it complies with the statutory and regulatory requirements of the relevant program. Such contractor or subcontractor must, whenever possible, also comply with requirements of this clause, Executive Order 14055, and 29 CFR part 9, to the extent that such compliance would not result in a violation of the requirements of the relevant program.

Appendix B to Part 9—Notice to Service Contract Employees

Service contract employees entitled to nondisplacement: The contract for [insert type of service] services currently performed by [insert name of predecessor contractor] has been awarded to a new (successor) contractor [insert name of successor contractor]. The new contractor's first date of performance on the contract will be [insert

first date of successor contractor's performance]. The new contractor is generally required to offer employment, in writing, to the employees who worked on the contract during the last 30 calendar days of the current contract, except as follows:

Employees who will not be laid off or discharged as a result of the end of this contract are not entitled to an offer of employment.

Managerial, supervisory, or non-service employees on the current contract are not entitled to an offer of employment.

The new contractor is permitted to reduce the size of the current workforce; in such circumstances, only a portion of the existing workforce may receive employment offers. However, the new contractor must offer employment to the displaced employees in positions for which they are qualified if any openings occur during the first 90 calendar days of performance on the new contract.

A successor contractor or subcontractor is not required to offer employment to an employee of the predecessor contractor if the successor contractor or any of its subcontractors reasonably believes, based on reliable evidence of the particular employee's past performance, that there would be just cause to discharge the employee.

An employee hired to work under the current federal service contract and one or

more nonfederal service contracts as part of a single job is not entitled to an offer of employment on the new contract, provided that the existing contractor did not deploy the employee in a manner that was designed to avoid the purposes of this part.

Time limit to accept offer: If you are offered employment on the new contract, you must be given at least 10 business days to accept the offer.

Complaints: Any employee(s) or authorized employee representative(s) of the predecessor contractor who believes that they are entitled to an offer of employment with the new contractor and who has not received an offer, may file a complaint, within 120 calendar days from the first date of contract performance, with the local Wage and Hour office.

For additional information: 1–866–4US–WAGE (1–866–487–9243), <https://www.dol.gov/agencies/whd>. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Jessica Looman,

Administrator, Wage and Hour Division.

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Part III

The President

Notice of December 13, 2023—Continuation of the National Emergency
With Respect to the Global Illicit Drug Trade

Presidential Documents

Title 3—

Notice of December 13, 2023

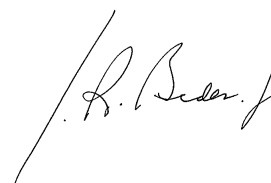
The President

Continuation of the National Emergency With Respect to the Global Illicit Drug Trade

On December 15, 2021, by Executive Order 14059, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by global illicit drug trafficking.

The trafficking into the United States of illicit drugs, including fentanyl and other synthetic opioids, is causing the deaths of tens of thousands of Americans annually, as well as countless more non-fatal overdoses with their own tragic human toll. Drug cartels, transnational criminal organizations, and their facilitators are the primary sources of illicit drugs and precursor chemicals that fuel the current opioid epidemic, as well as drug-related violence that harms our communities. International drug trafficking—including the illicit production, global sale, and widespread distribution of illegal drugs; the rise of extremely potent drugs such as fentanyl and other synthetic opioids; as well as the growing role of internet-based drug sales—continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 14059 of December 15, 2021, must continue in effect beyond December 15, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 14059 with respect to global illicit drug trafficking.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
December 13, 2023.

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