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Title 3—

Memorandum of June 28, 2024

The President

Extending Eligibility for Deferred Enforced Departure for Liberians

Memorandum for the Secretary of State [and] the Secretary of Homeland Security

Since 1991, the United States has provided safe haven for Liberians who were forced to flee their country as a result of armed conflict and widespread civil strife, in part through the grant of Temporary Protected Status (TPS) and Deferred Enforced Departure (DED).

In December 2019, the Congress enacted the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92) (NDAA), which included, as section 7611, the Liberian Refugee Immigration Fairness (LRIF) provision. The LRIF provision, with limited exceptions, makes Liberians who have been continuously present in the United States since November 20, 2014, as well as their spouses and children, eligible for adjustment of status to that of lawful permanent resident (LPR). The NDAA gave eligible Liberian nationals until December 20, 2020, to apply for this adjustment of status. After the enactment of the LRIF provision, President Trump further extended the DED transition period through January 10, 2021, to ensure that DED beneficiaries would continue to be eligible for employment authorization during the LRIF application period.

The LRIF application process was new and complex, resulting in some procedural and administrative challenges. Recognizing these difficulties, the Congress enacted a 1-year extension to the application period in section 901 of the Consolidated Appropriations Act, 2021 (Public Law 116–260). That legislation, however, did not provide for continued employment authorization past January 10, 2021. Through my memorandum of January 20, 2021 (Reinstating Deferred Enforced Departure for Liberians), DED was subsequently reinstated through June 30, 2022, in order to permit employment authorization for eligible Liberians while they made their applications for adjustment of status under the LRIF provision. My memorandum of June 27, 2022 (Extending and Expanding Eligibility for Deferred Enforced Departure for Liberians) (2022 Memorandum), further authorized an extension of DED for 24 months, ending June 30, 2024, and expanded eligibility to those Liberian nationals, or persons without nationality who last habitually resided in Liberia, who had been continuously physically present in the United States since May 20, 2017.

There are compelling foreign policy reasons to extend DED for those Liberians who have been continuously present in the United States since May 20, 2017, and were eligible for DED under the 2022 Memorandum. Providing protection from removal and work authorization to these Liberians, for whom we have long authorized TPS or DED in the United States, honors the historic close relationship between the United States and Liberia and is in the foreign policy interests of the United States.

Pursuant to my constitutional authority to conduct the foreign relations of the United States, I have determined that it is in the foreign policy interests of the United States to extend through June 30, 2026, deferred removal for those Liberians already under a grant of DED under the 2022 Memorandum. I have also determined that these Liberian nationals should have continued employment authorization through June 30, 2026.

The Secretary of Homeland Security shall promptly direct the appropriate officials to make provision, by means of a notice published in the *Federal Register*, for immediate allowance of employment authorization and prompt issuance of new or replacement employment authorization documents in appropriate cases for covered Liberians.

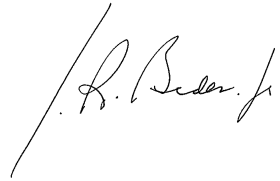
This grant of DED and continued employment authorization shall apply to any person who was eligible for a grant of DED under the 2022 Memorandum, to include any Liberian national, or person without nationality who last habitually resided in Liberia, who has been continuously physically present in the United States since May 20, 2017, but shall not apply to such persons in the following categories:

- (1) individuals who would be ineligible for TPS for the reasons provided in section 244(c)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. 1254a(c)(2)(B);
- (2) individuals who sought or seek LPR status under the LRIF provision but whose applications have been or are denied by the Secretary of Homeland Security due to ineligibility for the LRIF provision under sections 7611(b)(1)(C) and (b)(3) of the NDAA;
- (3) individuals whose removal the Secretary of Homeland Security determines is in the interest of the United States, subject to the LRIF provision;
- (4) individuals whose presence or activities in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States;
- (5) individuals who have voluntarily returned to Liberia or their country of last habitual residence outside the United States for an aggregate period of 180 days or more, as specified in subsection (c)(2) of the LRIF provision; or
- (6) individuals who are subject to extradition.

Accordingly, I hereby direct the Secretary of Homeland Security to take the necessary steps to implement for eligible Liberians:

- (1) a deferral of enforced departure from the United States through June 30, 2026, effective immediately; and
- (2) authorization for employment valid through June 30, 2026.

The Secretary of Homeland Security is authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to read "J. R. Biden Jr.", is positioned in the upper right quadrant of the page.

THE WHITE HOUSE,
Washington, June 28, 2024

[FR Doc. 2024-14756
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Rules and Regulations

Federal Register

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Doc. No. AMS–SC–23–0063]

Tomatoes Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking implements a recommendation from the Florida Tomato Committee (Committee) to increase the assessment rate established for the 2023–2024 and subsequent fiscal periods from \$0.025 to \$0.035 per 25-pound container of tomatoes or equivalent. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 2, 2024.

FOR FURTHER INFORMATION CONTACT:

Steven W. Kauffman, Marketing Specialist, or Christian D. Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: Steven.Kauffman@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rulemaking is issued under Marketing Agreement No. 125 and Marketing Order No. 966, as amended (7 CFR part 966), regulating the handling of tomatoes grown in

Florida. Part 966 referred to as “the Order” is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of producers of fresh tomatoes operating within the area of production.

The Agricultural Marketing Service (AMS) is issuing this rulemaking in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rulemaking has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rulemaking is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rulemaking has been reviewed under Executive Order 12988—Civil Justice Reform. Under the Order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable tomatoes for the 2023–2024 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rulemaking increases the assessment rate for Florida tomatoes handled under the Order from \$0.025 per 25-pound container or equivalent, the rate established for the 2017–2018 and subsequent fiscal periods, to a rate of \$0.035 per 25-pound container or equivalent for the 2023–2024 and subsequent fiscal periods.

Sections 966.41 and 966.42 authorize the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee’s needs and with the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2017–2018 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of \$0.025 per 25-pound container or equivalent of Florida tomatoes within the production area. That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on September 20, 2023, and unanimously recommended

2023–2024 fiscal period expenditures of \$1,155,764 and an assessment rate of \$0.035 per 25-pound container or equivalent of Florida tomatoes handled for the 2023–2024 and subsequent fiscal periods. In comparison, last fiscal period's budgeted expenditures were \$1,156,773. The assessment rate of \$0.035 per 25-pound container or equivalent is \$0.01 higher than the rate currently in effect. The Committee has used financial reserves in previous seasons to help pay for budgeted expenses. Increasing the assessment rate will allow the Committee to replenish and maintain their financial reserves at the desired level of \$250,000. The Committee projects handler receipts of approximately 22,000,000 25-pound containers or equivalent of assessable Florida tomatoes for the 2023–2024 fiscal period, an increase from the 21,815,350 containers handled for the 2022–2023 fiscal period.

The major expenditures recommended by the Committee for the 2023–2024 fiscal period include \$350,000 for research; \$340,000 for education and promotions; and \$277,393 for management and staff. By comparison, budgeted expenses for these items during the 2022–2023 fiscal period were \$350,000; \$330,000; and \$274,105, respectively.

At the current assessment rate of \$0.025, the expected 22,000,000 25-pound containers or equivalent of assessable Florida tomatoes would generate \$550,000 in assessment revenue (22,000,000 multiplied by \$0.025 assessment rate). By increasing the assessment rate by \$0.01 to \$0.035, assessment income should generate \$770,000 in assessment revenue (22,000,000 multiplied by \$0.035 assessment rate) for the 2023–2024 fiscal period. This amount should be appropriate to ensure the Committee has sufficient revenue, along with an anticipated \$265,501 in funds awarded through the Foreign Agricultural Service Market Access Program and \$129,071 in other income, to fully fund its recommended 2023–2024 fiscal period budgeted expenditures, while maintaining financial reserves at around \$250,000.

The Committee derived the recommended assessment rate by considering anticipated fiscal period expenses, expected shipments of Florida tomatoes, anticipated grant funds, and the amount of funds available in financial reserve. Income derived from handler assessments (\$770,000), Foreign Agricultural Service Market Access Program grants (\$265,501), and other sources including administrative and interest income (\$129,071), should be

adequate to cover budgeted expenses (\$1,155,764). Funds available in the financial reserve (currently about \$241,000) will be kept within the maximum permitted by the Order (approximately one fiscal period's expenses as authorized in § 966.44).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2023–2024 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this rulemaking on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 38 handlers of Florida tomatoes subject to regulation under the Order and approximately 50 producers of Florida tomatoes in the production area. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural producers of tomatoes as those having annual receipts of less than \$3,500,000 (NAICS code 111339, Other Non-citrus Fruit Farming), and small agricultural service firms as those whose annual receipts are less than \$34,000,000 (NAICS code 115114,

Postharvest Crop Activities) (13 CFR 121.201).

According to data from the AMS Market News Tomato Fax Report, the average price for fresh Florida tomatoes for the 2022–2023 season was approximately \$21.94 per 25-pound container, with total shipments of around 21,815,350 25-pound containers. Based on the average terminal market price and shipment information, the number of handlers, and assuming a normal distribution, the majority of tomato handlers have estimated average annual receipts of significantly less than \$34,000,000 (\$21.94 multiplied by 21,815,350 containers equals \$478,628,779, divided by 38 handlers equals \$12,595,494 per handler).

In addition, based on data from the National Agricultural Statistics Service (NASS), the average price producers received for fresh Florida tomatoes at the point of first sale during the 2022–2023 season was approximately \$11.08 per 25-pound container, with total shipments of around 21,815,350 containers. Using the average price producers received and shipment information, the number of producers, and assuming a normal distribution, the majority of producers have estimated average annual receipts greater than \$3.5 million (\$11.08 multiplied by 21,815,350 containers equals \$241,714,078, divided by 50 producers equals \$4,834,282 per producer). Thus, a majority of producers of Florida tomatoes may be classified as large entities, while a majority of handlers may be classified as small entities.

This rulemaking will increase the assessment rate collected from handlers for the 2023–2024 and subsequent fiscal periods from \$0.025 to \$0.035 per 25-pound container or equivalent of Florida tomatoes. The Committee unanimously recommended 2023–2024 fiscal period expenditures of \$1,155,764 and an assessment rate of \$0.035 per 25-pound container or equivalent of Florida tomatoes. The assessment rate of \$0.035 is \$0.01 higher than the current rate. The Committee expects industry to handle 22,000,000 25-pound containers or equivalent of Florida tomatoes during the 2023–2024 fiscal period. Thus, the \$0.035 rate per 25-pound container or equivalent should provide \$770,000 in assessment income (22,000,000 containers multiplied by \$0.035). The Committee expects to use an anticipated \$265,501 in funds awarded through the Foreign Agricultural Service Market Access Program and \$129,071 in other sources to cover remaining expenses. Income derived from handler assessments, Foreign Agricultural Service Market Access Program grants,

and other sources including member fees and interest income, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2023–2024 fiscal period include \$350,000 for research; \$340,000 for education and promotions; and \$277,393 for management and staff. By comparison, budgeted expenses for these items during the 2022–2023 fiscal period were \$350,000; \$330,000; and \$274,105, respectively.

The Committee unanimously recommended increasing the assessment rate after drawing down financial reserves in previous seasons. The Committee desires to maintain a financial reserve of around \$250,000, and without increasing the assessment rate, the Committee will not be able to maintain financial reserves at this level. The Committee estimates production for the 2023–2024 fiscal period to be 22,000,000 25-pound containers or equivalent of Florida tomatoes. At the current assessment rate, assessment income should equal \$550,000 (22,000,000 containers multiplied by \$0.025). By increasing the assessment rate by \$0.01, assessment income should be \$770,000 (22,000,000 containers multiplied by \$0.035). This amount, along with Foreign Agricultural Service Market Access Program grants, and other income, should provide sufficient funds to meet anticipated 2023–2024 fiscal period expenses, while maintaining financial reserves at around \$250,000.

Prior to arriving at this budget and assessment rate, the Committee considered maintaining the current assessment rate of \$0.025. However, the Committee would need to further draw down reserves to meet its expenses. The Committee members did not want to utilize additional funds from reserves to meet 2023–2024 fiscal period expenses. Consequently, the alternative of maintaining the current assessment rate was rejected.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates the average grower price for the 2023–2024 season should be approximately \$11.00 per 25-pound container of tomatoes or equivalent. Therefore, the estimated assessment revenue for the 2023–2024 crop year as a percentage of total grower revenue should be about 0.32 percent (\$0.035 divided by \$11.00 multiplied by 100).

This action increases the assessment obligation imposed on Florida tomato handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to

producers. However, these costs are expected to be offset by the benefits derived from the operation of the Order.

The Committee's meetings are widely publicized throughout the Florida tomato industry and all interested persons are invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 20, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rulemaking, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this rulemaking. Should any changes become necessary, they would be submitted to OMB for approval.

This rulemaking will not impose any additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS 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.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rulemaking.

A proposed rule concerning this action was published in the **Federal Register** on March 7, 2024 (89 FR 16471). Copies of the proposed rule were provided to all Florida tomato handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending April 8, 2024, was provided for interested persons to respond to the proposal. AMS received three comments during the comment period. Two commentors supported the action and one commenter did not address the merits of the proposed rule. Accordingly, AMS made no changes to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop

marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this rulemaking is consistent with and will effectuate the purposes of the Act.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 966 as follows:

PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 966.234 to read as follows:

§ 966.234 Assessment rate.

On and after August 1, 2023, an assessment rate of \$0.035 per 25-pound container or equivalent is established for Florida tomatoes.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–14551 Filed 7–2–24; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 500

Rules of Practice

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 9 of the Code of Federal Regulations, Part 200 to End, revised as of January 1, 2024, amend section 500.7 by revising paragraph (a)(5) to read as follows:

§ 500.7 Refusal to grant inspection.

(a) * * *

(5) Is unfit to engage in any business requiring inspection as specified in section 401 of the FMIA, section 18(a) of the PPIA, or section 18 of the EPIA.

* * * * *

[FR Doc. 2024–14682 Filed 7–2–24; 8:45 am]

BILLING CODE 0099–10–P

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1002

[Docket No. CFPB–2024–0018]

RIN 3170–AA09

Small Business Lending Under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Dates

AGENCY: Consumer Financial Protection Bureau.

ACTION: Interim final rule with request for public comment.

SUMMARY: In light of court orders in ongoing litigation, the Consumer Financial Protection Bureau (CFPB or Bureau) is amending Regulation B to extend the compliance dates set forth in its 2023 small business lending rule and to make other date-related conforming adjustments.

DATES: This interim final rule is effective August 2, 2024. Comments must be received on or before August 2, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2024–0018 or RIN 3170–AA09, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. A brief summary of this document will be available at <https://www.regulations.gov/docket/CFPB-2024-0018>.

- **Email:** 2024-IFR-SBLcompliance@cfpb.gov. Include Docket No. CFPB–2024–0018 or RIN 3170–AA09 in the subject line of the message.

- **Mail/Hand Delivery/Courier:** Comment Intake—Small Business Lending Compliance Dates, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The CFPB encourages the early submission of comments. All submissions should include the agency

name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <https://www.regulations.gov>.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

George Karithanom, Regulatory Implementation and Guidance Program Analyst, Office of Regulations, at 202–435–7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 1071 of that Act¹ amended the Equal Credit Opportunity Act (ECOA)² to require that financial institutions collect and report to the CFPB certain data regarding applications for credit for women-owned, minority-owned, and small businesses. Section 1071's statutory purposes are to (1) facilitate enforcement of fair lending laws, and (2) enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

Section 1071 directs the CFPB to prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to section 1071. On March 30, 2023, the CFPB issued a final rule to implement section 1071 by adding subpart B to Regulation B (2023 final rule). The 2023 final rule was published in the **Federal Register** on May 31, 2023.³ Further

details about section 1071 and this rulemaking can be found in the preamble to the 2023 final rule.

Subsequently, some lenders filed challenges to the 2023 final rule in the United States District Court for the Southern District of Texas.⁴ On July 31, 2023, the court issued an order⁵ that preliminarily enjoined the CFPB from implementing and enforcing the 2023 final rule against plaintiffs and their members pending the Supreme Court's reversal of *Community Financial Services Association of America, Ltd. v. CFPB*, 51 F.4th 616 (5th Cir. 2022), *cert. granted*, 143 S. Ct. 978 (2023) (CFSA), a trial on the merits, or until further court order. The court's order also stayed all deadlines for compliance with the requirements of the 2023 final rule for plaintiffs and their members pending the outcome of the Supreme Court case. The Texas court ordered that, in the event of a reversal in the Supreme Court case, the CFPB extend plaintiffs' and their members' deadlines for compliance with the 2023 final rule to compensate for the period stayed. Following motions to intervene by a number of other parties, on October 26, 2023, the Texas court extended the terms of its order to all covered financial institutions (*i.e.*, issued a nationwide stay).⁶

On May 16, 2024, the Supreme Court reversed the Fifth Circuit's ruling in CFSA.⁷

Summary of the Interim Final Rule

In this interim final rule, the CFPB is extending the compliance dates set forth in the 2023 final rule and making conforming adjustments. Consistent with existing court orders, the compliance dates are being extended 290 days to compensate for the period the rule was stayed (July 31, 2023 to May 16, 2024). Thus, covered financial institutions must begin collecting data as follows:

⁴ *Texas Bankers Ass'n v. CFPB*, No. 7:23–cv–00144 (S.D. Tex.).

⁵ Order Granting-in-Part and Denying-in-Part Pls.' Mot. for Prelim. Injunction, *Texas Bankers Ass'n*, No. 7:23–cv–00144 (S.D. Tex. July 31, 2023), ECF No. 25, https://files.consumerfinance.gov/f/documents/cfpb_pi_order_texas_bankers.pdf.

⁶ Order Granting Intervenor's Mot. For Prelim. Injunction, *Texas Bankers Ass'n*, No. 7:23–cv–00144 (S.D. Tex. Oct. 26, 2023), ECF No. 69, https://files.consumerfinance.gov/f/documents/cfpb_pi_second_order_texas_bankers.pdf.

⁷ *CFPB v. Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416 (2024).

¹ Public Law 111–203, tit. X, section 1071, 124 Stat. 1376, 2056 (2010), codified at ECOA section 704B, 15 U.S.C. 1691c–2.

² 15 U.S.C. 1691 *et seq.*

³ 88 FR 35150 (May 31, 2023).

TABLE 1—COMPLIANCE DATES AND FILING DEADLINES

Compliance tier	Original compliance date	New compliance date	First filing deadline
Highest volume lenders	October 1, 2024	July 18, 2025	June 1, 2026.
Moderate volume lenders	April 1, 2025	January 16, 2026	June 1, 2027.
Smallest volume lenders	January 1, 2026	October 18, 2026	June 1, 2027.

Covered financial institutions are permitted to continue using their small business originations from 2022 and 2023 to determine their compliance tier, or they may use their originations from 2023 and 2024. Covered financial institutions are permitted to begin collecting protected demographic data required under the 2023 final rule 12 months before their new compliance date, in order to test their procedures and systems. As illustrated above, the deadline for submitting small business lending data will remain June 1 following the calendar year for which data are collected. Finally, the CFPB is updating its grace period policy statement to reflect the revised compliance dates.

The CFPB seeks comment on this interim final rule.

II. Legal Authority

The CFPB adopted the 2023 final rule pursuant to its authority under section 1071, which directs the CFPB to adopt rules governing the collection and reporting of small business lending data. Some aspects of the 2023 final rule were also adopted under the CFPB's more general rulemaking authorities in ECOA. The CFPB's legal authorities are discussed in detail in the 2023 final rule.⁸

The CFPB is adopting this interim final rule to extend the 2023 final rule's compliance dates. ECOA section 704B(g)(1) grants the CFPB general rulemaking authority for section 1071.

III. Administrative Procedure Act

The Administrative Procedure Act (APA) does not require notice and opportunity for public comment if an agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.⁹ The CFPB finds that prior notice and public comment are unnecessary because this interim final rule implements a court's order to extend the 2023 final rule's compliance dates and makes other date-related conforming adjustments. Covered financial institutions need to know the new compliance dates promptly so they

can resume implementation efforts; further delay in finalizing those dates would be contrary to the public interest. The CFPB already solicited and received comment on the substance of the provisions that it is now amending, both during its 2020 consultation with representatives of small businesses pursuant to the Small Business Regulatory Enforcement Fairness Act¹⁰ and in its 2021 proposed rule.¹¹

IV. Discussion of the Final Rule

As discussed above, the court in *Texas Bankers Association v. CFPB* directed the CFPB to extend the compliance dates set forth in the 2023 final rule to compensate for the period the rule was stayed pending the Supreme Court's decision in *CFSA*. To facilitate compliance across all covered financial institutions, the CFPB is using July 31, 2023 as the base date to calculate the length of the compliance date extension for all covered financial institutions, including the initial plaintiffs and their members as well as the intervening parties. The CFPB is extending the 2023 final rule's compliance dates by 290 days (*i.e.*, the number of days that elapsed between the court's July 31, 2023 order and the Supreme Court's decision in *CFSA* on May 16, 2024).

A. Changes to Compliance Date Provisions

The 2023 final rule's compliance dates are set forth in § 1002.114(b). That section looks to a financial institution's volume of covered credit transactions for small businesses in each of calendar years 2022 and 2023 to determine the applicable compliance date. The 2023 final rule provided that covered financial institutions that originated at least 2,500 covered transactions in both

years were required to comply with the requirements of the 2023 final rule beginning October 1, 2024 (sometimes referred to as Tier 1 institutions). Covered financial institutions not in Tier 1 that originated at least 500 covered transactions in both years were required to comply beginning April 1, 2025 (Tier 2), and covered financial institutions not in Tier 1 or Tier 2 that originated at least 100 covered transactions in both years were required to comply beginning January 1, 2026 (Tier 3). The 2023 final rule also provided that a financial institution that did not originate at least 100 covered transactions in both 2022 and 2023 but that subsequently originates at least 100 such transactions in two consecutive calendar years must comply with the rule in accordance with § 1002.105(b), but in any case no earlier than January 1, 2026.

In this interim final rule, the CFPB is extending each of the compliance dates set forth in § 1002.114(b) by 290 days. Thus, Tier 1 institutions now have a compliance date of July 18, 2025, Tier 2 institutions now have a compliance date of January 16, 2026, and Tier 3 institutions now have a compliance date of October 18, 2026. Likewise, institutions that did not originate at least 100 covered transactions in 2022 and 2023 but subsequently do in two consecutive calendar years are not required to comply with the rule until October 18, 2026 at the earliest. The CFPB is making corresponding updates throughout the commentary accompanying § 1002.114(b), which provide additional guidance and examples regarding compliance dates. The CFPB is also revising comments 105(b)–2 and –6 and 109(b)–1, which involve examples of data collection occurring in years affected by the extended compliance dates in this interim final rule.

B. Voluntary Early Collection of Protected Demographic Data

Section 1002.114(c) addresses several transitional issues. Section 1002.114(c)(1) permits financial institutions to collect protected demographic information required under the 2023 final rule from small business applicants beginning 12

⁸ See, e.g., 88 FR 35150, 35173–74 (May 31, 2023).

⁹ 5 U.S.C. 553(b)(B).

¹⁰ CFPB, *Small Business Advisory Review Panel for Consumer Financial Protection Bureau Small Business Lending Data Collection Rulemaking, Outline of Proposals Under Consideration and Alternatives Considered* (Sept. 15, 2020), https://files.consumerfinance.gov/f/documents/cfpb_1071-sbrefa_outline-of-proposals-under-consideration-2020-09.pdf; and CFPB, *Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Small Business Lending Data Collection Rulemaking* (Dec. 14, 2020), https://files.consumerfinance.gov/f/documents/cfpb_1071-sbrefa-report.pdf.

¹¹ 86 FR 56356 (Oct. 8, 2021).

months prior to its compliance date. As this provision does not list any compliance dates specifically, no revisions are needed. Thus, a Tier 1 institution is permitted to begin collecting protected demographic information on or after July 18, 2024; a Tier 2 institution may begin on or after January 16, 2025; and a Tier 3 institution may begin on or after October 18, 2025, in order to test their procedures and systems for compiling and maintaining this information in advance of actually being required to collect and subsequently report it to the CFPB.¹²

C. Alternative Period for Counting Covered Originations To Determine Compliance Tier

The CFPB is adopting new § 1002.114(c)(3), which permits (but does not require) a financial institution to use its originations of covered credit transactions in each of calendar years 2023 and 2024, rather than those in 2022 and 2023, to determine its compliance date. Financial institutions may use whichever set of dates they prefer (*i.e.*, 2022 and 2023, or 2023 and 2024). Existing comment 114(b)–4 provides examples illustrating how a financial institution uses its originations in 2022 and 2023 to determine its compliance tier; new comment 114(b)–4.viii illustrates using 2023 and 2024 originations to determine compliance tier.

D. Determining Compliance Dates for Financial Institutions That Do Not Collect Information Sufficient To Determine Small Business Status

Section 1002.114(c)(2) provides that a financial institution that is unable to determine the number of covered credit transactions it originated in 2022 and 2023 for purposes of determining its compliance tier is permitted to use any reasonable method to estimate its originations to small businesses for either or both of 2022 and 2023. Existing comment 114(c)–5 lists several reasonable methods a financial institution may use to estimate its originations.

Pursuant to new § 1002.114(c)(3), which permits a financial institution to use its originations of covered credit transactions in each of calendar years 2023 and 2024 to determine its compliance date, financial institutions are likewise permitted to use any reasonable method to estimate their originations for either or both of 2023 and 2024. The CFPB is revising comment 114(c)–5 to make this clear and adding new comment 114(c)–6.vii to provide an example.

E. Deadline for Annual Data Submissions

Section 1002.109(a)(1) provides that covered financial institutions must submit their small business lending application registers to the CFPB on or before June 1 following the calendar year for which the data are compiled and maintained. As this provision does not list any compliance dates specifically, no revisions are needed. Thus, Tier 1 institutions will make their

first data submission by June 1, 2026; Tier 2 and Tier 3 by June 1, 2027.

V. Effective Date

The CFPB is adopting an effective date of 30 days after the publication of this interim final rule in the **Federal Register** consistent with section 553(d) of the Administrative Procedure Act.¹³

VI. Grace Period Policy Statement

In the 2023 final rule, the CFPB adopted a 12-month grace period during which the CFPB—for covered financial institutions under its supervisory and enforcement jurisdiction—would not intend to assess penalties for errors in data reporting, and would intend to conduct examinations only to diagnose compliance weaknesses, to the extent that these institutions engaged in good faith compliance efforts. The Grace Period Policy Statement set forth in the 2023 final rule explained the CFPB’s reasons for adopting such a grace period along with how the CFPB intended to implement such a grace period.¹⁴ The CFPB is updating this policy statement to reflect the new compliance dates set forth in this interim final rule.¹⁵

The following discussion explains how the CFPB intends to exercise its supervisory and enforcement discretion for the first 12 months of data collected after a covered financial institution’s initial compliance date.

With respect to covered financial institutions subject to the CFPB’s supervisory or enforcement jurisdiction that make good faith efforts to comply with the 2023 final rule, the CFPB intends to provide a grace period to reflect the new compliance dates as follows:

TABLE 2—GRACE PERIOD

Financial institutions covered by the grace period	Dates covered by the grace period
Financial institutions with a compliance date specified in § 1002.114(b)(1) (<i>i.e.</i> , Tier 1 institutions), as well as any financial institutions that make a voluntary submission for the first time for data collected in 2025.	The data collected in 2025 (from July 18, 2025 through December 31, 2025) as well as a portion of data collected in 2026 (from January 1, 2026 through July 17, 2026).
Financial institutions with a compliance date specified in § 1002.114(b)(2) (<i>i.e.</i> , Tier 2 institution), as well as any financial institutions that make a voluntary submission for the first time for data collected in 2026.	The data collected in 2026 (from January 16, 2026 through December 31, 2026) as well as a portion of data collected in 2027 (from January 1, 2027 through January 15, 2027).

¹² Under this provision, financial institutions will have time—beginning 12 months prior to their compliance date—to adjust any procedures or systems that may result in the inaccurate compilation or maintenance of applicants’ protected demographic information, the collection of which is required by section 1071 but otherwise generally prohibited under ECOA and Regulation B. (Financial institutions could of course collect the other information required by the 2023 final rule at

any time, without needing express permission in Regulation B to do so, as is needed for collecting protected demographic information.) See 88 FR 35150, 35449–50 (May 31, 2023).
¹³ 5 U.S.C. 553(d).
¹⁴ See 88 FR 35150, 35458–59 (May 31, 2023).
¹⁵ This is a general statement of policy under the Administrative Procedure Act. 5 U.S.C. 553(b). It articulates considerations relevant to the CFPB’s

exercise of its authorities. It does not impose any legal requirements, nor does it confer rights of any kind. It also does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act. 44 U.S.C. 3501 through 3521.

TABLE 2—GRACE PERIOD—Continued

Financial institutions covered by the grace period	Dates covered by the grace period
Financial institutions with a compliance date specified in § 1002.114(b)(3) (<i>i.e.</i> , Tier 3 institution), as well as any financial institutions that make a voluntary submission for the first time for data collected in 2027.	The data collected in 2026 (from October 18, 2026 through December 31, 2026) as well as a portion of data collected in 2027 (from January 1, 2027 through October 17, 2027).

As discussed in the 2023 final rule, the CFPB believes that a 12-month grace period for each compliance tier will give institutions time to diagnose and address unintentional errors without the prospect of penalties for inadvertent compliance issues, and may ultimately assist other covered financial institutions, especially those in later compliance tiers, in identifying best practices. While the CFPB anticipates that financial institutions in each compliance tier are capable of fully preparing to comply with the 2023 final rule by their respective new compliance dates, it views this grace period as enabling deliberate and thoughtful compliance with the rule, while still providing important data regarding small business lending as soon as practical.

During the grace period, if the CFPB identifies errors in a financial institution's initial data submissions, it does not intend to require data resubmission unless data errors are material. Further, the CFPB does not intend to assess penalties with respect to unintentional and good faith errors in the initial data submissions. Any examinations of these initial data submissions will be diagnostic and will help to identify compliance weaknesses. However, errors that are not the result of good faith compliance efforts by financial institutions, especially attempts to discourage applicants from providing data, will remain subject to the CFPB's full supervisory and enforcement authority, including the assessment of penalties.

The CFPB believes that the grace period covering the initial data submissions will provide financial institutions an opportunity to identify any gaps in their implementation of the 2023 final rule and make improvements in their compliance management systems for future data submissions. In addition, a grace period will permit the CFPB to help financial institutions identify errors and, thereby, self-correct to avoid such errors in the future. The CFPB can also use data collected during the grace period to alert financial institutions of common errors and potential best practices in data collection and submissions under this rule.

VII. CFPB Section 1022(b) Analysis

A. Overview

In developing the interim final rule, the CFPB has considered the potential benefits, costs, and impacts as required by section 1022(b)(2) of the Consumer Financial Protection Act of 2010 (CFPA).¹⁶ Section 1022(b)(2) calls for the CFPB to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of consumer access to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the CFPA, and the impact on consumers in rural areas. In addition, section 1022(b)(2)(B) directs the CFPB to consult with appropriate prudential regulators or other Federal agencies, regarding consistency with the objectives those agencies administer. The CFPB has accordingly consulted with the appropriate prudential regulators and other Federal agencies regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

In this interim final rule, the CFPB is extending by 290 days the compliance dates set forth in the 2023 small business lending rule and making several conforming adjustments. Thus, covered financial institutions with the highest volume of small business originations (Tier 1) must begin collecting data by July 18, 2025; moderate-volume institutions (Tier 2) by January 16, 2026; and the smallest volume institutions (Tier 3) by October 18, 2026. Covered financial institutions are permitted to continue using their small business originations from 2022 and 2023 to determine their compliance tier, or instead they may use their originations from 2023 and 2024.

The CFPB expects covered institutions to benefit from the extension of the compliance dates, but expects that the impacts of this interim final rule on covered institutions are small relative to the overall impacts of the 2023 final rule it modifies. The

CFPB additionally expects this interim final rule to have minimal impacts on small businesses, due to the long-term nature of the benefits of the 2023 final rule and an expectation that the 2023 final rule will have a limited effect on the cost of small business credit.

B. Data Limitation and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information the CFPB has obtained from industry, other regulatory agencies, and publicly available sources. The CFPB provides estimates, to the extent possible, of the potential benefits, costs, and impacts to consumers and covered persons of this interim final rule given available data.

To estimate the number of depository institutions covered by the interim final rule, the CFPB relies in part on data from publicly available sources, such as the Federal Financial Institutions Examination Council's Reports on Condition of Income (Call Reports), the National Credit Union Administration's Call Reports, and data reported under the Community Reinvestment Act. As described in detail in part IX.E of the 2023 final rule, information on the cost of compliance is derived from the CFPB's previous Home Mortgage Disclosure Act rulemaking activities and a One-time Cost Survey the CFPB administered in 2020 as part of its small business lending rule development process.

There are limitations, such as limited comprehensive data on non-depository institutions potentially subject to the 2023 final rule and thus this interim final rule, and limited data on which to quantify benefits of the interim final rule with precision. The CFPB supplements the data sources described above with general economic principles and the CFPB's expertise in consumer financial markets. The CFPB qualitatively describes potential benefits, costs, and impacts where the ability to provide quantitative estimates are impacted by these limitations.

C. Baseline for Analysis

In evaluating the potential benefits, costs, and impacts of the interim final rule, the CFPB takes as a baseline Regulation B as amended by the 2023

¹⁶ 12 U.S.C. 5512(b)(2).

final rule. Part IV above describes in detail the provisions of the 2023 final rule. The CFPB's analysis of the potential costs, benefits, and impacts of this interim final rule are relative to the original compliance dates and other requirements of the 2023 final rule.

D. Potential Benefits and Costs to Covered Persons and Small Businesses

1. Potential Benefits and Costs to Covered Persons

Based on the methodology used to determine coverage in the 2023 final rule,¹⁷ the CFPB expects about 100 financial institutions to be required to report in Tier 1, about 450 to be required to report in Tier 2, and about 2,000 to be required to report in Tier 3.

By extending the compliance dates by 290 days for all covered institutions, financial institutions will benefit by the delay in the expected costs of compliance with the 2023 final rule. The benefit from the compliance date extension will differ depending on whether the cost was expected to be "one-time" or "ongoing." Part IX.E of the 2023 final rule described two categories of cost that the CFPB expected covered financial institutions to incur. "One-time" costs refer to expenses that the financial institution will incur initially and only once to implement changes required to comply with the requirements of the rule. "Ongoing" costs are expenses incurred because of the ongoing reporting requirements of the rule, accrued on an annual basis.

The CFPB expects covered institutions to experience an annual ongoing cost of compliance in perpetuity. Therefore, extending the compliance dates by 290 days potentially saves financial institutions up to 290 days in expected annual compliance costs. In the 2023 rule, the CFPB detailed its methodology and estimates of this annual ongoing cost for institutions of different levels of complexity in their processes for collecting, checking, and reporting data on applications for small business credit. These "types" were Type A (least complex), Type B (medium complexity), and Type C (most complex) and were related to small business credit application volume. The 2023 final rule gave estimates of compliance costs for representative institutions of each type

as well as the market-level estimate for all complying institutions.

The CFPB estimated that, per application for small business credit, Type A institutions would incur \$83 in annual ongoing costs, Type B institutions would incur \$100, and Type C institutions would incur \$46. Based on the CFPB's estimates of application volumes for all institutions, the expected market level annual ongoing cost was between \$310 and \$330 million for depository institutions and \$62.3 million for non-depository institutions. The CFPB expects covered financial institutions to avoid 290 days of ongoing costs due to the compliance date extension. Institutions will effectively receive this benefit at the time they would have originally been required to start collecting data. Thus, Tier 3 institutions will receive this benefit farther in the future than Tier 2 institutions, who will receive the benefit farther in the future than Tier 1 institutions. In present value terms, Tier 1 institutions will see a proportionally larger benefit compared to baseline, relative to Tier 2 and Tier 3 institutions.

This interim final rule does not change the nominal value of the one-time costs that will be incurred by covered institutions but does potentially delay the realization of those costs up to 290 days into the future for institutions in each compliance tier. Thus, the new one-time costs are the baseline one-time costs discounted by 290 days. The present value of the benefit associated with the interim final rule's impact on one-time costs is the difference between the baseline one-time costs and the new discounted costs.

The CFPB additionally expects that the compliance date extension and the associated flexibility in years of origination data that can be used to determine coverage would confer a benefit to covered institutions with the additional time to prepare for compliance relative to the baseline.

With the extension of the compliance dates by 290 days, this interim final rule delays the realization of these potential benefits to covered financial institutions. As enumerated in the 2023 final rule, benefits include more efficient fair lending review prioritization by regulators and the institutions' own use of small business lending data to better understand small business credit demand and the supply by their competitors.

2. Potential Benefits and Costs to Small Businesses

As with the 2023 final rule, this interim final rule will not directly impact consumers, as that term is

defined by the Dodd-Frank Act. Some consumers will be impacted in their separate capacity as sole owners of small businesses covered by the rule. The CFPB has elected to consider the costs to small businesses from this interim final rule as it did in the 2023 final rule.

In part IX.F of the 2023 final rule, the CFPB described how small businesses would benefit from the impact of the rule on the enforcement of fair lending laws and on community development. In an environment with limited data sources on small business credit, the CFPB expects data collected under the rule to enable communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses. The CFPB also expects data collected under the 2023 final rule to facilitate fair lending enforcement by Federal, State, and local enforcement agencies. Due to limitations on data and methodology, the CFPB mostly described these benefits qualitatively.

To the extent small businesses benefit in the above ways from the 2023 final rule, the extension of the compliance dates reduces the benefits accruing to small businesses by delaying the realization of these benefits. While compliance dates are extended by 290 days, Tier 1 financial institutions will be required to file data one year later than expected under the 2023 final rule (*i.e.*, by June 1, 2026 rather than June 1, 2025). The CFPB expects that the benefits of the original rule will primarily begin with the publication of the data. Thus, small businesses' and financial institutions' realizations of the benefits arising from the 2023 final rule will likewise be delayed by at least one year, reducing the real net present value of these expected future benefits. The CFPB is unable to readily quantify the costs associated with delaying future benefits because the CFPB does not have the data to quantify all the benefits of the 2023 final rule.

The 2023 final rule also described that the CFPB expects financial institutions to pass on a portion of their annual ongoing costs to small business borrowers in the form of higher rates or fees. While, in general, the CFPB expects the magnitude of any pass-through to be a small portion of the total cost of the average loan to a small business applicant, extended compliance dates could benefit small business borrowers by delaying these increased costs.

¹⁷ The CFPB continues to use the estimates from the 2023 final rule, which are based on data from 2017 through 2019. The data are not yet available to update the estimates to a more recent year that is unaffected by the COVID-19 pandemic conditions.

3. Distribution of Small Business Impacts

The differences in the impacts of this interim final rule between different types of small businesses is likely to be small with only 290 days added to each of the compliance dates. Most of the distribution of benefits and costs are likely to be derived from whether small businesses are serviced by lenders in different compliance tiers and the difference in present discounted values.

E. Potential Impacts on Depository Institutions and Credit Unions With \$10 Billion or Less in Total Assets, as Described in CFPB Section 1026

Using the methodology described in the 2023 final rule, the CFPB estimates that between 1,700 and 1,900 banks, savings associations, and credit unions with \$10 billion or less in total assets will be affected by this interim final rule. The CFPB believes that the impacts of the interim final rule on these small depository institutions will be similar to those impacts on covered financial institutions as a whole, discussed above. These institutions would incur benefits from up to 290 fewer days in annual ongoing costs and the postponement of up to 290 days of one-time costs. They would also potentially benefit from additional time to develop software and other resources used to comply with the 2023 final rule.

F. Potential Impacts on Small Businesses' Access to Credit and on Small Businesses in Rural Areas

The CFPB does not expect this interim final rule to have a significant impact on small businesses' access to credit. In the 2023 final rule, the CFPB described how the likeliest effect of the rule on access to credit would be a small increase in interest rates or fees. This interim final rule shifts this potential effect by 290 days without any additional provisions that would affect credit access.

In part IX.H of the final rule, the CFPB described how existing data sources limited its ability to precisely estimate the number of financial institutions who serve rural areas who are covered under the 2023 final rule. The CFPB expects that 65 to 70 percent of rural bank and savings associations branches and 14 percent of rural credit union branches would be affected by the interim final rule using this methodology.

Small businesses in rural areas are expected to experience similar costs and benefits of small businesses more broadly. Small businesses in rural areas would experience a reduction in benefits via a postponement of the

benefits of the 2023 final rule on fair lending enforcement and community development. These small businesses would also experience a benefit by the postponement of expected small increases in interest rates and fees.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis in a rulemaking where a general notice of proposed rulemaking is not required.¹⁸ As discussed in part III above, the CFPB has determined that prior notice and comment is unnecessary for this interim final rule. As an additional basis, the CFPB's Director certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities, and so an initial or final regulatory flexibility analysis is also not required for that reason.¹⁹ The rule will not impose significant costs on creditors, including small entities, for the reasons described in the section 1022(b) analysis in part VII above.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Under the PRA, the CFPB may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB. The interim final rule amends 12 CFR part 1002 (Regulation B), which implements the small business lending rule. The CFPB's OMB control number for Regulation B is 3170-0013; its current expiration date is August 31, 2025.

The interim final rule does not add to or change the collection requirements of the 2023 final rule; rather, it only changes the initial compliance dates, pursuant to court orders, and makes other date-related conforming adjustments. The CFPB has therefore determined that the interim final rule does not contain any new or substantively revised information collection requirements as defined by the PRA.

X. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the CFPB will

¹⁸ 5 U.S.C. 603(a), 604(a).

¹⁹ 5 U.S.C. 605(b).

submit a report containing this interim final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the interim final rule taking effect. The Office of Information and Regulatory Affairs has designated this interim final rule as not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Banks, banking, Civil rights, Consumer protection, Credit, Credit unions, Marital status discrimination, National banks, Penalties.

Authority and Issuance

For the reasons set forth in the preamble, the CFPB amends Regulation B, 12 CFR part 1002, as follows:

PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b. Subpart B is also issued under 15 U.S.C. 1691c-2.

■ 2. Section 1002.14 is amended by:

- a. In paragraph (b)(1) removing "October 1, 2024" and adding in its place "July 18, 2025";
- b. In paragraph (b)(2) removing "April 1, 2025" and adding in its place "January 16, 2026";
- c. In paragraphs (b)(3) and (4) removing "January 1, 2026" and adding in its place "October 18, 2026"; and
- d. Adding paragraph (c)(3).

The addition reads as follows:

§ 1002.114 Effective date, compliance date, and special transitional rules.

* * * * *

(c) * * *

(3) *Alternative time period for determining compliance dates.* A financial institution is permitted to use its originations of covered credit transactions in each of calendar years 2023 and 2024 in lieu of calendar years 2022 and 2023 as specified in paragraphs (b) and (c)(2) of this section.

■ 3. In Supplement I to part 1002:

- a. Under *Section 1002.105—Covered Financial Institutions and Exempt Institutions*, revise 105(b) *Covered Financial Institution*;
- b. Under *Section 1002.109—Reporting of Data to the Bureau*, revise 109(b) *Financial Institution Identifying Information*; and
- c. Under *Section 1002.114—Effective Date, Compliance Date, and Special Transition Rules*, revise 114(b) *Compliance Date* and 114(c) *Special Transition Rules*.

The revisions read as follows:

Supplement I to Part 1002—Official Interpretations

* * * * *

Section 1002.105—Covered Financial Institutions and Exempt Institutions

* * * * *

105(b) Covered Financial Institution

1. *Preceding calendar year.* The definition of covered financial institution refers to preceding calendar years. For example, in 2029, the two preceding calendar years are 2027 and 2028. Accordingly, in 2029, Financial Institution A does not meet the loan-volume threshold in § 1002.105(b) if did not originate at least 100 covered credit transactions for small businesses both during 2027 and during 2028.

2. *Origination threshold.* A financial institution qualifies as a covered financial institution based on total covered credit transactions originated for small businesses, rather than covered applications received from small businesses. For example, if in both 2026 and 2027, Financial Institution B received 105 covered applications from small businesses and originated 95 covered credit transactions for small businesses, then for 2028, Financial Institution B is not a covered financial institution.

3. *Counting originations when multiple financial institutions are involved in originating a covered credit transaction.* For the purpose of counting originations to determine whether a financial institution is a covered financial institution under § 1002.105(b), in a situation where multiple financial institutions are involved in originating a single covered credit transaction, only the last financial institution with authority to set the material terms of the covered credit transaction is required to count the origination.

4. *Counting originations after adjustments to the gross annual revenue threshold due to inflation.* Pursuant to § 1002.106(b)(2), every five years, the gross annual revenue threshold used to define a small business in § 1002.106(b)(1) shall be adjusted, if necessary, to account for inflation. The first time such an adjustment could occur is in 2030, with an effective date of January 1, 2031. A financial institution seeking to determine whether it is a covered financial institution applies the gross annual revenue threshold that is in effect for each year it is evaluating. For example, a financial institution seeking to determine whether it is a covered financial institution in 2032 counts its originations of covered credit transactions for small businesses in calendar years 2030 and 2031. The financial institution applies the initial \$5 million threshold to evaluate whether its originations were to small businesses in 2030. In this example, if the small business threshold were increased to \$5.5 million effective January 1, 2031, the financial institution applies the \$5.5 million threshold to count its originations for small businesses in 2031.

5. *Reevaluation, extension, or renewal requests, as well as credit line increases and other requests for additional credit amounts.*

While requests for additional credit amounts on an existing account can constitute a “covered application” pursuant to § 1002.103(b)(1), such requests are not counted as originations for the purpose of determining whether a financial institution is a covered financial institution pursuant to § 1002.105(b). In addition, transactions that extend, renew, or otherwise amend a transaction are not counted as originations. For example, if a financial institution originates 50 term loans and 30 lines of credit for small businesses in each of the preceding two calendar years, along with 25 line increases for small businesses in each of those years, the financial institution is not a covered financial institution because it has not originated at least 100 covered credit transactions in each of the two preceding calendar years.

6. *Annual consideration.* Whether a financial institution is a covered financial institution for a particular year depends on its small business lending activity in the preceding two calendar years. Therefore, whether a financial institution is a covered financial institution is an annual consideration for each year that data may be compiled and maintained for purposes of subpart B of this part. A financial institution may be a covered financial institution for a given year of data collection (and the obligations arising from qualifying as a covered financial institution shall continue into subsequent years, pursuant to §§ 1002.110 and 1002.111), but the same financial institution may not be a covered financial institution for the following year of data collection. For example, Financial Institution C originated 105 covered transactions for small businesses in both 2027 and 2028. In 2029, Financial Institution C is a covered financial institution and therefore is obligated to compile and maintain applicable 2029 small business lending data under § 1002.107(a). During 2029, Financial Institution C originates 95 covered transactions for small businesses. In 2030, Financial Institution C is not a covered financial institution with respect to 2030 small business lending data, and is not obligated to compile and maintain 2030 data under § 1002.107(a) (although Financial Institution C may volunteer to collect and maintain 2030 data pursuant to § 1002.5(a)(4)(vii) and as explained in comment 105(b)–10). Pursuant to § 1002.109(a), Financial Institution C shall submit its small business lending application register for 2029 data in the format prescribed by the Bureau by June 1, 2030 because Financial Institution C is a covered financial institution with respect to 2029 data, and the data submission deadline of June 1, 2030 applies to 2029 data.

7. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed financial institution is a covered financial institution under § 1002.105(b) if it, considering the combined lending activity of the surviving or newly formed institution and the merged or acquired financial institutions (or acquired branches or locations), satisfies the criteria included in § 1002.105(b). For example,

Financial Institutions A and B merge. The surviving or newly formed financial institution meets the threshold in § 1002.105(b) if the combined previous components of the surviving or newly formed financial institution (A plus B) would have originated at least 100 covered credit transactions for small businesses for each of the two preceding calendar years. Similarly, if the combined previous components and the surviving or newly formed financial institution would have reported at least 100 covered transactions for small businesses for the year previous to the merger as well as 100 covered transactions for small businesses for the year of the merger, the threshold described in § 1002.105(b) would be met and the surviving or newly formed financial institution would be a covered institution under § 1002.105(b) for the year following the merger. Comment 105(b)–8 discusses a financial institution’s responsibilities with respect to compiling and maintaining (and subsequently reporting) data during the calendar year of a merger.

8. *Merger or acquisition—coverage specific to the calendar year of the merger or acquisition.* The scenarios described below illustrate a financial institution’s responsibilities specifically for data from the calendar year of a merger or acquisition. For purposes of these illustrations, an “institution that is not covered” means either an institution that is not a financial institution, as defined in § 1002.105(a), or a financial institution that is not a covered financial institution, as defined in § 1002.105(b).

i. Two institutions that are not covered financial institutions merge. The surviving or newly formed institution meets all of the requirements necessary to be a covered financial institution. No data are required to be compiled, maintained, or reported for the calendar year of the merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered financial institution).

ii. A covered financial institution and an institution that is not covered merge. The covered financial institution is the surviving institution, or a new covered financial institution is formed. For the calendar year of the merger, data are required to be compiled, maintained, and reported for covered applications from the covered financial institution and is optional for covered applications from the financial institution that was previously not covered.

iii. A covered financial institution and an institution that is not covered merge. The institution that is not covered is the surviving institution and remains not covered after the merger, or a new institution that is not covered is formed. For the calendar year of the merger, data are required to be compiled and maintained (and subsequently reported) for covered applications from the previously covered financial institution that took place prior to the merger. After the merger date, compiling, maintaining, and reporting data is optional for applications from the institution that was previously covered for the remainder of the calendar year of the merger.

iv. Two covered financial institutions merge. The surviving or newly formed

financial institution is a covered financial institution. Data are required to be compiled and maintained (and subsequently reported) for the entire calendar year of the merger. The surviving or newly formed financial institution files either a consolidated submission or separate submissions for that calendar year.

9. *Foreign applicability.* As discussed in comment 1(a)–2, Regulation B (including subpart B) generally does not apply to lending activities that occur outside the United States.

10. *Voluntary collection and reporting.* Section 1002.5(a)(4)(vii) through (x) permits a creditor that is not a covered financial institution under § 1002.105(b) to voluntarily collect and report information regarding covered applications from small businesses in certain circumstances. If a creditor is voluntarily collecting information for covered applications regarding whether the applicant is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business under § 1002.107(a)(18), and regarding the ethnicity, race, and sex of the applicant's principal owners under § 1002.107(a)(19), it shall do so in compliance with §§ 1002.107, 1002.108, 1002.111, 1002.112 as though it were a covered financial institution. If a creditor is reporting those covered applications from small businesses to the Bureau, it shall do so in compliance with §§ 1002.109 and 1002.110 as though it were a covered financial institution.

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Section 1002.109—Reporting of Data to the Bureau

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109(b) Financial Institution Identifying Information

1. *Changes to financial institution identifying information.* If a financial institution's information required pursuant to § 1002.109(b) changes, the financial institution shall provide the new information with the data submission for the collection year of the change. For example, assume two financial institutions that previously reported data under subpart B of this part merge and the surviving institution retained its Legal Entity Identifier but obtained a new TIN in February 2028. The surviving institution must report the new TIN with its data submission for its 2028 data (which is due by June 1, 2029) pursuant to § 1002.109(b)(5). Likewise, if that financial institution's Federal prudential regulator changes in February 2028 as a result of the merger, it must identify its new Federal prudential regulator in its annual submission for its 2028 data.

* * * * *

Section 1002.114—Effective Date, Compliance Date, and Special Transition Rules

114(b) Compliance Date

1. *Application of compliance date.* The applicable compliance date in § 1002.114(b) is the date by which the covered financial institution must begin to compile data as specified in § 1002.107, comply with the

firewall requirements of § 1002.108, and begin to maintain records as specified in § 1002.111. In addition, the covered financial institution must comply with § 1002.110(c) and (d) no later than June 1 of the year after the applicable compliance date. For instance, if § 1002.114(b)(2) applies to a financial institution, it must comply with §§ 1002.107 and 1002.108, and portions of § 1002.111, beginning January 16, 2026, and it must comply with § 1002.110(c) and (d), and portions of § 1002.111, no later than June 1, 2027.

2. *Initial partial year collections pursuant to § 1002.114(b).* i. When the compliance date of July 18, 2025 specified in § 1002.114(b)(1) applies to a covered financial institution, the financial institution is required to collect data for covered applications during the period from July 18, 2025 to December 31, 2025. The financial institution must compile data for this period pursuant to § 1002.107, comply with the firewall requirements of § 1002.108, and maintain records as specified in § 1002.111. In addition, for data collected during this period, the covered financial institution must comply with §§ 1002.109 and 1002.110(c) and (d) by June 1, 2026.

ii. When the compliance date of January 16, 2026 specified in § 1002.114(b)(2) applies to a covered financial institution, the financial institution is required to collect data for covered applications during the period from January 16, 2026 to December 31, 2026. The financial institution must compile data for this period pursuant to § 1002.107, comply with the firewall requirements of § 1002.108, and maintain records as specified in § 1002.111. In addition, for data collected during this period, the covered financial institution must comply with §§ 1002.109 and 1002.110(c) and (d) by June 1, 2027.

iii. When the compliance date of October 18, 2026 specified in § 1002.114(b)(3) or (4) applies to a covered financial institution, the financial institution is required to collect data for covered applications during the period from October 18, 2026 to December 31, 2026. The financial institution must compile data for this period pursuant to § 1002.107, comply with the firewall requirements of § 1002.108, and maintain records as specified in § 1002.111. In addition, for data collected during this period, the covered financial institution must comply with §§ 1002.109 and 1002.110(c) and (d) by June 1, 2027.

3. *Informal names for compliance date provisions.* To facilitate discussion of the compliance dates specified in § 1002.114(b)(1), (2), and (3), in the official commentary and any other documents referring to these compliance dates, the Bureau adopts the following informal simplified names. Tier 1 refers to the cohort of covered financial institutions that have a compliance date of July 18, 2025 pursuant to § 1002.114(b)(1). Tier 2 refers to the cohort of covered financial institutions that have a compliance date of January 16, 2026 pursuant to § 1002.114(b)(2). Tier 3 refers to the cohort of covered financial institutions that have a compliance date of October 18, 2026 pursuant to § 1002.114(b)(3).

4. *Examples.* The following scenarios illustrate how to determine whether a

financial institution is a covered financial institution and which compliance date specified in § 1002.114(b) applies. Unless otherwise indicated, in each example the financial institution has chosen to use its originations in 2022 and 2023 (rather than 2023 and 2024 as permitted by § 1002.114(c)(3)) to determine its initial compliance tier.

i. Financial Institution A originated 3,000 covered credit transactions for small businesses in calendar year 2022, and 3,000 in calendar year 2023. Financial Institution A is in Tier 1 and has a compliance date of July 18, 2025.

ii. Financial Institution B originated 2,000 covered credit transactions for small businesses in calendar year 2022, and 3,000 in calendar year 2023. Because Financial Institution B did not originate at least 2,500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1. Because Financial Institution B did originate at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 2 and has a compliance date of January 16, 2026.

iii. Financial Institution C originated 400 covered credit transactions for small businesses in calendar year 2022, and 1,000 in calendar year 2023. Because Financial Institution C did not originate at least 2,500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, and because it did not originate at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 2. Because Financial Institution C did originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 3 and has a compliance date of October 18, 2026.

iv. Financial Institution D originated 90 covered credit transactions for small businesses in calendar year 2022, 120 in calendar year 2023, and 90 in calendar years 2024, 2025, and 2026. Because Financial Institution D did not originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution D did not originate at least 100 covered credit transactions for small businesses in subsequent consecutive calendar years, it is not a covered financial institution under § 1002.105(b) and is not required to comply with the rule in 2025, 2026, or 2027.

v. Financial Institution E originated 120 covered credit transactions for small businesses in each of calendar years 2022, 2023, and 2024, and 90 in 2025. Because Financial Institution E did not originate at least 2,500 or 500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1 or Tier 2. Because Financial Institution E originated at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 3 and has a compliance date of October 18, 2026. However, because Financial Institution E did not originate at least 100 covered credit transactions for small businesses in both 2024 and 2025, it no longer satisfies the definition of a covered

financial institution in § 1002.105(b) at the time of the compliance date for Tier 3 institutions and thus is not required to comply with the rule in 2026.

vi. Financial Institution F originated 90 covered credit transactions for small businesses in calendar year 2022, and 120 in 2023, 2024, and 2025. Because Financial Institution F did not originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution F originated at least 100 covered credit transactions for small businesses in subsequent calendar years, § 1002.114(b)(4), which cross-references § 1002.105(b), applies to Financial Institution F. Because Financial Institution F originated at least 100 covered credit transactions for small businesses in each of 2024 and 2025, it is a covered financial institution under § 1002.105(b) and is required to comply with the rule beginning October 18, 2026. Alternatively, if Financial Institution F chooses to use its originations in calendar years 2023 and 2024 to determine its compliance tier pursuant to § 1002.114(c)(3), it would be in Tier 3 and likewise required to comply with the rule beginning October 18, 2026.

vii. Financial Institution G originated 90 covered credit transactions for small businesses in each of calendar years 2022, 2023, 2024, 2025, and 2026, and 120 in each of 2027 and 2028. Because Financial Institution F did not originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution G originated at least 100 covered credit transactions for small businesses in subsequent calendar years, § 1002.114(b)(4), which cross-references § 1002.105(b), applies to Financial Institution G. Because Financial Institution G originated at least 100 covered credit transactions for small businesses in each of 2027 and 2028, it is a covered financial institution under § 1002.105(b) and is required to comply with the rule beginning January 1, 2029.

viii. Financial Institution H originated 550 covered credit transactions for small businesses in each of calendar years 2022 and 2023, 450 in 2024, and 550 in 2025. Because Financial Institution H originated at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it would be in Tier 2 and have a compliance date of January 16, 2026. However, § 1002.114(c)(3) permits financial institutions to use their originations in 2023 and 2024, rather than in 2022 and 2023, to determine compliance tier. If Financial Institution H elects to use its originations in 2023 and 2024, it would be in Tier 3 and required to comply with the rule beginning October 18, 2026.

114(c) Special Transition Rules

1. *Collection of certain information prior to a financial institution's compliance date.* Notwithstanding § 1002.5(a)(4)(ix), a financial institution that chooses to collect information on covered applications as permitted by § 1002.114(c)(1) in the 12 months prior to its initial compliance date as specified in § 1002.114(b)(1), (2) or (3) need comply only with the requirements set out in

§§ 1002.107(a)(18) and (19), 1002.108, and 1002.111(b) and (c) with respect to the information collected. During this 12-month period, a covered financial institution need not comply with the provisions of § 1002.107 (other than §§ 1002.107(a)(18) and (19)), 1002.109, 1002.110, 1002.111(a), or 1002.114.

2. *Transition rule for applications received prior to a compliance date but final action is taken after a compliance date.* If a covered financial institution receives a covered application from a small business prior to its initial compliance date specified in § 1002.114(b), but takes final action on or after that date, the financial institution is not required to collect data regarding that application pursuant to § 1002.107 nor to report the application pursuant to § 1002.109. For example, if a financial institution is subject to a compliance date of July 18, 2025, and it receives an application on July 7, 2025 but does not take final action on the application until July 25, 2025, the financial institution is not required to collect data pursuant to § 1002.107 nor to report data to the Bureau pursuant to § 1002.109 regarding that application.

3. *Has readily accessible the information needed to determine small business status.* A financial institution has readily accessible the information needed to determine whether its originations of covered credit transactions were for small businesses as defined in § 1002.106 if, for instance, it in the ordinary course of business collects data on the precise gross annual revenue of the businesses for which it originates loans, it obtains information sufficient to determine whether an applicant for business credit had gross annual revenues of \$5 million or less, or if it collects and reports similar data to Federal or State government agencies pursuant to other laws or regulations.

4. *Does not have readily accessible the information needed to determine small business status.* A financial institution does not have readily accessible the information needed to determine whether its originations of covered credit transactions were for small businesses as defined in § 1002.106 if it did not in the ordinary course of business collect either precise or approximate information on whether the businesses to which it originated covered credit transactions had gross annual revenue of \$5 million or less. In addition, even if precise or approximate information on gross annual revenue was initially collected, a financial institution does not have readily accessible this information if, to retrieve this information, for example, it must review paper loan files, recall such information from either archived paper records or scanned records in digital archives, or obtain such information from third parties that initially obtained this information but did not transmit such information to the financial institution.

5. *Reasonable method to estimate the number of originations.* The reasonable methods that financial institutions may use to estimate originations for 2022 and 2023 (or for 2023 and 2024, pursuant to § 1002.114(c)(3)) include, but are not limited to, the following:

i. A financial institution may comply with § 1002.114(c)(2) by determining the small

business status of covered credit transactions by asking every applicant, prior to the closing of approved transactions, to self-report whether it had gross annual revenue for its preceding fiscal year of \$5 million or less, during the period October 1 through December 31, 2023. The financial institution may annualize the number of covered credit transactions it originates to small businesses from October 1 through December 31, 2023 by quadrupling the originations for this period, and apply the annualized number of originations to both calendar years 2022 and 2023. Pursuant to § 1002.114(c)(3), a financial institution is permitted to use its originations in 2023 and 2024, rather than 2022 and 2023, to determine its compliance tier. Thus, a financial institution may ask applicants to self-report revenue information during the period of October 1 through December 31, 2024, and then may annualize the number of covered credit transactions it originated to small businesses during that period and apply the annualized number of originations to both calendar years 2023 and 2024.

ii. A financial institution may comply with § 1002.114(c)(2) by assuming that every covered credit transaction it originates for business customers in calendar years 2022 and 2023 (or in 2023 and 2024) is to a small business.

iii. A financial institution may comply with § 1002.114(c)(2) by using another methodology provided that such methodology is reasonable and documented in writing.

6. *Examples.* The following scenarios illustrate the potential application of § 1002.114(c)(2) to a financial institution's compliance date under § 1002.114(b). Unless otherwise indicated, in each example the financial institution has chosen to estimate its originations for 2022 and 2023 (rather than 2023 and 2024 as permitted by § 1002.114(c)(3)) to determine its initial compliance tier.

i. Prior to October 1, 2023, Financial Institution A did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution A chose to use the methodology set out in comment 114(c)–5.i and as of October 1, 2023 began to collect information on gross annual revenue as defined in § 1002.107(a)(14) for its covered credit transactions originated for businesses. Using this information, Financial Institution A determined that it had originated 750 covered credit transactions for businesses that were small as defined in § 1002.106. On an annualized basis, Financial Institution A originated 3,000 covered credit transactions for small businesses (750 originations * 4 = 3,000 originations per year). Applying this annualized figure of 3,000 originations to both calendar years 2022 and 2023, Financial Institution A is in Tier 1 and has a compliance date of July 18, 2025.

ii. Prior to July 1, 2023, Financial Institution B collected gross annual revenue information for some applicants for business credit, but such information was only noted in its paper loan files. Financial Institution

B thus does not have reasonable access to information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions for calendar years 2022 and 2023. Financial Institution B chose to use the methodology set out in comment 114(c)–5.i, and as of October 1, 2023, Financial Institution B began to ask all businesses for whom it was closing covered credit transactions if they had gross annual revenues in the preceding fiscal year of \$5 million or less. Using this information, Financial Institution B determined that it had originated 350 covered credit transactions for businesses that were small as defined in § 1002.106. On an annualized basis, Financial Institution B originated 1,400 covered credit transactions for small businesses (350 originations * 4 = 1,400 originations per year). Applying this estimated figure of 1,400 originations to both calendar years 2022 and 2023, Financial Institution B is in Tier 2 and has a compliance date of January 16, 2026.

iii. Prior to April 1, 2023, Financial Institution C did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution C chose its own methodology pursuant to comment 114(c)–5.iii, basing it in part on the methodology specified in comment 114(c)–5.i. Starting on April 1, 2023, Financial Institution C began to ask all business applicants for covered credit transactions if they had gross annual revenue in their preceding fiscal year of \$5 million or less. Using this information, Financial Institution C determined that it had originated 100 covered credit transactions for businesses that were small as defined in § 1002.106. On an annualized basis, Financial Institution C originated approximately 133 covered credit transactions for small businesses ((100 originations * 365 days)/275 days = 132.73 originations per year). Applying this estimate of 133 originations to both calendar years 2022 and 2023, Financial Institution C is in Tier 3 and has a compliance date of October 18, 2026.

iv. Financial Institution D did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution D determined that it had originated 3,000 total covered credit transactions for businesses in each of 2022 and 2023. Applying the methodology specified in comment 114(c)–5.ii, Financial Institution D assumed that all 3,000 covered credit transactions originated in each of 2022 and 2023 were to small businesses. On that basis, Financial Institution D is in Tier 1 and has a compliance date of July 18, 2025.

v. Financial Institution E did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial

Institution E determined that it had originated 700 total covered credit transactions for businesses in each of 2022 and 2023. Applying the methodology specified in comment 114(c)–5.ii, Financial Institution E assumed that all such transactions in each of 2022 and 2023 were originated for small businesses. On that basis, Financial Institution E is in Tier 2 and has a compliance date of January 16, 2026.

vi. Financial Institution F does not have readily accessible gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution F determined that it had originated 80 total covered credit transactions for businesses in 2022 and 150 total covered credit transactions for businesses in 2023. Applying the methodology set out in comment 114(c)–5.ii, Financial Institution F assumed that all such transactions originated in 2022 and 2023 were originated for small businesses. On that basis, Financial Institution E is not in Tier 1, Tier 2 or Tier 3, and is subject to the compliance date provision specified in § 1002.114(b)(4).

vii. Financial Institution G does not have readily accessible gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022, 2023, or 2024. Financial Institution G chose to use the methodology set out in comment 114(c)–5.i, and as of October 1, 2024, Financial Institution G began to ask all businesses for whom it was closing covered credit transactions if they had gross annual revenue in the preceding fiscal year of \$5 million or less. Using this information, Financial Institution G determined that it had originated 700 covered credit transactions during that period for businesses that were small as defined in § 1002.106. On an annualized basis, Financial Institution G originated 2,800 covered credit transactions for small businesses (700 originations * 4 = 2,800 originations per year). Applying this estimated figure of 2,800 originations to both calendar years 2023 and 2024, Financial Institution G is in Tier 1 and has a compliance date of July 18, 2025.

* * * * *

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2024–14396 Filed 7–2–24; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 240621–0171]

RIN 0694–AJ66

Addition of Entities and Revision of Entries on the Entity List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding six entries to the Entity List, under the destinations of the People's Republic of China (China) (2), South Africa (1), the United Arab Emirates (UAE) (2), and the United Kingdom (1). These entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. This rule also modifies two existing entities on the Entity List, one under the destination of China and one under the destination of Russia.

DATES: This rule is effective July 3, 2024.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Entity List

The Entity List (supplement no. 4 to part 744 of the EAR (15 CFR parts 730 through 774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) when a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the “License Review Policy” column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that

added the entity to the Entity List. BIS places entities on the Entity List pursuant to parts 744 (Control Policy: End-User and End-Use Based) and 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Entity List Decisions

Additions to the Entity List

The ERC determined to add Global Training Solutions Limited and Smartech Future Limited, both under the destination of China, Grace Air (Pty) Ltd. under the destination of South Africa, and Livingston Aerospace Ltd., under the destination of the United Kingdom, to the Entity List. These entities are listed because of their links to the Test Flying Academy of South Africa (TFASA) and the training of China's military forces using Western and North Atlantic Treaty Organization (NATO) sources. TFASA was added to the Entity List on June 12, 2023 (88 FR 38739, June 14, 2023). This activity is contrary to the national security and foreign policy interests of the United States under § 744.11 of the EAR.

The ERC determined to add two entities, Mega Fast Cargo LLC, and Mega Technique General Trading, both under the destination of the UAE, to the Entity List. These additions are being made because these entities repeatedly engaged in dilatory or evasive conduct, including the provision of false, misleading, or incomplete information, during end-use checks. In addition, Mega Fast Cargo LLC has engaged in shipments of U.S.-origin commodities to Russia since Russia's further invasion of Ukraine in February 2022. This activity is contrary to U.S. national security and foreign policy interests under § 744.11 of the EAR.

For these six entities, BIS imposes a license requirement for all items subject to the EAR and will review license applications under a presumption of denial. For the reasons described above, this final rule adds the following six entities, including aliases where appropriate, to the Entity List:

China

- Global Training Solutions Limited; *and*
- Smartech Future Limited.

South Africa

- Grace Air (Pty) Ltd.

United Arab Emirates

- Mega Fast Cargo LLC; *and*
- Mega Technique General Trading.

United Kingdom

- Livingston Aerospace Ltd.

Modifications to the Entity List

This final rule implements the decision of the ERC to modify two existing entries on the Entity List. Specifically, the ERC determined to add three aliases to the entity Tenco Technology Company Ltd., under the destination of China, for a total of seven aliases. In addition, the ERC determined to revise the entry for Systems of Biological Synthesis LLC, under the destination of Russia, by adding one address for a total of two addresses.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on July 3, 2024, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) before August 2, 2024. Any such items not actually exported, reexported or transferred (in-country) before midnight, on August 2, 2024, require a license in accordance with this final rule.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves an information collection approved by OMB under control number 0694–0088, Simplified Network Application Processing System. BIS does not anticipate a change to the burden hours associated with this collection as a result of this rule. Information regarding the collection, including all supporting materials, can be accessed at <https://www.reginfo.gov/public/do/PRAMain>.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 744

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 1. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p.

783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 7, 2023, 88 FR 62439 (September 11, 2023); Notice of November 1, 2023, 88 FR 75475 (November 3, 2023).

■ 2. Supplement no. 4 is amended by:

■ a. Under CHINA, PEOPLE'S REPUBLIC OF:

■ i. Adding, in alphabetical order, entries for “Global Training Solutions Limited” and “Smartech Future Limited;” *and*

■ ii. Revising the entry for “Tenco Technology Company Ltd.,”

■ b. Under RUSSIA, revising the entry for “Systems of Biological Synthesis LLC;”

■ c. Under SOUTH AFRICA, adding, in alphabetical order, an entry for “Grace Air (Pty) Ltd;”

■ d. Under UNITED ARAB EMIRATES, adding, in alphabetical order, entries for

“Mega Fast Cargo LLC” *and* “Mega Technique General Trading;” *and*

■ e. Under UNITED KINGDOM, adding, in alphabetical order, an entry for “Livingston Aerospace Ltd.”

The revision and additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	Federal Register citation
CHINA, PEOPLE'S REPUBLIC OF.				
	Global Training Solutions Limited, 8 Ng Fong Street, 11/F Lee Ka Industrial Building, Room 32, San Po Kong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER] 7/3/2024.
	Smartech Future Limited, a.k.a., the following one alias: —Balloons SMT. 29 Luk Hop Street, Wang Fai Industrial Building, 11/F, Room 8, Hong Kong; <i>and</i> 253–261 Hennessy Road, Easey Commercial Building, Room 1502, Wan Chai, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER] 7/3/2024.
	Tenco Technology Company Ltd., a.k.a., the following seven aliases: —Redd Forest Technology Company Limited; —Shenzhen Shengfaweiye Electronic Co., Ltd.; —Shenzhen Tenco Technology Co., Ltd.; —Tenco International Co., Ltd.; —Shenzhen Qianhai Yikeshu Industrial Company Limited; —Shenzhen Yikeshu Shiye You Xia; <i>and</i> —Shenzhen Yikeshu Shiye You Xian. Jiahe Huaqiang Building, Shennan Middle Road, Room 2709, Block A, Futian District, Shenzhen, Guangdong, 518007, China; <i>and</i> Jiahe Building, Shennan Mid Road, Room 2709, Block A, Futian District, Shenzhen, 518000, China; <i>and</i> 56 Hoi Yuen Road, Kwun Kowloon, Room 311 3F Genplas Industrial Building, Hong Kong; <i>and</i> 8 Lam Lok Street, Room 15, 6F Corporation Square, Kowloon Bay, Hong Kong; <i>and</i> Longhua Street, Room 801, Number 15, Building 14, Xiayousong Village, Longhua District, Shenzhen, 518000, China <i>and</i> No.1 Qianhaiwan 1 Road, Room 201 Block A, Shenzhen, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	84 FR 21236, 5/14/19. 85 FR 83769, 12/23/20. 87 FR 77508, 12/19/22. 89 FR [INSERT FR PAGE NUMBER] 7/3/2024.
RUSSIA	Systems of Biological Synthesis LLC., a.k.a., the following three aliases: —Sistemy Biologicheskogo Sinteza; —OOO SBS; <i>and</i> —SBS LLC. Akademika Koroleva Street, Building 13/1, Office 35–39, Moscow, 129515, Russia <i>and</i> Akademika Koroleva Street, Building 13/1, Floor 2, Offices 60–61, Moscow, 129515, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR 34157, 6/6/22. 89 FR [INSERT FR PAGE NUMBER] 7/3/2024.
SOUTH AFRICA ...	Grace Air (Pty) Ltd, Hangar 1, Anderson Street, Oudtshoorn Air Field, Western Cape, Oudtshoorn, 6620, South Africa <i>and</i> 477 Witherite Road, Pretoria, South Africa.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER] 7/3/2024.

Country	Entity	License requirement	License review policy	Federal Register citation
	*	*	*	*
UNITED ARAB EMIRATES.				
	Mega Fast Cargo LLC, #405, Floor 4, Nasseriya Building, 1st Industrial Area, Al Qusais, Dubai, United Arab Emirates; and Riqaa Al Buteen Plaza Building, Dubai, United Arab Emirates; and Al Maktoum Rd., Dubai, United Arab Emirates and P.O Box: 238930, Bin Al Fahed Building, No. 3 Room 203, 2nd Floor, Industrial Area 1, Alqusais, Dubai, United Arab Emirates.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER] 7/3/2024.
	Mega Technique General Trading, P.O. Box 60049, Al Qusais, Nasseriya Building, Dubai, United Arab Emirates.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER] 7/3/2024.
	*	*	*	*
	*	*	*	*
UNITED KINGDOM.				
	Livingston Aerospace Ltd., Dock Cottage, Bullo Pill, Gloucestershire, GL14 1ED, United Kingdom and 23 Cleveland Road, Lytham, Lytham St Annes, Lancashire, FY8 5JH, United Kingdom.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER] 7/3/2024.
	*	*	*	*

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Matthew S. Borman,
Principal Deputy Assistant Secretary for
Export Administration.

[FR Doc. 2024–14635 Filed 7–2–24; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 240626–0176]

RIN 0694–AJ70

The Unverified List; Additions and Removals

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by adding 13 persons to the Unverified List (UVL). The 13 persons being added are added under the following destinations: China, Peoples' Republic of (China) (8), Cyprus (1), Kyrgyzstan (1), Türkiye (2), and the United Arab Emirates (UAE) (1). BIS is also amending the EAR by removing eight persons from the UVL. Of the eight persons being removed, one is under the destination of the UAE, one is under the destination of Russia, and six are under the destination of China. This final rule also removes the country

name Russia from the UVL. Lastly, this final rule replaces the country name Turkey with Türkiye in the UVL. This is a conforming change to the U.S. State Department's recognition on January 9, 2023, of Türkiye's official name.

DATES: *This rule is effective:* July 3, 2024.

FOR FURTHER INFORMATION CONTACT: Deniz Muslu Acting Director, Office of Enforcement Analysis, Phone: (202) 482–4255, Email: UVLRequest@bis.doc.gov

SUPPLEMENTARY INFORMATION:

Background

Unverified List

The UVL, found in supplement no. 6 to part 744 of the EAR (15 CFR parts 730–774), contains the names and addresses of foreign persons who are or have been parties to a transaction, as described in § 748.5 of the EAR, involving the export, reexport, or transfer (in-country) of items subject to the EAR. These foreign persons are added to the UVL because BIS or Federal officials acting on BIS's behalf were unable to verify their *bona fides* (i.e., legitimacy and reliability relating to the end use and end user of items subject to the EAR) through the completion of an end-use check. Sometimes these checks, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for reasons outside the U.S. Government's control.

There are a number of reasons why end-use checks cannot be completed to the satisfaction of the U.S. Government. The reasons include, but are not limited to: (1) reasons unrelated to the cooperation of the foreign party subject to the end-use check (e.g., BIS sometimes initiates end-use checks, but is unable to complete them because the foreign party cannot be found at the address indicated on the associated export documents and BIS cannot contact the party by telephone or email); (2) reasons related to a lack of cooperation by a host government that fails to schedule and facilitate the completion of an end-use check (e.g., a host government agencies' lack of response to requests to conduct end-use checks, actions preventing the scheduling of such checks, or refusals to schedule checks in a timely manner); or (3) when, during the end-use check, a recipient of items subject to the EAR is unable to produce the items that are the subject of the end-use check for visual inspection or provide sufficient documentation or other evidence to confirm the disposition of the items.

BIS's inability to confirm the *bona fides* of foreign persons subject to end-use checks raises concerns about the suitability of such persons as participants in future exports, reexports, or transfers (in-country) of items subject to the EAR; the inability to confirm a foreign person's *bona fides* also indicates a risk that items subject to the EAR may be diverted to prohibited end uses and/or end users. Under such

circumstances, there may not be sufficient information to add the foreign person at issue to the Entity List (supplement no. 4 to part 744 of the EAR) under § 744.11 of the EAR. Therefore, BIS may add the foreign person to the UVL.

As provided in § 740.2(a)(17) of the EAR, the use of license exceptions for exports, reexports, and transfers (in-country) involving a party or parties to the transaction who are listed on the UVL is suspended. Additionally, under § 744.15(b) of the EAR, there is a requirement for exporters, re-exporters, and transferors to obtain, and maintain a record of, a UVL statement from a party or parties to the transaction who are listed on the UVL before proceeding with exports, reexports, and transfers (in-country) to such persons, when the exports, reexports and transfers (in-country) are not subject to a license requirement. Finally, pursuant to § 758.1(b)(8), Electronic Export Information (EEI) must be filed in the Automated Export System (AES) for all exports of tangible items subject to the EAR in which parties to the transaction, as described in § 748.5(d) through (f), are listed on the UVL.

Requests for the removal of a UVL entry must be made in accordance with § 744.15(d) of the EAR. Decisions regarding the removal or modification of UVL entry will be made by the Deputy Assistant Secretary for Export Enforcement, based on a demonstration by the listed person of their *bona fides*. As provided in § 744.15(c)(2) of the EAR, BIS will remove a person from the UVL when BIS is able to verify the *bona fides* of the listed person.

Additions to the UVL

This rule adds 13 persons to the UVL by amending supplement no. 6 to part 744 of the EAR to include their names and addresses. BIS is adding these persons pursuant to § 744.15(c) of the EAR. This final rule implements the decision to add the following 13 persons to the UVL: Avant Science Co., Ltd.; Bada Group Hong Kong Corporation, Limited; Hongkong Delta Electronics Technology Co., Limited; Hongxin Technology Limited; Lihang Technology Co., Ltd.; Shenzhen Mingxinyuan Co., Ltd.; Shenzhen Xianhexin Electronics Co., Ltd.; and Xi'An Aerotek Co., Ltd. under the destination of China; Mirsystems Ltd. under the destination of Cyprus; Inerto LLC under the destination of Kyrgyzstan; AUK Group and ER Transport Uluslararası Tasimacilik Limited Sirketi under the destination of Türkiye; and Navio Shipping LLC under the destination of the UAE.

Removals From the UVL

This rule removes seven persons from the UVL because BIS was able to verify their *bona fides*. This rule removes the following seven persons located in the following destinations from the UVL: Fulian Precision Electronics (Tianjin) Co., Ltd.; Nanning Fulian Fu Gui Precision Co., Ltd.; Guangzhou Trusme Electronics Technology Co., Ltd.; Guangzhou Xinyun Intelligent Technology Co., Ltd.; Shenzhen Jia Li Chuang Tech Development Co., Ltd.; and Xi'An Yierda Co., Ltd. under the destination of China; and Aero King FZC under the destination of the UAE. BIS is removing these persons pursuant to § 744.15(c)(2) of the EAR. This rule also makes a conforming change to remove one person under the destination of Russia from the UVL on the basis of that person's addition to the Entity List. On February 23, 2024, in the final rule "Additions of Entities to the Entity List" (89 FR 14385 February 27, 2024), BIS added "EFO Company Limited Liability Company" a.k.a. the following three aliases:—OOO EFO;—EFO Ltd.; and—EFO LLC., under the destination of Russia to the Entity List. Therefore, this rule removes "EFO Ltd.", under the destination of Russia, from the UVL.

Corrections to the UVL

Given the removal of all entries all under the destination of Russia, this final rule removes the destination of Russia from the UVL. This final rule also changes the name of Turkey to Türkiye in the UVL, which impacts the name of the destination and the five entries within that destination. BIS makes this change to conform to the U.S. State Department's recognition on January 9, 2023, of Türkiye's official name.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. 4801–4852. ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this final rule.

Savings Clause

Shipments (1) that are removed from license exception eligibility or that are now subject to requirements in § 744.15 of the EAR as a result of this regulatory action; (2) that were eligible for export, reexport, or transfer (in-country) without a license before this regulatory action; and (3) that were on dock for

loading, on lighter, laden aboard an exporting carrier, or enroute aboard a carrier to a port of export, on July 3, 2024, pursuant to actual orders, may proceed to that UVL listed person under the previous license exception eligibility or without a license and pursuant to the export clearance requirements set forth in part 758 of the EAR that applied prior to this person being listed on the UVL, so long as the items have been exported from the United States, reexported or transferred (in-country) before August 2, 2024. Any such items not actually exported, reexported or transferred (in-country) before midnight on August 2, 2024 are subject to the requirements in § 744.15 of the EAR in accordance with this rule.

Rulemaking Requirements

Executive Order Requirements

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is not a "significant regulatory action" under Executive Order 12866.

This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act Requirements

Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

The UVL additions contain collections of information approved by OMB under the following control numbers:

- OMB Control Number 0694–0088—Simple Network Application Process and Multipurpose Application Form,
- OMB Control Number 0694–0122—Miscellaneous Licensing Responsibilities and Enforcement,
- OMB Control Number 0694–0134—Entity List and Unverified List Requests,
- OMB Control Number 0694–0137—License Exemptions and Exclusions.

BIS believes that the overall increases in burdens and costs will be minimal and will fall within the already approved amounts for these existing collections. Additional information regarding these collections of information—including all background materials—can be found at <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

Administrative Procedure Act and Regulatory Flexibility Act Requirements

Pursuant to Section 1762 of ECRA (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking and opportunity for public participation.

Further, no other law requires notice of proposed rulemaking or opportunity for public comment for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—END-USE AND END-USER CONTROLS

■ 1. The authority citation for 15 CFR part 744 is continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 7, 2023, 88 FR 62439 (September 11, 2023); Notice of November 1, 2023, 88 FR 75475 (November 3, 2023).

■ 2. Supplement no. 6 to part 744 is amended:

■ a. Under CHINA, PEOPLE'S REPUBLIC OF, by:

■ i. Adding entries in alphabetical order for “Avant Science Co., Ltd.” and “Bada Group Hong Kong Corporation Limited”;

■ ii. Removing the entries for “Fulian Precision Electronics (Tianjin) Co., Ltd.,” “Guangzhou Trusme Electronics Technology Co., Ltd.,” and “Guangzhou Xinyun Intelligent Technology Co., Ltd.”;

■ iii. Adding entries in alphabetical order for “Hongkong Delta Electronics Technology Co., Limited”, “Hongxin Technology Limited”, and “Lihang Technology Co., Ltd.”;

■ iv. Removing the entries for “Nanning Fulian Fu Gui Precision Industrial Co., Ltd.” and “Shenzhen Jia Li Chuang Tech Development Co., Ltd.”;

■ v. Adding entries in alphabetical order for “Shenzhen Mingxinyuan Co., Ltd.”, “Shenzhen Xianhexin Electronics Co., Ltd.”, and “Xi’An Aerotek Co., Ltd.”; and

■ vi. Removing the entry for “Xi’An Yierda Co., Ltd.”;

■ b. By adding an entry in alphabetical order for CYPRUS;

■ c. By adding an entry in alphabetical order for KYRGYZSTAN;

■ d. By removing the entry for “RUSSIA”;

■ g. By removing the entry for “TURKEY” and adding an entry for “TÜRKIYE” in its place; and

■ h. Under UNITED ARAB EMIRATES by

■ i. ii. Removing the entry for “Aero King FZC”; and

■ ii. Adding an entry in alphabetical order for “Navio Shipping LLC”.

The additions read as follows:

Supplement No. 6 to Part 744—Unverified List

* * * * *

Country	Listed person and address	Federal Register citation
* * *	* * *	* * *
CHINA, PEOPLES REPUBLIC OF.		
* * *	* * *	* * *
	Avant Science Co., Ltd., 24/F Che Wah Industrial Building No 1–7 Kin Hong St., Kwai Chung, New Territories, Hong Kong.	89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.
* * *	* * *	* * *
	Bada Group Hong Kong Corporation, Limited Unit 102–104, 1/F, Kerry Warehouse, San Po Street, Sheung Shui Hong Kong; and Rm 102, 1/F, China Resources Logistics Sheung Shui Warehouse No. 2 San Po Street, Sheung Shui, New Territories, Hong Kong.	89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.
* * *	* * *	* * *
	Hongkong Delta Electronics Technology Co., Limited Unit 3, 6/F Kam Hon Industrial Building 8 Wang Kwun Road, Kowloon Bay, Hong Kong.	89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.
	Hongxin Technology Limited, B/5, 5/F, Block 1, Camel Paint Building 62 Hoi Yuen Road, Kwun Tong, Kowloon, Hong Kong; and Flat/Rm 917B, Block A, 9/F, New Mandarin Plaza No. 14 Science Museum Road, Tsim Sha Tsui, Kowloon, Hong Kong.	89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.

Country	Listed person and address	Federal Register citation
*	*	*
	Lihang Technology Co., Ltd., Shenhua Industrial Building Room 602, Chiwei, Binhe Avenue, Futian District Shenzhen, Guangdong, China.	89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.
*	*	*
	Shenzhen Mingxinyuan Co., Ltd., No. 18 Zhonghang Road New Asia Guoli Building Room 1319, Huaqiangbei, Futian District, Shenzhen, Guangdong, China.	89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.
	Shenzhen Xianhexin Electronics Co., Ltd., Huaqiang North Street, Dingcheng Building 613, Futian District, Shenzhen, Guangdong, China.	89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.
*	*	*
	Xi'an Aerotek Co., Ltd., No. 4 First Road Hi Tech Zone Xi'an, Shaanxi, China	89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.
*	*	*
CYPRUS	Mirsystems Ltd, Griva Digeni 28 1st Floor, Nicosia, 1066 Cyprus	89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.
*	*	*
*	*	*
KYRGYZSTAN	Inerto LLC, Lermontov Street House 1, Bishkek, Kyrgyzstan	89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.
*	*	*
TÜRKİYE	AUK Group, Kurtulus Mah. Sinasi Efendi Sk. Ahmet Paksoy Apt. No:17 Kat:2, Seyhan. Adana 01010, Türkiye; <i>and</i> 34277 Arnavutkoy Tayakadin Mah. Branch, Istanbul 34540, Türkiye. BLC Havacilik Saglik Medikal Insaat Elektrik Ic ve Dis Ticaret Asemek San.Sit. 1469 Cad. No:18, İvedik—OSB 06378, Ankara, Türkiye. ER Transport Uluslararası Tasimacilik Limited Sirketi, Kucukbakkalkoy Mah. Dudullu Cad. R2 Blok Sitesi Brandium Blok NO:23—25b Ic Kapi No:86 Atasehir, Istanbul, Türkiye; <i>and</i> Serifali Mah. Buyukyavuz Sk. Royal Plaza B Blok No:3 Ic Kapi No:16 Umraniye, Istanbul, Türkiye. Fast Aviation, Yesilkoy MAH Ataturk, Cad. EGS Bloklari, B:2 No:2 D:1, Istanbul, Türkiye	89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024. 88 FR 17708, March 24, 2023. 89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024. 89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024. 85 FR 64017, October 9, 2020. 89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024. 85 FR 64017, October 9, 2020. 89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024. 88 FR 17708, March 24, 2023. 89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024. 88 FR 17708, March 24, 2023. 89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.
	Metafor Lojistik, Ma. Istiklal Cad. Beyoglu, Istanbul, Türkiye	85 FR 64017, October 9, 2020.
	Piro Deniz Motorlari, Safak Mh. Akdeniz San. Sit. 50003 Sk., No: 115 Kepez—Antalya, Antalya, Türkiye.	88 FR 17708, March 24, 2023.
	Üçüzler Lojistik Gıda Tekstil, a.k.a. Üçüzler Lojistik Ltd Sti, Yeni Mahalle Hamit Öcal Caddesi, No 35/1, Reyhanlı/Hatay, Türkiye 31500; <i>and</i> Yeni Mahalle Hamit Öcal Caddesi, No 29, Reyhanlı/Hatay, Turkey 31500; <i>and</i> Yeni Mahalle Dr. Nihat Kural Sk., Apt No: 15/11, Reyhanlı/Hatay, Türkiye 31500.	88 FR 17708, March 24, 2023. 89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.

UNITED ARAB
EMIRATES.

Country	Listed person and address	Federal Register citation
*	*	*
Navio Shipping LLC, Suite 3801, Aspin Commercial Tower Sheikh Zayed Road, PO Box 122471 Dubai, UAE.		89 FR [INSERT FEDERAL REGISTER PAGE NUMBER] 7/3/2024.
*	*	*

Matthew S. Borman,
Deputy Assistant Secretary for Export Administration.
[FR Doc. 2024–14642 Filed 7–2–24; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration
21 CFR Part 180
[Docket No. FDA–2023–N–0937]
RIN 0910–A181
Revocation of Authorization for Use of Brominated Vegetable Oil in Food
AGENCY: Food and Drug Administration, HHS.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is amending our regulations to revoke the authorization for the use of brominated vegetable oil (BVO) in food. This action is being taken because there is no longer a reasonable certainty of no harm from the continued use of BVO in food. Specifically, the final rule revokes the authorization for the use of BVO as a food ingredient intended to stabilize flavoring oils in fruit-flavored beverages. There are no authorizations for other uses of BVO in food.

DATES: The rule is effective August 2, 2024. For the applicable compliance date, see section VII “Effective/Compliance Dates” in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the docket number found in brackets in the heading of this final rule into the “Search” box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jason Downey, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5001 Campus

Dr., College Park, MD 20740, 240–402–9241; or Philip L. Chao, 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:

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I. Executive Summary

A. Purpose of the Final Rule

The final rule amends our regulations to revoke the authorization for the only authorized use of BVO in food. We are taking this action because there is no longer a basis to conclude that this use is safe.

BVO is a complex mixture of plant-derived triglycerides that have been reacted to contain atoms of the element bromine bonded to the molecules. BVO has historically been prepared from a variety of vegetable oils, including corn, cottonseed, and olive. More recently, BVO is often prepared from soybean oil and declared on food labels as “brominated soybean oil.” BVO is used primarily to help emulsify citrus-flavored soft drinks, preventing them from separating during distribution.

B. Summary of the Major Provisions of the Final Rule

The final rule revokes the only authorization for the use of BVO as an ingredient in food. Specifically, the final rule removes 21 CFR 180.30, “Brominated vegetable oil.”

C. Legal Authority

We are issuing this final rule consistent with our authority under sections 409(i) and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(i) and 371(a)). We discuss our legal authority in greater detail in section IV of this rule.

D. Costs and Benefits

The costs of this final rule come from reformulating products currently manufactured with BVO, relabeling products currently manufactured with BVO, ingredient substitutes for BVO, and possible changes to sensory product properties (which could lead to decreased consumption). The benefits of this final rule come in the form of public health gains from reduced exposure to BVO. The annualized costs of this rule (with a discount rate of 2 percent), minus the costs of the baseline of gradual voluntary reduction, are \$0.02 million to \$0.06 million. The first-year costs of the final rule are \$6.6 million to \$16.6 million. We estimate the annualized reduction in BVO exposure under the final rule relative to the baseline of gradual voluntary reduction to be roughly 0.02 million ounces (oz).

Abbreviation/ Acronym	What it means
BVO	Brominated vegetable oil.
CFR	Code of Federal Regulations.
FDA	Food and Drug Administration.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
GRAS	Generally Recognized as Safe.
NCTR	National Center for Toxicological Research.
ppm	parts per million.

III. Background

A. Need for the Regulation/History of This Rulemaking

BVO has been used as a flavoring oil stabilizer and emulsifier since the 1920s and was listed as generally recognized as safe (GRAS) for this use by FDA. In 1970, FDA concluded that BVO could no longer be regarded as GRAS for use in food because of toxicity concerns under the conditions of use at the time, at a level of approximately 150 parts per million (ppm) in beverages (Ref. 1). FDA removed BVO from the list of “Substances generally recognized as safe” in 21 CFR part 121 (now codified under 21 CFR part 182) (35 FR 1049, January 27, 1970). In response, the Flavor and Extract Manufacturers Association submitted a food additive petition requesting FDA approval for use of BVO as a food additive in beverages at a maximum use level of 15 ppm. We reviewed the petition, including results from unpublished BVO studies, and while the available information did not indicate an immediate threat to health from the use of BVO in beverages at 15 ppm, we concluded in our petition response that additional long-term studies were needed to support the 15 ppm limit (Ref. 2).

Based on the data available at the time and the history of use of BVO in food without apparent harm, we determined, in October 1970, that there would be an adequate margin of safety from the use of BVO in beverages at the reduced use level of 15 ppm on an interim basis while additional, longer term safety studies with BVO were conducted (Ref. 1). We established an interim food additive regulation under 21 CFR 121.1234 (later codified at § 180.30 (21 CFR 180.30)) authorizing the use of BVO as a stabilizer for flavoring oils used in fruit-flavored beverages in an amount not to exceed 15 ppm in the finished beverage. We initially authorized this use of BVO on a 3-year interim basis pending the receipt of additional data (35 FR 12062, July 28, 1970), and then for an indefinite period to allow for completion of subsequent safety studies (39 FR 36113, October 8, 1974). BVO is not approved for any other use in food in the United States. BVO is not permitted for use in beverages in some jurisdictions, including Australia, the European Union, Japan, and New Zealand. Some BVO-containing products have been reformulated to replace BVO to market the products in jurisdictions that do not permit the use of BVO in those products, and safe and authorized substitutes for BVO are

available and have long been in use for the same functions as BVO.

In 2014, as part of our work to reevaluate food and color additives, we reviewed all available data and information that were relevant to the safety of BVO used as a food ingredient. We also reviewed the memoranda and safety studies in our files regarding BVO and considered current scientific principles and study design practices. We determined that the safety data and information available did not provide evidence of a health threat resulting from the limited permitted use of BVO as a flavoring stabilizer in fruit-flavored beverages, but many studies that we reviewed did not clearly establish safe levels of chronic use (Ref. 3). We identified deficiencies in the existing studies, including poor study design by modern standards, equivocal results, inconsistencies in measured parameters between studies, and suboptimal dose selection (Ref. 3). We concluded that high-quality data from contemporary studies, performed under current guideline standards, were needed to address the knowledge gaps regarding the safety of BVO (Ref. 3).

Therefore, through a collaboration between FDA’s Center for Food Safety and Applied Nutrition, the National Center for Toxicological Research (NCTR), and the National Institute of Environmental Health Sciences’ Division of Translational Toxicology (formerly the Division of the National Toxicology Program), new rodent safety studies on BVO were designed and executed with the goal of addressing the potential for thyroid toxicity and bioaccumulation.

The rodent safety studies conducted by NCTR were published in 2022 (Ref. 4) and confirmed previous reports that dietary exposure to BVO is toxic to the thyroid and results in bioaccumulation of lipid-bound bromine in the body at doses relevant to human exposure. To account for uncertainty in translating animal studies to humans, risk assessors evaluate the safety of food ingredients in animal studies at use levels greater than probable human dietary exposure. For example, FDA typically requires food additives to be safe in animal studies at exposures at least 100-fold higher than probable human dietary exposure (21 CFR 170.22) to account for uncertainty in applying results from animal studies to humans. Using the combined 2015–2018 National Health and Nutrition Examination Survey and the conservative assumption that all beverages labeled as containing BVO contain the 15 ppm use level permitted by § 180.30, we estimated mean and 90th percentile dietary exposures of 5

and 9 milligrams (mg) BVO/person (p)/day (d) for the U.S. population aged 2 years and older (Ref. 5), or 0.08 and 0.15 mg/kilogram (kg) body weight (bw)/d on a 60 kg bw basis. The doses of BVO used in the published studies more closely approximate levels of dietary exposure to BVO in humans than the doses used in many of the earlier studies.

NCTR’s first 90-day study conducted in rats described adverse effects on the thyroids of test animals following dietary exposure to BVO. Histological changes in the thyroid, specifically follicular cell hypertrophy, were observed in males at all exposure levels and in females at the highest exposure level, suggestive of a sex-specific effect. The incidence of abnormal histopathological findings in male thyroids increased in a dose-dependent manner. This study also demonstrated alterations in hormone signaling along the hypothalamic-pituitary-thyroid axis as a result of dietary exposure to BVO (Ref. 6). Overall, these new data corroborate previous studies in rats and pigs that also reported thyroid toxicity after dietary exposure to BVO (Ref. 3). Additionally, in both studies, dietary exposure to BVO led to the accumulation of inorganic and organic bromine in test animals (Ref. 6), a finding previously related to the onset of central nervous system toxicity (*i.e.*, lethargy, ataxia, and disorientation) in pigs exposed to BVO (Ref. 3). After 90 days of dietary exposure to BVO, accumulation had not reached steady state, but brominated fatty acids appeared to accumulate in a dose-dependent manner in the heart, liver, and inguinal fat of all animals fed BVO.

Based on these study results, we estimated that bioaccumulated brominated fatty acids could persist in test animals for up to 587 days after BVO was removed from the diet (Ref. 6). The observed potential for brominated fatty acids to bioaccumulate in these studies confirms previous studies in laboratory animals and humans that raised safety questions with BVO’s use as a food ingredient (Ref. 3). Importantly, the bioaccumulation of lipid-bound bromine makes it difficult to estimate cumulative dietary exposure to BVO and to interpret subchronic studies that reported no adverse effect from dietary exposure to BVO (Ref. 6). These studies demonstrate BVO consumption can result in thyroid toxicity in both male and female rats, interference with the hypothalamic-pituitary-thyroid axis in male rats, and bioaccumulation of lipid-bound bromine in both sexes. These studies demonstrated adverse effects in animals at all doses tested, and the test doses

more closely approximated levels of dietary exposure to BVO in humans than many earlier studies. We could not derive a safe level of dietary exposure to BVO from these studies. As a result of these new data, we concluded that there is no longer a reasonable certainty of no harm from the use of BVO as a stabilizer for flavoring oils in fruit-flavored beverages. Therefore, in the **Federal Register** of November 3, 2023 (88 FR 75523), we issued a proposed rule to revoke the authorization of BVO as a food additive.

B. Summary of Comments to the Proposed Rule

We received over 40 comments to the proposed rule. All comments supported revoking authorization for the use of BVO as an ingredient in food, although some comments asked that we take action against other substances, such as color additives, preservatives, and “harmful” chemicals. We discuss the comments later in this final rule.

IV. Legal Authority

We are issuing this final rule under sections 409(i) and 701(a) of the FD&C Act. The FD&C Act defines “food additive,” in relevant part, as any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in it becoming a component of food, if such substance is not generally recognized by qualified experts as safe under the conditions of its intended use (section 201(s) of the FD&C Act (21 U.S.C. 321(s))). Section 409(i) of the FD&C Act provides that the procedure by which food additive regulations may be amended or repealed are to be prescribed by FDA regulation and that such procedure must conform to the procedure specified in the statute for promulgating these regulations. Under 21 CFR 171.130(a), FDA may propose repeating a regulation pertaining to a food additive. Section 701(a) of the FD&C Act provides the authority to issue regulations for the efficient enforcement of the FD&C Act.

V. Comments on the Proposed Rule and FDA Response

We received over 40 comments on our proposal to revoke the authorization for use of BVO as an ingredient in food and are finalizing it without change. The comments came from individuals, a grocery chain, a consumer advocacy group, and an environmental group.

We describe and respond to the comments in this section. To make it easier to identify comments and our responses, the word “Comment,” in parentheses, will appear before the

comment’s description, and the word “Response,” in parentheses, will appear before our response. We have also numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment’s value or importance or the order in which it was received.

(Comment 1) The proposed rule would revoke § 180.30, which authorizes on an interim basis the use of BVO as a stabilizer for flavoring oils used in fruit-flavored beverages, for which any applicable standards of identity do not preclude such use, in an amount not to exceed 15 ppm in the finished beverage.

All comments supported revoking BVO’s authorization for use as a stabilizer for flavoring oils used in fruit-flavored beverages, and some comments stated that BVO should not be present in foods generally. Most comments supported revocation without offering any additional evidence or summarized the evidence that we gave in the proposed rule. Some comments cited other published articles or made additional arguments to support revocation.

(Response 1) We appreciate interest in and support of the proposed rule. We are finalizing the rule as proposed.

We note that, while some comments said BVO should not be present in food generally, § 180.30 did not authorize BVO’s use in all foods. The authorization was specific to BVO’s use, on an interim basis, as a stabilizer for flavoring oils used in fruit-flavored beverages. We previously determined that the use of BVO in food is not GRAS (35 FR 1049). Therefore, BVO cannot be used in food without an authorizing food additive regulation or an applicable exception from regulation as a food additive (e.g., section 201(s)(1) through (6) of the FD&C Act).

(Comment 2) Several comments sought actions in addition to revoking § 180.30. In general, the comments asked us to “ban” other food and color additives and unspecified “poisons and toxins.”

(Response 2) The rulemaking, as well as the administrative record supporting the rule, are specific to BVO. Consequently, requests that we take action against other substances are outside the scope of this rulemaking.

We do note, however, that reassessing the safety of substances used in food is an important part of our food safety mission, especially as new information becomes available. See [https://www.fda.gov/news-events/fda-voices/how-fdas-new-approach-reviewing-](https://www.fda.gov/news-events/fda-voices/how-fdas-new-approach-reviewing-chemicals-added-food-will-strengthen-food-safety)

[chemicals-added-food-will-strengthen-food-safety](https://www.fda.gov/news-events/fda-voices/how-fdas-new-approach-reviewing-chemicals-added-food-will-strengthen-food-safety).

(Comment 3) One comment said that our conclusions regarding BVO’s safety probably would extend to other brominated food additives and asked that we evaluate brominated food additives as a group and ensure that consumers are not exposed to bromine-related health risks through other means once BVO is no longer permitted as a food additive. The comment also asked that we revoke the authorization for all brominated vegetable oils, including brominated soybean oil.

(Response 3) With respect to brominated soybean oil, within § 180.30, the term “brominated vegetable oil” includes any vegetable oil subjected to bromination, as described in section I.A. of this document. Because this rulemaking revokes § 180.30, a vegetable oil subjected to bromination (including brominated soybean, corn, cottonseed, olive, and sesame oil) is no longer authorized for use as a stabilizer for flavoring oils used in fruit-flavored beverages.

With respect to other brominated food additives, this request is outside the scope of this rulemaking.

(Comment 4) Two comments stated that while some manufacturers already have discontinued use of BVO, products containing BVO are available on the market and found in store-brand products and “lesser-known regional brand” products or “value products” sold in low-budget stores. The comments said that people with limited income are more likely to buy such products and, therefore, will be more likely to suffer adverse health effects.

(Response 4) We agree with the comments. In addition, as noted in the economic analysis accompanying the rule, BVO-containing beverages are often sugar-sweetened beverages, and some studies show that low-income consumers may consume more sugar-sweetened beverages and thus may be disproportionately exposed to BVO. Also, as noted in the economic analysis accompanying the proposed rule, news about manufacturers committing to removing BVO has been prevalent in the past decade, which may lead to consumers spending less time reading food product labels to determine whether food contains BVO. This would potentially create an information asymmetry where consumers incorrectly believe that their food no longer contains BVO. Thus, intervention is needed to avoid potential adverse health impacts in the shorter term.

VI. Description of the Final Rule

The final rule revokes § 180.30, which authorizes on an interim basis the use of BVO as a stabilizer for flavoring oils generally used in fruit-flavored beverages, for which any applicable standards of identity do not preclude such use, in an amount not to exceed 15 ppm in the finished beverage. We previously determined that the use of BVO in food is not GRAS (35 FR 1049). Therefore, the use of BVO in food is no longer be authorized.

VII. Effective/Compliance Dates

The final rule's effective date is August 2, 2024.

We also recognize that the food industry would need sufficient time to reformulate products and for these products to work their way through distribution. Therefore, the compliance date for this rule is 1 year after the effective date, to provide the opportunity for companies to reformulate, relabel, and deplete the inventory of BVO-containing products before we begin enforcing the final rule.

VIII. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801, Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866, 13563, and 14094 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Rules

are “significant” under Executive Order 12866 Section 3(f)(1) (as amended by Executive Order 14094) if they “have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of [the Office of Information and Regulatory Affairs (OIRA)] for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities.” OIRA has determined that this final rule is not a significant regulatory action under Executive Order 12866 Section 3(f)(1).

Because this rule is not likely to result in an annual effect on the economy of \$100 million or more or meets other criteria specified in the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act, OIRA has determined that this rule does not fall within the scope of 5 U.S.C. 804(2).

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because we estimate that this final rule will impact at most 2.5 percent of small businesses within the beverage manufacturing industry, and because we believe that costly disruptions to small entities are likely to be small due to replacement formulas for BVO having been in place and widely used for decades, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before issuing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000

or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$183 million, using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. This final rule will not result in an expenditure in any year that meets or exceeds this amount.

Food producers would not be permitted to use BVO as a food additive under the final rule. For the purposes of this analysis, we assume that all products currently using BVO will be reformulated to use some other kind of stabilizer.

The costs of this final rule come from reformulating products currently manufactured with BVO, relabeling products currently manufactured with BVO, ingredient substitutes for BVO, and changes to sensory product properties. The benefits of this final rule come in the form of public health gains from reduced exposure to BVO. The annualized costs (with a discount rate of 2 percent) of this rule, minus the costs of the baseline of gradual voluntary reduction, are \$0.02 million to \$0.06 million. The first-year costs of the final rule are \$6.6 million to \$16.4 million. We estimate the annualized reduction in BVO exposure under the final rule relative to the baseline of gradual voluntary reduction to be roughly 0.02 million oz.

It is possible that the cost of reformulation and relabeling could be passed on to consumers in the form of higher prices. We do not know what percentage of the costs will be passed on to consumers. However, replacement formulas have been in place for decades and are widely used in beverage products throughout the United States and the world. The time between the publication of our final rule and the rule's compliance period should minimize costly disruptions to manufacturers still using BVO.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE FINAL RULE
[Millions of 2023 dollars]

Category	Primary estimate	Low estimate	High estimate	Dollar year	Discount rate (%)	Time horizon	Notes (e.g., risk assumptions; source citations; whether inclusion of capital effects differs across low, primary, high estimates; etc.)
Benefits:							
Annualized monetized benefits.	.....	.....	.....	.....	2	.....	
Annualized quantified, but non-monetized, benefits.	0.02 million oz	0.01 million oz	0.03 million oz .....	.....	.....	2026–2045	The benefits of the final rule come in the form of reduction in exposure to BVO.
Unquantified benefits .....	.....	.....	.....	.....	.....	.....	For the rule to be cost effective, it would have to prevent over \$2 worth of illness annually per oz of reduced BVO exposure.
Costs:							

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE FINAL RULE—Continued
[Millions of 2023 dollars]

Category	Primary estimate	Low estimate	High estimate	Dollar year	Discount rate (%)	Time horizon	Notes (e.g., risk assumptions; source citations; whether inclusion of capital effects differs across low, primary, high estimates; etc.)
Annualized monetized costs.	\$0.04 million/yr	\$0.02 million/yr	\$0.06 million/yr	2023	2	2026–2045	The first-year costs are roughly \$6.6 million to \$16.4 million.
Annualized quantified, but non-monetized, costs.	.....	.....	.....	.....	.....	.....	
Unquantified costs .....	.....	.....	.....	.....	.....	.....	
Transfers:							
Annualized monetized Federal budgetary transfers.	.....	.....	.....	.....	2	.....	We do not know what percentage of producer costs will be passed on to consumers.
Bearers of transfer gain and loss?.	.....	.....	.....	.....	.....	.....	
Other annualized monetized transfers.	.....	.....	.....	.....	2	.....	
Bearers of transfer gain and loss?.	Consumers .....	.....	.....	.....	.....	.....	
Net Benefits:							
Annualized monetized net benefits.	.....	.....	.....	.....	2	.....	
Category	Effects			Notes			
Effects on State, local, or Tribal governments.							
Effects on small businesses ..	No significant impact on substantial number of small businesses.			In the Small Entity Analysis, we estimate that this final rule does not have a significant economic impact on a substantial number of small businesses.			
Effects on wages							
Effects on growth							

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 7) and at <https://www.fda.gov/about-fda/economics-staff/regulatory-impact-analyses-ria>.

We received comments on our preliminary regulatory impact analysis of the proposed rule. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or the order in which it was received.

(Comment 5) One comment said that banning of BVO is supported economically, socially, and scientifically in both the USA as well as many other countries in the world, and that the economic impact of such a ban would be minor especially with the ease of access to safer substitutes.

(Response 5) We appreciate interest in and support of the proposed rule. The preliminary regulatory impact analysis supports the comment's conclusion that the economic impact of banning BVO would be minor, and this is also

supported in our final regulatory impact analysis.

(Comment 6) One comment said that products containing BVO are available on the market and disproportionately expose low-income consumers to health risks.

(Response 6) The distributional analysis section of the preliminary regulatory impact analysis and of the final regulatory impact analysis presents recent statistics and studies showing differential consumption of sugar-sweetened beverages. Some of these statistics and studies concur with the comment's conclusion that low-income consumers are disproportionately exposed to BVO.

(Comment 7) One comment said that, even if the cost to transition to BVO alternatives had been determined to be untenable, BVO should still be banned.

(Response 7) Given that no comments opposed revoking § 180.30 or argued for any other action (such as amending the rule), and given FDA's determination that there is no longer a basis to conclude that this use of BVO is safe, we have finalized the rule by revoking § 180.30.

IX. Analysis of Environmental Impacts

We previously considered the environmental effects of this rule, as stated in the proposed rule (88 FR 75523 at 75527). We stated that we had determined, under 21 CFR 25.32(m), that this action “is of a type that does not individually or cumulatively have a significant effect on the human environment” such that neither an environmental assessment nor an environmental impact statement is required. We did not receive any new information or comments that would affect our previous determination.

X. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that would have a

substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

XII. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the final rule does not contain policies that 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XIII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at <https://www.regulations.gov>. References without asterisks are not on public display at <https://www.regulations.gov> because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

- *1. FDA Memorandum from S. Shibko to Division of Regulations and Petitions Control, May 25, 1970.
- *2. FDA Memorandum from L. Friedman to L. Buckley, Division of Regulations and Petitions Control, October 21, 1970.
- *3. FDA Memorandum from Y. Zang to T. Croce, Division of Petition Review, September 2, 2014.
- 4. Woodling K.A., P. Chitranshi, C.C. Jacob, et al., "Toxicological Evaluation of Brominated Vegetable Oil in Sprague Dawley Rats." *Food and Chemical Toxicology*, 165:113137, 2022.
- *5. FDA Memorandum from D. Doell to J. Downey, Regulatory Review Branch—Team 1, March 1, 2023.

- *6. FDA Memorandum from J. Gingrich to J. Downey, Regulatory Review Branch—Team 1, March 1, 2023.
- *7. FDA Final Rule to Revoke Uses of Brominated Vegetable Oil in Foods (<https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations>).

List of Subjects in 21 CFR Part 180

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 180 is amended as follows:

PART 180—FOOD ADDITIVES PERMITTED IN FOOD OR IN CONTACT WITH FOOD ON AN INTERIM BASIS PENDING ADDITIONAL STUDY

- 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 371; 42 U.S.C. 241.

§ 180.30 [Removed]

- 2. Remove § 180.30.

Dated: June 18, 2024.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2024–14300 Filed 7–2–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 58

[TD 10002]

RIN 1545–BQ60

Excise Tax on Repurchase of Corporate Stock—Procedure and Administration

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the reporting and payment of the excise tax on repurchases of corporate stock made after December 31, 2022. The regulations affect certain publicly traded corporations that repurchase their stock or whose stock is acquired by certain specified affiliates.

DATES:

Effective date: These final regulations are effective on June 28, 2024.

Applicability dates: For dates of applicability, see §§ 58.6001–(d), 58.6011–1(d), 58.6060–1(b), 58.6061–1(b), 58.6065–1(b), 58.6071–1(e),

58.6091–1(d), 58.6107–1(b), 58.6109–1(b), 58.6151–1(b), 58.6694–1(e), 58.6695–1(b), and 58.6696–1(b).

SUPPLEMENTARY INFORMATION:

Background

I. The Proposed Regulations

On April 12, 2024, the Department of the Treasury (Treasury Department) and the IRS published proposed regulations (REG–118499–23) in the **Federal Register** (89 FR 25829) that would provide rules on procedure and administration applicable to the reporting and payment of the excise tax on repurchases of corporate stock (stock repurchase excise tax) imposed by section 4501 of the Internal Revenue Code (Code) for repurchases made after December 31, 2022 (proposed procedural regulations). This Treasury decision finalizes the proposed procedural regulations (other than proposed § 58.6011–1(c)) after taking into account comments received, as described in the Summary of Comments and Explanation of Revisions section of this preamble. The final regulations are added as subpart B of new 26 CFR part 58 (Stock Repurchase Excise Tax Regulations), which is added to subchapter D of 26 CFR chapter I (Miscellaneous Excise Taxes).

On April 12, 2024, the Treasury Department and the IRS also published a separate notice of proposed rulemaking (REG–115710–22) in the same issue of the **Federal Register** (89 FR 25980) that would provide operating rules in proposed subpart A of part 58 relating to the computation of the stock repurchase excise tax (proposed computational regulations). This Treasury decision does not finalize the proposed computational regulations. The Treasury Department and the IRS intend to finalize the proposed computational regulations in a separate Treasury decision after considering comments received with respect to those proposed regulations.

II. Section 4501; Notice 2023–2

Section 4501 was added to a new chapter 37 of the Code by the enactment of section 10201 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). In general, section 4501 imposes the stock repurchase excise tax on each covered corporation (as defined in section 4501(b)) for repurchases made after December 31, 2022. See section 10201(d) of the IRA. The stock repurchase excise tax is equal to 1 percent of the fair market value of any stock of the covered corporation that is

repurchased (as defined in section 4501(c)(1)) by the covered corporation, or treated as repurchased by the covered corporation, during the taxable year. Section 4501(a). The term “covered corporation” includes an entity treated as a covered corporation under section 4501(d)(1)(A) or (d)(2)(A).

Section 4501(f) authorizes the Secretary of the Treasury or her delegate (Secretary) to prescribe regulations and other guidance as are necessary or appropriate to carry out, and to prevent the avoidance of, the purposes of section 4501.

On January 17, 2023, the Treasury Department and the IRS published Notice 2023–2, 2023–3 I.R.B. 374, to provide initial guidance on the application of the stock repurchase excise tax. The notice described certain operating rules for purposes of the stock repurchase excise tax that the Treasury Department and the IRS intended to include in proposed regulations. In addition, section 4 of Notice 2023–2 described the anticipated rules for reporting and paying any liability for the stock repurchase excise tax. As described in Notice 2023–2, those anticipated rules would provide that (i) the stock repurchase excise tax must be reported on IRS Form 720, *Quarterly Federal Excise Tax Return*, (ii) taxpayers must attach an additional form to the Form 720 reflecting the computation of the stock repurchase excise tax, (iii) the stock repurchase excise tax must be reported once per taxable year on the Form 720 that is due for the first full quarter after the close of the taxpayer’s taxable year, (iv) the deadline for payment of the stock repurchase excise tax is the same as the filing deadline, and (v) no extensions are permitted for reporting or paying the stock repurchase excise tax.

Consistent with Notice 2023–2, on April 12, 2024, the Treasury Department and the IRS published the proposed procedural regulations prescribing the manner and method of reporting and paying the stock repurchase excise tax in proposed subpart B of the proposed Stock Repurchase Excise Tax Regulations (26 CFR part 58) under sections 6001, 6011, 6060, 6061, 6065, 6071, 6091, 6107, 6109, 6151, 6694, 6695, and 6696 of the Code. As noted in the preamble to the proposed procedural regulations, to assist in the identification of transactions subject to the stock repurchase excise tax, the Treasury Department and the IRS have added items relevant to the stock repurchase excise tax to tax return forms other than Form 720. *See* Form 1120, *U.S. Corporation Income Tax Return* and Form 1065, *U.S. Return of*

Partnership Income. The Treasury Department and the IRS continue to evaluate amending or developing other forms, including for information reporting with respect to foreign owners of domestic business entities and domestic owners of foreign business entities, to assist in the identification of transactions subject to the stock repurchase excise tax.

Summary of Comments and Explanation of Revisions

After consideration of the comments received in response to the proposed procedural regulations, this Treasury decision adopts those regulations (other than proposed § 58.6011–1(c)) with the revisions described in this Summary of Comments and Explanation of Revisions.

I. Combination of Proposed Procedural Regulations and Proposed Computational Regulations

One commenter suggested that the proposed computational regulations and the proposed procedural regulations should be combined into one proposal because they stem from the same piece of legislation, have the same goal, and employ the same methodology of achieving that goal. These final regulations do not adopt the commenter’s suggestion. Although the proposed computational regulations and the proposed procedural regulations stem from, and facilitate the implementation of, the same piece of legislation, the Treasury Department and the IRS proposed these regulations in two separate notices of proposed rulemaking to facilitate the prompt finalization of the proposed procedural regulations, and to thereby provide taxpayers with certainty regarding the manner of reporting and paying the stock repurchase excise tax. Moreover, it is not uncommon for the Treasury Department and the IRS to issue separate tranches of regulatory guidance with respect to a single statutory provision.

II. Recordkeeping Requirement

Under proposed § 58.6001–1(a), any covered corporation, or any person treated as a covered corporation, that makes a repurchase or that is treated as making a repurchase is required to keep complete and detailed records sufficient to establish accurately the amount of repurchases, adjustments, or exceptions required to be shown on its stock repurchase excise tax return. Proposed § 58.6001–1(b) provides that the IRS may require any covered corporation or person treated as a covered corporation to make such returns, render such

statements, or keep such specific records as to enable the IRS to determine whether the covered corporation or person treated as a covered corporation is liable for the stock repurchase excise tax. Proposed § 58.6001–1(c) provides that the records required to be maintained must be available for inspection by the IRS and retained for so long as their contents may become material.

One commenter suggested that a covered corporation should be required to keep only complete and detailed records sufficient to establish the amount of tax shown on its stock repurchase excise tax return, which is defined under proposed § 58.6011–1(b). For example, according to the commenter, if the covered corporation chooses one method for valuing the amount of the corporation’s repurchases and issuances, and the IRS asserts that the covered corporation should have used a different method for valuing the amount of the corporation’s repurchases and issuances, the covered corporation should not be required to maintain records sufficient to establish the amount of the corporation’s repurchases and issuances under the IRS’s preferred method of valuation.

The Treasury Department and the IRS disagree with the commenter. The recordkeeping requirements in proposed § 58.6001–1(a) are similar to the recordkeeping requirements under section 6001 for other excise taxes in subchapter D of 26 CFR chapter I (Miscellaneous Excise Taxes). *See*, for example, §§ 53.6001–1(a) (“Any person subject to tax under chapter 42 . . . shall keep records as are sufficient to enable the district director to determine accurately the amount of liability”); 55.6001–1(a) (similar with respect to tax under chapter 44); 56.6001–1(a) (similar with respect to tax under chapter 41); 156.6001–1(a) (similar with respect to tax under chapter 54); and 157.6001–1(a) (similar with respect to tax under chapter 55). Moreover, the valuation requirements in the proposed computational regulations would allow covered corporations to choose from one of four acceptable methods in determining the market price of publicly traded stock so long as the covered corporation consistently applies such method throughout the covered corporation’s taxable year. *See* proposed §§ 58.4501–2(h) and –4(e). This recordkeeping requirement appropriately balances the need for covered corporations to keep records with the IRS’s need to be able to establish accurately the amount of repurchases, adjustments, or exceptions required to be shown on a covered

corporation's stock repurchase excise tax return. Accordingly, these final regulations do not adopt this comment.

III. Return Requirement

A. Overview

Proposed § 58.6011–1(a) would require a stock repurchase excise tax return to be filed by any covered corporation, or any person treated as a covered corporation, that makes a repurchase (as defined in section 4501(c)(1)), or that is treated as making a repurchase under section 4501(c)(2)(A), (d)(1)(B), or (d)(2)(B), after December 31, 2022. Under the proposed procedural regulations, any covered corporation, or any person treated as a covered corporation, that makes a repurchase, or that is treated as making a repurchase, is required to comply with these requirements, even if every repurchase is eligible for a statutory exception under section 4501(e) (for example, in the case of repurchases by a regulated investment company (RIC), as defined in section 851 of the Code, or a real estate investment trust (REIT), as defined in section 856(a) of the Code) or is offset by issuances or provisions of the covered corporation's stock under section 4501(c)(3).

B. Filing Obligations of Regulated Investment Companies and Real Estate Investment Trusts

One commenter recommended that RICs and REITs should be exempt from filing the Form 7208, *Excise Tax on Repurchase of Corporate Stock*, provided all repurchases during the relevant reporting period are made by the RIC or the REIT and thereby qualify for the statutory exception under section 4501(e)(5). Alternatively, the commenter recommended that, in lieu of requiring RICs and REITs to file Form 7208 with respect to their repurchases, the IRS could add a “checkbox” to Form 1120–RIC, *U.S. Income Tax Return for Regulated Investment Companies*, and Form 1120–REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, pursuant to which RICs and REITs could certify that all stock repurchases made during the taxable year qualified for the statutory exception under section 4501(e)(5). According to the commenter, requiring RICs and REITs to file a Form 7208 in situations in which all their repurchases qualify for the statutory exception under section 4501(e)(5) would be unnecessary, burdensome, and duplicative of filings already required by the Securities and Exchange Commission (SEC), with no apparent benefit for tax compliance.

The Treasury Department and the IRS agree that, so long as a covered corporation qualifies as a RIC or a REIT for a taxable year, then all of such corporation's repurchases of its stock during that year would qualify for the statutory exception under section 4501(e)(5). Accordingly, the final regulations adopt the commenter's primary recommendation and exempt RICs and REITs from the obligation to file a stock repurchase excise tax return. See § 58.6011–1(a).

However, RICs and REITs would continue to be subject to the recordkeeping requirement in § 58.6001–1 under the final regulations. Records establishing a RIC's or a REIT's repurchases, adjustments, and exceptions under the stock repurchase excise tax could become relevant in the event a covered corporation ceases to qualify as a RIC or a REIT for the taxable year, or if the corporation revokes its election to be a REIT for the taxable year. In such cases, the corporation's repurchases would not qualify for the exception under section 4501(e)(5), and the information required to be retained under § 58.6001–1 would be required to compute the corporation's stock repurchase excise tax liability.

C. Filing Obligation Only for Taxable Years in Which a Repurchase Is Made

Commenters have asked whether proposed § 58.6011–1(a) could be construed as mandating a continuing annual filing requirement for any covered corporation or any person treated as a covered corporation that has made a repurchase, or that is treated as having made a repurchase, in a previous taxable year. For example, commenters have suggested that the language of proposed § 58.6011–1(a) could be read as requiring a covered corporation to file a stock repurchase excise tax return even with respect to taxable years in which the covered corporation has not made a repurchase, because proposed § 58.6011–1(a) requires any covered corporation that makes a repurchase after December 31, 2022, to file a stock repurchase excise tax return, without specifying that a repurchase must occur within the period for which such return is filed.

The Treasury Department and the IRS intended a stock repurchase excise tax return to be filed only with respect to a taxable year in which a repurchase, or a transaction treated as a repurchase, is made. Accordingly, these final regulations revise § 58.6011–1(a) to clarify that a stock repurchase excise tax return must be filed with respect to any taxable year in which the covered corporation or person treated as a

covered corporation makes a repurchase or is treated as making a repurchase.

D. Special Rules for Multiple Section 4501(d) Covered Corporations With Respect to a Covered Surrogate Foreign Corporation

Proposed § 58.6011–1(c) cross-references proposed § 58.4501–7(d)(2) for special rules applicable to persons treated as a covered corporation (as described in section 4501(d)(2)(A)) with respect to a covered surrogate foreign corporation (as defined in section 4501(d)(3)(B)). These final regulations reserve § 58.6011–1(c). The Treasury Department and the IRS intend to finalize proposed § 58.6011–1(c) when proposed § 58.4501–7(d)(2) is finalized.

IV. Signing of Stock Repurchase Excise Tax Return

Under proposed § 58.6061–1(a), any stock repurchase excise tax return, statement, or other document required to be made with respect to the stock repurchase excise tax would be required to be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document.

One commenter suggested that the signing requirement under proposed § 58.6061–1(a) should be coordinated with the signing requirement under section 6062 of the Code. Section 6062 provides that “[t]he return of a corporation *with respect to income* shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act” (emphasis added).

These final regulations do not adopt this comment. By its terms, section 6062 addresses corporate *income tax* returns and does not apply to excise tax returns, including the stock repurchase excise tax return. Accordingly, the appropriate party to sign the stock repurchase excise return must be designated under section 6061, rather than section 6062. Moreover, proposed § 58.6011–1(b) would provide that the stock repurchase excise tax return is the Form 720 with an attached Form 7208. The Form 7208 does not have a signature line, and the instructions to the Form 7208 require the form to be attached to a Form 720, which must be signed under penalties of perjury. See Instructions to Form 7208. As such, the appropriate party to sign the stock repurchase excise tax return is the party who signs the Form 720.

V. Example in Proposed § 58.6071–1(d)

The Treasury Department and the IRS have made non-substantive revisions to the *Example* in proposed § 58.6071–1(d) to align it with the effective date of these final regulations.

VI. Modification of Applicability Date

The rules described in the proposed procedural regulations generally were proposed to have applied to stock repurchase excise tax returns (and to the extent relevant, claims for refund) required to be filed after the date final regulations were published in the **Federal Register**, and during taxable years ending after the date final regulations were published in the **Federal Register**. These final regulations will apply to stock repurchase excise tax returns (and to the extent relevant, claims for refund) required to be filed after the date these final regulations are filed with the **Federal Register**, and during taxable years ending after the date these final regulations are filed in the **Federal Register**. The Treasury Department and the IRS have made this slight adjustment to the applicability dates to facilitate the IRS's administration and enforcement of the stock repurchase excise tax and provide guidance to taxpayers as quickly as possible.

Statement of Availability for IRS Documents

Any IRS Revenue Procedure, Revenue Ruling, Notice, or other guidance cited in this preamble is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is

mandatory, voluntary, or required to obtain or retain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in these final regulations contain reporting and recordkeeping requirements in §§ 58.6001–1 and 58.6011–1 necessary for the IRS to accurately determine the stock repurchase excise tax due. The collection of information is required by law to comply with the provisions of section 4501 of the Code as enacted by section 10201 of the IRA.

The recordkeeping requirements mentioned within these final regulations are considered general tax records under section 6001. These records are required for the IRS to validate that taxpayers have met the regulatory requirements. The reporting requirements, including the written penalty of perjury statement, are covered within Form 7208 and its instructions. The IRS obtained OMB approval for Form 7208 and the associated collections under 1545–2323 in accordance with the procedures outlined in 5 CFR 1320.10.

These final regulations mention reporting and recordkeeping requirements for tax preparers. These final regulations are not changing the requirements contained within § 1.6107–1, which is included in 1545–1231.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these final regulations provide specific administrative, procedural, and recordkeeping rules that apply only to certain tax return preparers and to publicly traded corporations, which tend to consist of larger businesses. Specifically, based on data available to the IRS, for tax year 2021, 4,366 corporations reported publicly traded common stock. Of those corporations, 2,407 (over 55 percent) reported gross receipts over \$100 million, and 3,272 (approximately 75 percent) reported gross receipts over \$10 million. Meanwhile, for tax year 2021, the IRS received 7,464,790 Corporation Income Tax Returns and 4,710,457 U.S. Returns of Partnership Income. IRS Publication 6292, Fiscal Year Projections for the United States: 2022–2029, Fall 2022, Table 2. Of these corporation and partnership returns for

tax year 2021, 11,685,207 reported total assets below \$10 million. Thus, the number of corporations affected by these final regulations that reported total assets below \$10 million is less than one hundredth of one percent of the total number of businesses that reported total assets below \$10 million for tax year 2021. Therefore, these final regulations will not create additional obligations for, or impose an economic impact on, a substantial number of small entities. Accordingly, the Secretary certifies that the final regulations will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Internal Revenue Code, the proposed procedural regulations (REG–118499–23) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business, and no comments were received.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency (to the extent practicable and permitted by law) from promulgating any regulation that has federalism implications, unless the agency meets the consultation and funding requirements of section 6 of the Executive order, if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VII. Congressional Review Act

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

Drafting Information

The principal authors of these regulations are Kailee H. Farrell and Samuel G. Trammell of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 58

Excise taxes, Stock repurchase excise tax, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 58 is added to read as follows:

PART 58—STOCK REPURCHASE EXCISE TAX

Subpart A—[Reserved]

Subpart B—Procedure and Administration

Sec.

- 58.6001–1 Notice or regulations requiring records, statements, and special returns.
- 58.6011–1 General requirement of return, statement, or list.
- 58.6060–1 Reporting requirements for tax return preparers.
- 58.6061–1 Signing of returns and other documents.
- 58.6065–1 Verification of returns.
- 58.6071–1 Time for filing returns.
- 58.6091–1 Place for filing tax returns under chapter 37 of the Internal Revenue Code.
- 58.6107–1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.
- 58.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.
- 58.6151–1 Time and place for paying of tax shown on returns.
- 58.6694–1 Section 6694 penalties.
- 58.6695–1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.
- 58.6696–1 Claims for credit or refund by tax return preparers

Authority: 26 U.S.C. 4501(f) and 7805.

Section 58.6001–1 also issued under 26 U.S.C. 6001;

Section 58.6011–1 also issued under 26 U.S.C. 6011(a);

Section 58.6060–1 also issued under 26 U.S.C. 6060(a);

Section 58.6061–1 also issued under 26 U.S.C. 6061(a);

Section 58.6065–1 also issued under 26 U.S.C. 6065;

Section 58.6071–1 also issued under 26 U.S.C. 6071(a);

Section 58.6091–1 also issued under 26 U.S.C. 6091(a);

Section 58.6107–1 also issued under 26 U.S.C. 6107;

Section 58.6109–1 also issued under 26 U.S.C. 6109(a);

Section 58.6151–1 also issued under 26 U.S.C. 6151;

Section 58.6694–1 also issued under 26 U.S.C. 6694;

Section 58.6695–1 also issued under 26 U.S.C. 6695;

Section 58.6696–1 also issued under 26 U.S.C. 6696.

Subpart A—[Reserved]

Subpart B—Procedure and Administration

§ 58.6001–1 Notice or regulations requiring records, statements, and special returns.

(a) *In general.* Any covered corporation (as defined in section 4501(b) of the Internal Revenue Code (Code)), or any person treated as a covered corporation (as described in section 4501(d)(1)(A) or (d)(2)(A)), that makes a repurchase (as defined in section 4501(c)(1)), or that is treated as making a repurchase under section 4501(c)(2)(A), (d)(1)(B), or (d)(2)(B), must keep such complete and detailed records as are sufficient to establish accurately the amount of repurchases, adjustments, or exceptions required to be shown by the covered corporation or person treated as a covered corporation in any stock repurchase excise tax return (as defined in § 58.6011–1(b)).

(b) *Notice by IRS requiring returns, statements, or the keeping of records.* The Internal Revenue Service (IRS) may require any covered corporation or person treated as a covered corporation, by notice served upon such corporation or person, to make such returns, render such statements, or keep such specific records as will enable the IRS to determine whether or not such corporation or person is liable for tax under chapter 37 of the Code.

(c) *Retention of records.* The records required by this section must be kept at all times available for inspection by the IRS and must be retained for so long as the contents thereof may become material in the administration of any internal revenue law.

(d) *Applicability date.* This section applies to repurchases, adjustments, or exceptions required to be shown in any stock repurchase excise tax return required to be filed after June 28, 2024, and during taxable years ending after June 28, 2024.

§ 58.6011–1 General requirement of return, statement, or list.

(a) *In general.* Any covered corporation (as defined in section 4501(b) of the Internal Revenue Code (Code)), or any person treated as a covered corporation (as described in section 4501(d)(1)(A) or (d)(2)(A)), other than a regulated investment company (as defined in section 851 of the Code) or a real estate investment trust (as defined in section 856(a) of the Code), that makes a repurchase (as defined in section 4501(c)(1)), or that is treated as making a repurchase under section 4501(c)(2)(A), (d)(1)(B), or (d)(2)(B), after December 31, 2022, must file a stock repurchase excise tax return with respect to any taxable year in which the covered corporation or person treated as a covered corporation makes a repurchase or is treated as making a repurchase under section 4501(c)(2)(A), (d)(1)(B), or (d)(2)(B).

(b) *Stock Repurchase Excise Tax Return.* For purposes of this part, the term *stock repurchase excise tax return* means the Form 720, *Quarterly Federal Excise Tax Return*, due for the first full calendar quarter after the end of the covered corporation's taxable year, with an attached Form 7208, *Excise Tax on Repurchase of Corporate Stock*, or any other forms, schedules, or statements prescribed by the Commissioner for the purpose of making a return to report the tax under chapter 37 of the Code.

(c) [Reserved]

(d) *Applicability date.* This section applies to stock repurchase excise tax returns required to be filed after June 28, 2024, and during taxable years ending after June 28, 2024.

§ 58.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that engages or employs one or more signing tax return preparers (as defined in § 301.7701–15(b)(1) of this chapter) to prepare a stock repurchase excise tax return (as defined in § 58.6011–1(b)) or claim for refund of tax under chapter 37 of the Internal Revenue Code, other than for the person, at any time during a return period, must satisfy the recordkeeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Applicability date.* This section applies to stock repurchase excise tax returns and claims for refund required to be filed after June 28, 2024, and during taxable years ending after June 28, 2024.

§ 58.6061–1 Signing of returns and other documents.

(a) *In general.* Any stock repurchase excise tax return (as defined in § 58.6011–1(b)), statement, or other document required to be made with respect to the tax imposed by chapter 37 of the Internal Revenue Code must be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such a return, statement, or other document is prima facie evidence that the individual is authorized to sign the return, statement, or other document.

(b) *Applicability date.* This section applies to stock repurchase excise tax returns, statements, or other documents that are required to be made with respect to the tax imposed by chapter 37 and required to be filed after June 28, 2024, and during taxable years ending after June 28, 2024.

§ 58.6065–1 Verification of returns.

(a) *In general.* If either a stock repurchase excise tax return (as defined in § 58.6011–1(b)), statement, or other document made with respect to any tax imposed by chapter 37 of the Internal Revenue Code, or the related form and instructions, requires that such return, statement, or other document contain or be verified by a written declaration that it is made under the penalties of perjury, then it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 37, subtitle F, or regulations under this part with respect to any tax imposed by chapter 37 may be required to contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) *Applicability date.* This section applies to stock repurchase excise tax returns, statements, or other documents that are required to be made with respect to the tax imposed by chapter 37 and required to be filed after June 28, 2024, and during taxable years ending after June 28, 2024.

§ 58.6071–1 Time for filing returns.

(a) *In general.* Except as provided in paragraph (c) of this section, a stock repurchase excise tax return required by § 58.6011–1(a) must be filed by the due date of the Form 720, *Quarterly Federal Excise Tax Return*, that is for the first full calendar quarter after the end of the taxable year of the covered corporation

(as defined in section 4501(b) of the Internal Revenue Code (Code)), or person treated as a covered corporation (as described in section 4501(d)(1)(A) or (d)(2)(A)).

(b) *Example.* Corporation X is a covered corporation with a taxable year that ends on December 31. During its 2024 taxable year, Corporation X makes a repurchase within the meaning of section 4501(c)(1). Because Corporation X's taxable year ends in the fourth quarter of the calendar year, Corporation X must file a stock repurchase excise tax return reporting liability for the tax imposed by chapter 37 of the Code by the due date for a first-quarter Form 720 (that is, April 30, 2025).

(c) *Taxable years ending on or before June 28, 2024.* With respect to a covered corporation, or person treated as a covered corporation, with a taxable year ending after December 31, 2022, and on or before June 28, 2024, the stock repurchase excise tax return required by § 58.6011–1(a) for such taxable year must be filed by the due date of the Form 720 for the first full calendar quarter after June 28, 2024. If a covered corporation, or person treated as a covered corporation, has more than one taxable year ending after December 31, 2022, and on or before June 28, 2024, the covered corporation, or person treated as a covered corporation, should file a single Form 720 with two separate Forms 7208, *Excise Tax on Repurchase of Corporate Stock* (one for each taxable year) attached.

(d) *Example.* Corporation Y is a covered corporation with a taxable year ending December 31, 2023. During its 2023 taxable year, Corporation Y makes a repurchase within the meaning of section 4501(c)(1). Corporation Y is required to file the stock repurchase excise tax return for its 2023 taxable year by the due date of the Form 720 for the first full calendar quarter after June 28, 2024. The due date for the Form 720 for the first full calendar quarter after June 28, 2024 (that is, the third quarter Form 720), is October 31, 2024.

(e) *Applicability date.* This section applies to stock repurchase excise tax returns required to be filed after June 28, 2024, and during taxable years ending after June 28, 2024.

§ 58.6091–1 Place for filing tax returns under chapter 37 of the Internal Revenue Code.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, stock repurchase excise tax returns required by § 58.6011–1(a) must be filed in accordance with the instructions applicable to such returns.

(b) *Hand-carried returns.*

Notwithstanding paragraph (a) of this section, stock repurchase excise tax returns that are filed by hand carrying must be filed with any person assigned the responsibility to receive hand-carried returns in the local Internal Revenue Service (IRS) office that serves the principal place of business, principal office, or agency of the taxpayer.

(c) *Exceptional cases.*

Notwithstanding paragraph (a) of this section, the Commissioner may permit the filing of any stock repurchase excise tax return in any local IRS office.

(d) *Applicability date.* This section applies to stock repurchase excise tax returns required to be filed after June 28, 2024, and during taxable years ending after June 28, 2024.

§ 58.6107–1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer (as defined in § 301.7701–15(b)(1) of this chapter) of any stock repurchase excise tax return required by § 58.6011–1(a) or claim for refund of tax under chapter 37 of the Internal Revenue Code must furnish a completed copy of the stock repurchase excise tax return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Applicability date.* This section applies to stock repurchase excise tax returns and claims for refund required to be filed after June 28, 2024, and during taxable years ending after June 28, 2024.

§ 58.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each stock repurchase excise tax return required by § 58.6011–1(a) or claim for refund of tax under chapter 37 of the Internal Revenue Code prepared by one or more signing tax return preparers (as defined in § 301.7701–15(b)(1) of this chapter) must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the stock repurchase excise tax return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Applicability date.* This section applies to stock repurchase excise tax returns and claims for refund required to be filed after June 28, 2024, and during taxable years ending after June 28, 2024.

§ 58.6151–1 Time and place for paying of tax shown on returns.

(a) *In general.* The tax shown on any stock repurchase excise tax return required by § 58.6011–1(a) must, without assessment or notice and demand, be paid to the Internal Revenue Service at the time and place for filing such stock repurchase excise tax return. For provisions relating to the time and place for filing the stock repurchase excise tax return required under § 58.6011–1(a), see §§ 58.6071–1 and 58.6091–1.

(b) *Applicability date.* This section applies to payments of stock repurchase excise tax required to be paid after June 28, 2024, and during taxable years ending after June 28, 2024.

§ 58.6694–1 Section 6694 penalties.

(a) *Penalties applicable to tax return preparer.* For general definitions regarding penalties under section 6694 of the Internal Revenue Code (Code) applicable to preparers of tax returns or claims for refund of tax under chapter 37 of the Code, see § 1.6694–1 of this chapter.

(b) *Penalties for understatement due to an unreasonable position.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 37 may be subject to penalties under section 6694(a) in the manner stated in § 1.6694–2 of this chapter.

(c) *Penalties for understatement due to willful, reckless, or intentional conduct.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 37 may be subject to penalties under section 6694(b) in the manner stated in § 1.6694–3 of this chapter.

(d) *Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.* The rules under § 1.6694–4 of this chapter, relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund of tax pays 15 percent of a penalty for understatement of taxpayer's liability and to procedural matters regarding the investigation, assessment, and collection of the penalties under sections 6694(a) and (b), apply to a tax return preparer who prepared a return or claim for refund for tax under chapter 37.

(e) *Applicability date.* This section applies to returns and claims for refund filed, and advice provided, after June 28, 2024, and during taxable years ending after June 28, 2024.

§ 58.6695–1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 37 of the Internal Revenue Code (Code) may be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b), failure to furnish an identifying number under section 6695(c), failure to retain a copy or list under section 6695(d), failure to file a correct information return under section 6695(e), and endorsement or negotiation of a check under section 6695(f), in the manner stated in § 1.6695–1 of this chapter.

(b) *Applicability date.* This section applies to returns and claims for refund filed after June 28, 2024, and during taxable years ending after June 28, 2024.

§ 58.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* The rules under § 1.6696–1 of this chapter apply to claims for credit or refund by a tax return preparer who prepared a return or claim for credit or refund for tax under chapter 37 of the Internal Revenue Code.

(b) *Applicability date.* This section applies to returns and claims for credit or refund filed, and advice provided, after June 28, 2024, and during taxable years ending after June 28, 2024.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: June 24, 2024.

Aviva R. Aron-Dine,
Acting Assistant Secretary of the Treasury
(Tax Policy).

[FR Doc. 2024–14426 Filed 6–28–24; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY**Financial Crimes Enforcement Network****31 CFR Part 1010****RIN 1506–AB65****Imposition of Special Measure Regarding Al-Huda Bank as a Financial Institution of Primary Money Laundering Concern**

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is issuing this final rule to prohibit covered U.S. financial institutions from opening or

maintaining a correspondent account for, or on behalf of Al-Huda Bank, a foreign financial institution based in Iraq found to be of primary money laundering concern pursuant to section 311 of the USA PATRIOT Act. The rule further requires covered U.S. financial institutions to take reasonable steps not to process transactions for the correspondent account of a foreign banking institution in the United States if such a transaction involves Al-Huda Bank. It also requires covered institutions to apply special due diligence to their foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving Al-Huda Bank.

DATES: This final rule is effective August 2, 2024.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:**I. Background****A. Statutory Provisions**

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56 (USA PATRIOT Act). Title III of the USA PATRIOT Act amended the anti-money laundering (AML) provisions of the Bank Secrecy Act (BSA) to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.¹ Section 311 of the USA PATRIOT Act (section 311), codified at 31 U.S.C. 5318A, grants the Secretary of the Treasury (Secretary) authority, upon finding that reasonable grounds exist for concluding that one or more financial institutions operating outside of the United States is of primary money laundering concern, to require domestic financial institutions and domestic financial agencies to take certain “special measures.” The authority of the Secretary to administer the Bank Secrecy Act (BSA) and its implementing regulations has been delegated to FinCEN.²

¹ The BSA, as amended, is the popular name for a collection of statutory authorities that FinCEN administers that is codified at 12 U.S.C. 1829b, 1951–1960 and 31 U.S.C. 5311–5314, 5316–5336, and includes other authorities reflected in notes thereto. Regulations implementing the BSA appear at 31 CFR Chapter X.

² Pursuant to Treasury Order 180–01 (Jan. 14, 2020), the authority of the Secretary to administer the BSA, including, but not limited to, 31 U.S.C. 5318A, has been delegated to the Director of FinCEN.

The five special measures set out in section 311 are safeguards that may be employed to defend the U.S. financial system from money laundering and terrorist financing risks. The Secretary may impose one or more of these special measures in order to protect the U.S. financial system from such threats. Through special measures one through four, the Secretary may impose additional recordkeeping, information collection, and reporting requirements on covered domestic financial institutions and domestic financial agencies—collectively, “covered financial institutions.”³ Through special measure five, the Secretary may prohibit, or impose conditions on, the opening or maintaining in the United States of a correspondent account for or on behalf of a foreign banking institution, if such correspondent account involves the foreign financial institution found to be of primary money laundering concern.⁴

B. Al-Huda Bank

Al-Huda Bank is a private commercial bank registered and headquartered in Baghdad, Iraq, with five branch locations in Baghdad, Karbala, and Nasiriyah, Iraq. Al-Huda Bank has no subsidiaries or branches outside of Iraq and is regulated by the Central Bank of Iraq (CBI).

Al-Huda Bank has no direct U.S. correspondent banking relationships but interacts with the U.S. financial system indirectly through U.S. dollar (USD) correspondent accounts at six foreign financial institutions. In other words, Al-Huda Bank interacts with foreign banks that themselves have correspondent accounts with U.S. banks.

II. FinCEN’s Section 311 Rulemaking Regarding Al-Huda Bank

A. Finding

In a notice of proposed rulemaking (NPRM) published in the **Federal Register** on January 31, 2024, FinCEN found that reasonable grounds exist for concluding that Al-Huda Bank is a foreign financial institution of primary money laundering concern pursuant to 31 U.S.C. 5318A.⁵

As described in the NPRM, FinCEN assesses that Al-Huda Bank has exploited its access to USD to support designated foreign terrorist organizations (FTOs), including Iran’s Islamic Revolutionary Guard Corps (IRGC) and IRGC-Quds Force (IRGC-QF), as well as Iran-aligned Iraqi

militias Kata’ib Hizballah (KH) and Asa’ib Ahl al-Haq (AAH).⁶ Since its establishment, Al-Huda Bank has been controlled and operated by the IRGC and IRGC-QF. Moreover, the chairman of Al-Huda Bank is complicit in Al-Huda Bank’s illicit financial activities, including money laundering through front companies that conceal the true nature of and parties involved in illicit transactions, ultimately enabling the financing of terrorism.

Given the nature of Iraq’s economy and trade relationships, Iraqi businesses that import goods into Iraq rely on wire transfers of USD from the CBI account at the Federal Reserve Bank of New York (FRBNY), a process known as the wire auction, or more generally the “CBI dollar auction.”⁷ Many Iraqi businesses and financial institutions use the CBI dollar auction for legitimate purposes. However, FinCEN assesses that Al-Huda Bank has deliberately embarked on a strategy that relies on exploiting the CBI dollar auction to support designated FTOs, including the IRGC, IRGC-QF, KH, and AAH, with the support of the Iranian government. Al-Huda Bank has actively supported terrorist groups and abused the CBI dollar auction through numerous money laundering typologies, including use of fraudulent documentation to obscure the ultimate beneficiaries of the transactions. Given these facts, FinCEN assesses that there is a high risk of Al-Huda Bank exploiting USD correspondent relationships to support its money laundering and terrorist financing activity.

1. Al-Huda Bank Has Exploited Its Access to USD Through the Wire Auction

Individual Iraqi businesses that import goods into Iraq rely on wire transfers of USD from CBI’s account at the FRBNY. The wire auction, a part of what is known as the CBI dollar auction, is the mechanism by which the CBI provides USD to facilitate the purchase of imports. When Iraq sells oil in the international petroleum markets, the revenues are credited in USD to the CBI’s account at the FRBNY. Iraqi

companies with accounts at Iraqi banks can then access the CBI dollar auction to purchase USD with IQD to pay for imports. USD are transferred from the CBI’s FRBNY account to an Iraqi bank, and onward to a third-country bank on behalf of a third-country exporter.

Many Iraqi businesses and their banks use the CBI dollar auction for its intended, legitimate purpose of facilitating imports of goods. However, FinCEN assesses that Al-Huda Bank has deliberately embarked on a strategy that relies on illegitimate exploitation of the CBI dollar auction to support designated FTOs, including the IRGC, IRGC-QF, KH, and AAH, with the support of the Iranian government.

With the knowledge of Al-Huda Bank’s chairman, Al-Huda Bank’s abuse of the CBI dollar auction was obfuscated through the application of numerous money laundering typologies, including the use of fraudulent documentation, fake deposits, identity documents of the deceased, fake companies, and counterfeit IQD, which were used to purchase USD and support terrorist groups and militias. For years, Al-Huda Bank has been involved in these deceptive money laundering activities. Examples of three of these money laundering typologies are discussed below: (1) fraudulent documentation; (2) stolen identities; and (3) counterfeit IQD. Al-Huda Bank’s use of these money laundering typologies also risks exposing covered financial institutions to Al-Huda Bank’s exploitation of USD correspondent banking relationships to support its terrorist financing activities.

Since at least 2012, Al-Huda Bank has used fraudulent documentation to purchase foreign currency—including USD—from the CBI at CBI dollar auctions. Based on media reporting, between 2012 and 2014, Al-Huda Bank filed false documentation to justify international transfers of over \$6 billion to banks and companies.⁸ On at least one occasion, government authorities detected Al-Huda Bank’s filing of fraudulent documentation, which resulted in freezing of a transfer of a significant amount of money. In another scheme, Al-Huda Bank would deposit fake checks to make the balance seem higher on the account Al-Huda Bank used in CBI dollar auctions. The fake check deposits would allow Al-Huda Bank to purchase USD using that false higher balance before the fake check

⁶ The U.S. Department of State has authority to designate organizations as FTOs. The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) has also designated the IRGC, IRGC-QF, KH, and AAH pursuant to multiple sanctions authorities.

⁷ The CBI dollar auction comprises both (1) the wire auction, and (2) bulk USD banknote shipments to Iraq which the CBI sells to exchange houses and banks in return for Iraqi dinar (IQD). The latter is known as the “cash auction” and is a separate process from the wire auction. Al-Huda Bank’s known illicit finance activities described herein are related to the wire auction.

⁸ Al-Arabiya, “Billions of Dollars” Smuggled Out of Iraq During Maliki’s Rule (Nov. 9, 2015), available at <https://english.alarabiya.net/News/middle-east/2015/11/09/Iraq-smuggled-billions-of-dollars-during-Maliki-s-rule>.

³ 31 U.S.C. 5318A(b)(1)–(b)(4).

⁴ 31 U.S.C. 5318A(b)(5).

⁵ 89 FR 6074 (Jan. 31, 2024).

bounced, which Al-Huda Bank would then write off.

Al-Huda Bank, with its chairman's knowledge, has also abused the CBI dollar auction by utilizing stolen identities. In one scheme, the Al-Huda Bank chairman and other Al-Huda Bank officials would use the identification documents of deceased individuals to purchase USD in CBI dollar auctions. Al-Huda Bank officials would also pay living people for use of their identification documents. The illicit use of identification documents allowed Al-Huda Bank to circumvent limits on currency purchases.

With the knowledge of Al-Huda Bank's chairman, Al-Huda Bank has also been involved in funneling of counterfeit IQD through fake businesses in Iraq. The counterfeit IQD would be printed in Iran, funneled through Iraqi businesses, and then exchanged for USD. The use of counterfeit IQD greatly increases the amount of illicit profit gained from exchanging IQD for USD at the CBI dollar auction, and the funneling of counterfeit IQD through Iraqi businesses disguises the counterfeit IQD's source in Iran.

2. Through the Exploitation of the Wire Auction, Al-Huda Bank Has Provided Support to Designated FTOs

Iran has exploited its relationship with Iraq-based, Iran-backed militias to influence Iraqi businesses and officials to generate illicit revenue for the militias' operations. As part of this effort, Iran has developed a network of commercial platforms, including financial institutions, to move funds and misrepresent trade-based financial transactions that obscure the ultimate beneficiaries, namely Iran-backed terrorist groups and militias.

Since its establishment, Al-Huda Bank has been controlled and operated by the IRGC and IRGC-QF. In 2008, the chairman of Al-Huda Bank established the bank specifically for the benefit of KH and has met with and taken orders from IRGC-QF leadership in Tehran, Iran. After establishing the bank, the Al-Huda Bank chairman began money laundering operations on behalf of the IRGC-QF and KH.

Al-Huda Bank has funded Iran-aligned militias through a scheme in which Al-Huda Bank and other Iraqi banks have falsely claimed imports into Iraq that did not exist worth billions of dollars to justify the purchase of USD in the CBI dollar auction. Al-Huda Bank would purchase the USD with counterfeit IQD printed in Iran. Al-Huda Bank was not allowed to conduct financial transactions without the Iran-aligned militias' involvement and Al-

Huda Bank would provide part of Al-Huda Bank's revenue from this scheme to those Iran-aligned militias.

This fraudulent scheme has been a substantial source of funding for Iran-aligned militias' operations. The Iran-aligned Iraqi militia AAH has used companies based across Iraq to generate revenue, launder illicit profits, and convert IQD to USD. AAH has used Al-Huda Bank to maintain accounts for some of these companies, as well as to access the currency auction. The use of false imports, counterfeit currency, and front companies are essential components of exploitation of the CBI dollar auction by obscuring the source of funds and the purpose and ultimate beneficiaries of the transactions that support Iran-aligned Iraqi militias. Overall, IRGC and IRGC-QF use of Al-Huda Bank and several other Iraqi banks to access the CBI dollar auction resulted in approximately \$70 billion USD in profit, from 2019 through 2020.

B. Proposed Special Measure

In the NPRM, FinCEN proposed: (1) to prohibit covered financial institutions from opening or maintaining a correspondent account in the United States for, or on behalf of, Al-Huda Bank; (2) to prohibit covered financial institutions from processing a transaction involving Al-Huda Bank through the United States correspondent account of a foreign banking institution; and (3) a requirement for covered financial institutions to apply special due diligence to their foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving Al-Huda Bank.⁹ The comment period for the NPRM closed on March 1, 2024.

As further described below, FinCEN is adopting the proposal as a final rule. In so doing, FinCEN has considered public comments and the relevant statutory factors and has engaged in the required consultations prescribed by 31 U.S.C. 5318A.

C. Subsequent Developments

Following the issuance of the NPRM, the CBI banned Al-Huda Bank from accessing the CBI dollar auction.¹⁰ However, in light of Al-Huda Bank's consistent and longstanding ties to terrorist organizations since its inception and its history of obfuscating transactions and account holders in support of those organizations, it is

reasonable to assess that Al-Huda Bank will seek ways to continue that support even without access to the CBI dollar auction, through its access to USD correspondent banking relationships in the region. Therefore, Al-Huda Bank remains of primary money laundering concern.

D. Consideration of Comments

Concurrent with the issuance of the NPRM on January 31, 2024, FinCEN opened a comment period that closed on March 1, 2024. FinCEN received seven comments; they are described below, along with FinCEN's response. Neither Al-Huda Bank nor its officers submitted any comments.

1. Comments Attesting to Al-Huda Bank's or Bank Owner Hamad al-Moussawi's Good Reputation

In response to the NPRM, FinCEN received four comments attesting to the good reputation of the owner and chairman of Al-Huda Bank, Hamad al-Moussawi (al-Moussawi). Commenters claimed that al-Moussawi is "pro-Western," a "democracy supporter," and holds "purely liberal ideas." Several commenters also claimed that al-Moussawi "does not have any suspicious relationships", or ties with "Iranian backed groups" or "extremist Islamic parties or other sectarian parties." Two commenters commented on the reputation of Al-Huda Bank itself. One described the bank as "one of the disciplined banks with a good reputation." The second claimed that "the bank has not faced any accusations of this kind previously." These commenters have not provided any specific evidence or documentation to support their claims. Further, even if they could be substantiated, such general claims about Al-Huda Bank and its owner al-Moussawi would not allay FinCEN's concerns regarding Al-Huda Bank's specific illicit conduct.

2. Comments Disputing the Feasibility of Money Laundering Typologies Outlined in the NPRM

Two commenters claimed that it would be "impossible" or "unrealistic" for a bank to conduct the type of illicit activity described in the NPRM, given the CBI's supervision and controls. Specifically, these commenters disputed the ability of any Iraqi bank to utilize forged checks and counterfeit IQD.

These comments do not allay FinCEN's concerns regarding Al-Huda Bank, as the commenters have not provided specific evidence or documentation to support their claims.

⁹ 89 FR 6074 (Jan. 31, 2024).

¹⁰ Reuters, *Iraq bans 8 local banks from US dollar transactions* (Feb. 4, 2024), available at <https://www.reuters.com/business/finance/iraq-bans-8-local-banks-us-dollar-transactions-2024-02-04/>.

3. Comments Questioning the Sources Cited in the NPRM

Four comments claimed that FinCEN did not provide sufficient evidence, and/or relied upon inaccurate, biased public and non-public information. Four comments questioned the veracity of media reporting as evidence in the NPRM. One commenter found that the NPRM “relied on information from media sources” and stated that “media in the Middle East, as a whole, is unprofessional, participates in corrupt practices, lacks neutrality, and is irresponsible.” Another commenter claimed that information FinCEN used, including media reporting, “is often not thoroughly researched, and if the reports received by [FinCEN] originated from Iraqi parties, [. . .] those reports were built on the basis of animosity towards individuals and a desire to harm their interests, rather than a desire to present facts.” These comments do not allay FinCEN’s concerns regarding Al-Huda Bank, as they cite no specific evidence that would call into question the reliability of the media reporting and sources upon which FinCEN has relied.

Moreover, FinCEN based its findings on corroborated evidence from both public and non-public sources, of which media reporting was only a small part. In making its finding of primary money laundering concern and adopting special measure five to address it, FinCEN has considered the totality of information available to it, including from media organizations, and has independently evaluated its sources for credibility, potential bias, and accuracy. One commenter claimed to have “found a document issued by the Central Bank of Iraq denying the accuracy” of an article cited in the NPRM. The article reported that, from 2012 to 2014, Al-Huda Bank used forged documents in transfers of over \$6 billion to banks and companies outside of Iraq.¹¹ The document stated that there were no such personal money transfers transferred out of Iraq to the account of Al-Huda Bank’s owner. Because the document focuses narrowly on the owner’s personal money transfers, it does not contradict the information reported in the article, which is also corroborated by other sources.

¹¹ Al-Arabiya, “Billions of Dollars” Smuggled Out of Iraq During Maliki’s Rule (Nov. 9, 2015), available at <https://english.alarabiya.net/News/middle-east/2015/11/09/iraq-smuggled-billions-of-dollars-during-Maliki-s-rule>.

E. Summary of FinCEN’s Ongoing Concerns Regarding Al-Huda Bank

After considering comments received from the public, as well as other information available to the agency, including both public and non-public information, FinCEN is issuing this final rule, imposing a prohibition on U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, Al-Huda Bank. The information available to FinCEN provides reason to conclude that Al-Huda Bank continues to be a foreign financial institution of primary money laundering concern.

III. Imposition of a Special Measure Regarding Al-Huda Bank as a Foreign Financial Institution of Primary Money Laundering Concern

Based upon this finding, FinCEN is authorized to impose one or more special measures. Following the required consultations and the consideration of all relevant factors discussed in the NPRM, FinCEN proposed a prohibition under the fifth special measure.¹²

After reviewing the comments and considering all potential special measures, FinCEN concludes that a prohibition under special measure five is warranted. Consistent with the finding that Al-Huda Bank is a foreign financial institution of primary money laundering concern, and in consideration of additional relevant factors, this final rule imposes a prohibition on the opening or maintaining of correspondent accounts by covered financial institutions for, or on behalf of, Al-Huda Bank. This prohibition will help guard against the money laundering and terrorist financing risks to the U.S. financial

¹² Prior to issuing the January 2024 NPRM and this final rule, FinCEN consulted with representatives and staff of the following Departments and agencies regarding this action: Department of Justice; the Department of State; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; the Securities and Exchange Commission; the Commodity Futures Trading Commission; the Office of the Comptroller of the Currency; and the National Credit Union Administration. During those consultations, FinCEN shared drafts and information for the purpose of obtaining interagency views on: (1) the finding that Al-Huda Bank is of primary money laundering concern; (2) the imposition of special measure five prohibiting covered U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, Al-Huda Bank and requiring covered U.S. financial institutions to take reasonable steps not to process transactions for the correspondent account of a foreign banking institution in the United States if such a transaction involves Al-Huda Bank; and (3) the effect such prohibition would have on the domestic and international financial system. Those views are reflected in FinCEN’s explanation of the reasons for issuing this final rule.

system posed by Al-Huda Bank, as identified in the NPRM and this final rule.

A. Whether Similar Action Has Been or Is Being Taken by Other Nations or Multilateral Groups Regarding Al-Huda Bank

Following the issuance of the NPRM, the CBI banned Al-Huda Bank from accessing the CBI dollar auction.¹³ Nevertheless, as indicated above, FinCEN remains concerned by Al-Huda Bank’s continued potential to interact with the U.S. financial system indirectly through U.S. dollar (USD) correspondent accounts at six foreign financial institutions.

B. Whether the Imposition of Any Particular Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

While FinCEN assesses that the final rule will place some cost and burden on covered financial institutions, these burdens are neither undue nor inappropriate in view of the threat posed by the illicit activity facilitated by Al-Huda Bank. As described in the NPRM, Al-Huda Bank has had access to USD through the CBI dollar auction, which does not require Iraqi banks to have direct USD correspondent relationships. Further, as described above, Al-Huda Bank has no direct USD correspondent relationships with U.S. financial institutions. Rather, it accesses USD through its nested correspondent relationships, including, but not limited to, six USD accounts outside the United States. These accounts may be used for commercial payments, as well as foreign exchange and money markets. Covered financial institutions and transaction partners have ample opportunity to arrange for alternative payment mechanisms in the absence of correspondent banking relationships with Al-Huda Bank.

As such, a prohibition on correspondent banking with Al-Huda Bank will impose minimal additional compliance costs for covered financial institutions, which would most commonly involve merely adding Al-Huda Bank to existing sanctions and money laundering screening tools. FinCEN assesses that given the risks posed by Al-Huda Bank’s facilitation of money laundering, the additional

¹³ Reuters, *Iraq bans 8 local banks from US dollar transactions* (Feb. 4, 2024), available at <https://www.reuters.com/business/finance/iraq-bans-8-local-banks-us-dollar-transactions-2024-02-04/>.

burden on covered financial institutions in preventing the opening of correspondent accounts with Al-Huda Bank, as well as conducting due diligence on foreign correspondent account holders and notifying them of the prohibition, will be minimal and not undue.

C. The Extent to Which the Action or the Timing of the Action Would Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of Al-Huda Bank

FinCEN assesses that imposing the final rule will have minimal impact upon the international payment, clearance, and settlement system. As a comparatively small bank, responsible for a nominal amount of transaction volume in the region, Al-Huda Bank is not a systemically important financial institution in Iraq, regionally, or globally. FinCEN views that prohibiting Al-Huda Bank's access to U.S.-Iraq correspondent banking channels should not affect overall cross-border transaction volumes.

Further, a prohibition under special measure five will not prevent Al-Huda Bank from conducting legitimate business activities in other foreign currencies. In addition to the six correspondent accounts used to access USD noted above, Al-Huda Bank currently holds two Euro accounts and two United Arab Emirates dirham accounts.¹⁴ Provided that its legitimate activities do not involve a correspondent account maintained in the United States, and so long as Al-Huda Bank maintains non-USD correspondent relationships in the region, the bank could continue to engage in those activities.

D. The Effect of the Action on United States National Security and Foreign Policy

As described in the NPRM, evidence available to FinCEN has demonstrated that Al-Huda Bank served as a significant conduit for the financing of FTOs in violation of U.S. and international sanctions. Imposing a prohibition under special measure five will: (1) limit Al-Huda Bank's ability to facilitate illicit finance within an international network of front companies and sanctions evasion infrastructure supporting these FTOs, by removing its access to correspondent accounts in the United States; and (2) raise awareness of the way illicit actors exploit weaknesses in vulnerable

jurisdictions to circumvent sanctions and finance terrorism.

E. Consideration of Alternative Special Measures

In assessing the appropriate special measure to impose, FinCEN considered alternatives to a prohibition on the opening or maintaining in the United States of correspondent accounts, including the imposition of one or more of the first four special measures, or imposing conditions on the opening or maintaining of correspondent accounts under special measure five. Having considered these alternatives and for the reasons set out below, FinCEN assesses that none of the other special measures available under section 311 would appropriately address the risks posed by Al-Huda Bank and the urgent need to prevent it from accessing USD through correspondent banking entirely.

With the knowledge of Al-Huda Bank's chairman, Al-Huda Bank's abuse of the dollar auction was obfuscated through the application of numerous money laundering typologies, including the use of fraudulent documentation, fake deposits, identity documents of the deceased, fake companies, and counterfeit IQD, which were used to purchase USD and support terrorist groups and militias. Taken as a whole, Al-Huda Bank's illicit activities present a heightened risk of obscured transaction counterparty identification that would be undetectable by covered financial institutions. Indeed, a key feature of the facilitation of funding for Iranian and Iran-aligned FTOs through Al-Huda Bank is the use of fake companies to obscure the true beneficial owners and ultimate destinations of funds involved in the transactions. Moreover, this behavior provides opportunities for obscuring the identities of transaction counterparties to correspondent banking relationship providers.

Because of the nature, extent, and purpose of the obfuscation engaged in by Al-Huda Bank, any special measure intended to mandate additional information collection would likely be ineffective and insufficient to determine the true identity of illicit finance actors. For example, the provision under special measure one, that "the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer" be collected in records and reports, could be circumvented by the operations of shell companies, wherein the reported identity of the originator serves to obscure the true beneficial owner or originator. This would accordingly be ineffective in

preventing illicit transactions. Al-Huda Bank's record of such circumvention suggests special measure one would not adequately protect the U.S. financial system from the threats posed by the bank.

Further, the requirements under special measures three and four, that domestic financial institutions obtain "with respect to each customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States", are also likely to be ineffective. First, Al-Huda Bank's use of nested correspondent account access through layers of payment systems would render these alternative measures ineffective. Only significant effort and expense by U.S. institutions could fill this gap, which would impose a disproportionate compliance burden and with no guarantee that the money laundering threat would be addressed through customer due diligence research.

FinCEN also considered special measure two, which may require domestic financial institutions to "obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person." The agency determined this special measure to be largely irrelevant since the concerns involving Al-Huda Bank do not involve the opening or maintaining of accounts in the U.S. by foreign persons.

FinCEN similarly assesses that merely imposing conditions under special measure five would be inadequate to address the risks posed by Al-Huda Bank's activities. Special measure five also enables FinCEN to impose conditions as an alternative to a prohibition on the opening or maintaining of correspondent accounts. Given Al-Huda Bank's consistent and longstanding ties to terrorist organizations since its inception, and its track record of obfuscating transactions and account holders, FinCEN determined that imposing any condition would not be an effective measure to safeguard the U.S. financial system. FinCEN assesses that the billions of dollars supplied to terrorist groups through Al-Huda Bank's exploitation of its access to USD, and the exposure of U.S. financial institutions to Al-Huda Bank's illicit activity outweigh the value in providing conditioned access to the U.S. financial system for any purportedly legitimate business activity. Conditions on the opening or maintaining of correspondent accounts

¹⁴ BankCheck, *Al-Huda Bank—Iraq* (accessed May 28, 2024), available at <https://bankcheck.app>.

would likely be insufficient to prevent illicit financial flows through the U.S. financial system, given Al-Huda Bank's use of fraudulent documentation and front companies to obscure its financing of terrorist groups in order to access USD. Given Al-Huda Bank's deliberate use of these money laundering typologies, FinCEN cannot craft sufficient conditions to enable covered financial institutions to open or maintain correspondent accounts for Al-Huda Bank without introducing severe risk to those financial institutions in processing transactions that ultimately finance terrorism.

FinCEN, thus, assesses that any condition or additional recordkeeping or reporting requirement would be an ineffective measure to safeguard the U.S. financial system. Such measures would not prevent Al-Huda Bank from accessing the correspondent accounts of U.S. financial institutions, thus leaving the U.S. financial system vulnerable to processing illicit transfers that are likely to finance terrorist groups, posing a significant national security and money laundering risk. In addition, no recordkeeping or reporting requirements or conditions would be sufficient to guard against the risks posed by a bank that processes transactions that are designed to obscure the transactions' true nature and are ultimately for the benefit of terrorist groups. For these reasons, and after thorough consideration of alternate measures, FinCEN has determined that a prohibition on opening or maintaining correspondent banking relationships is the only special measure out of the special measures available under section 311 that can adequately protect the U.S. financial system from the illicit finance risk posed by Al-Huda Bank.

IV. Section-by-Section Analysis

A. 1010.663(a)—Definitions

1. Definition of Al-Huda Bank

The final rule defines the term "Al-Huda Bank" to mean all subsidiaries, branches, and offices of Al-Huda Bank operating as a bank in any jurisdiction. FinCEN is not currently aware of any subsidiary banks or branches outside of Iraq.

2. Definition of Correspondent Account

The final rule defines the term "correspondent account" to have the same meaning as the definition contained in 31 CFR 1010.605(c)(1)(ii). In the case of a U.S. depository institution, this broad definition includes most types of banking relationships between a U.S. depository institution and a foreign bank that are

established to provide regular services, dealings, and other financial transactions, including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit. FinCEN is using the same definition of "account" for purposes of this final rule as is established for depository institutions in the final rule implementing the provisions of section 312 of the USA PATRIOT Act, requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.¹⁵ Under this definition, "payable-through accounts" are a type of correspondent account.

In the case of securities broker-dealers, futures commission merchants, introducing brokers in commodities, and investment companies that are open-end companies (mutual funds), FinCEN is also using the same definition of "account" for purposes of this final rule as was established for these entities in the final rule implementing the provisions of section 312 of the USA PATRIOT Act, requiring due diligence for correspondent accounts maintained for certain foreign banks.¹⁶

3. Definition of Covered Financial Institution

In a change from the proposed rule,¹⁷ and consistent with prior section 311 actions imposing special measure five, the final rule defines the term "covered financial institution" by reference to 31 CFR 1010.605(e)(1), the same definition used in the BSA rule (31 CFR 1010.610) requiring the establishment of due diligence programs for correspondent accounts for financial institutions. In general, this definition includes the following:

- a bank;
- a broker or dealer in securities;
- a futures commission merchant or an introducing broker in commodities; and
- a mutual fund.

4. Definition of Foreign Banking Institution

The final rule defines the term "foreign banking institution" to mean a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term

does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law. This is consistent with the definition of "foreign bank" under 31 CFR 1010.100(u). This final rule interprets Al-Huda Bank to be a foreign banking institution.

5. Definition of Subsidiary

The final rule defines the term "subsidiary" to mean a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

B. 1010.663(b)—Prohibition on Accounts and Due Diligence Requirements for Covered Financial Institutions

1. Prohibition on Opening or Maintaining Correspondent Accounts

Section 1010.663(b)(1) of the final rule prohibits covered financial institutions from opening or maintaining in the United States a correspondent account for, or on behalf of, Al-Huda Bank.

2. Prohibition on Use of Correspondent Accounts Involving Al-Huda Bank

Section 1010.663(b)(2) of the final rule requires covered financial institutions to take reasonable steps to not process a transaction for the correspondent account of a foreign banking institution in the United States if such a transaction involves Al-Huda Bank. Such reasonable steps are described in 1010.663(b)(3), which sets forth the special due diligence requirements a covered financial institution is required to take when it knows or has reason to believe that a transaction involves Al-Huda Bank.

3. Special Due Diligence for Correspondent Accounts

As a corollary to the prohibition set forth in sections 1010.663(b)(1) and (b)(2), section 1010.663(b)(3) of the final rule requires covered financial institutions to apply special due diligence to all of their foreign correspondent accounts that is reasonably designed to guard against such accounts being used to process transactions involving Al-Huda Bank. As part of that special due diligence, covered financial institutions are required to notify those foreign correspondent account holders that the covered financial institutions know or have reason to believe provide services to Al-Huda Bank, that such correspondents may not provide Al-Huda Bank with access to the correspondent account maintained at the covered financial institution. A

¹⁵ See 31 CFR 1010.605(c)(2)(i).

¹⁶ See 31 CFR 1010.605(c)(2)(ii)–(iv).

¹⁷ When defining a covered financial institution, the proposed regulatory text incorrectly referenced 31 CFR 1010.605(e)(2), instead of 31 CFR 1010.605(e)(1). In addition, although the regulatory impact analysis properly considered those financial institutions listed in 31 CFR 1010.605(e)(1), it incorrectly cited 31 CFR 1010.100(t) (as did the section-by-section analysis).

covered financial institution may satisfy this notification requirement using the following notice:

Notice: Pursuant to U.S. regulations issued under Section 311 of the USA PATRIOT Act, see 31 CFR 1010.663, we are prohibited from opening or maintaining in the United States a correspondent account for, or on behalf of, Al-Huda Bank. The regulations also require us to notify you that you may not provide Al-Huda Bank, including any of its subsidiaries, branches, and offices access to the correspondent account you hold at our financial institution. If we become aware that the correspondent account you hold at our financial institution has processed any transactions involving Al-Huda Bank, including any of its subsidiaries, branches, and offices, we will be required to take appropriate steps to prevent such access, including terminating your account.

The purpose of the notice requirement is to aid cooperation with correspondent account holders in preventing transactions involving Al-Huda Bank from accessing the U.S. financial system. FinCEN does not require or expect a covered financial institution to obtain a certification from any of its correspondent account holders that access will not be provided to comply with this notice requirement.

Methods of compliance with the notice requirement could include, for example, transmitting a notice by mail, fax, or email. The notice should be transmitted whenever a covered financial institution knows or has reason to believe that a foreign correspondent account holder provides services to Al-Huda Bank.

Special due diligence also includes implementing risk-based procedures designed to identify any use of correspondent accounts to process transactions involving Al-Huda Bank. A covered financial institution is expected to apply an appropriate screening mechanism to identify a funds transfer order that on its face lists Al-Huda Bank as the financial institution of the originator or beneficiary, or otherwise references Al-Huda Bank in a manner detectable under the financial institution's normal screening mechanisms. An appropriate screening mechanism could be one of the tools used by a covered financial institution to comply with various legal requirements, such as commercially available software programs used to comply with the economic sanctions programs administered by OFAC.

4. Recordkeeping and Reporting

Section 1010.663(b)(4) of the final rule clarifies that the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable

law or regulation. A covered financial institution must, however, document its compliance with the notification requirement described above.

V. Regulatory Impact Analysis

FinCEN has analyzed this final rule under Executive Orders 12866, 13563, and 14094, the Regulatory Flexibility Act,¹⁸ the Unfunded Mandates Reform Act,¹⁹ and the Paperwork Reduction Act.²⁰

As discussed above, the intended effects of the imposition of special measure five to Al-Huda Bank are twofold. The rule is expected to: (1) combat and deter money laundering in facilitation of terrorist financing associated with Al-Huda Bank, and (2) prevent Al-Huda Bank from using the U.S. financial system to enable its illicit finance behavior. In the analysis below, FinCEN discusses the economic effects that are expected to accompany adoption of the final rule and assess such expectations in more granular detail. This discussion includes a detailed explanation of certain ways FinCEN's conclusions may be sensitive to methodological choices and underlying assumptions made in drawing inferences from available data.

A. Executive Orders

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

It has been determined that this final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

When an agency issues a final rule, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" (IRFA) that will "describe the impact of the proposed rule on small entities."²¹ However, Section 605 of the RFA allows

an agency to certify a rule, in lieu of preparing an analysis, if the final rule is not expected to have a significant economic impact on a substantial number of small entities. This final rule applies to all covered financial institutions and affects a substantial number of small entities. However, for the reasons described below, FinCEN assesses that these changes do not have a significant economic impact on such entities.

In addition to prohibiting covered financial institutions from opening or maintaining in the United States a correspondent account for, or on behalf of, Al-Huda Bank, this final rule requires that covered financial institutions take reasonable measures to detect use of their correspondent accounts to process transactions involving Al-Huda Bank. All U.S. persons, including U.S. financial institutions, currently must comply with OFAC sanctions, and U.S. financial institutions generally have suspicious activity reporting requirements and systems in place to screen transactions to comply with OFAC sanctions and section 311 special measures administered by FinCEN. The systems that U.S. financial institutions have in place to comply with these requirements can easily be modified to adapt to this final rule. Thus, the special due diligence that is required under the final rule—*i.e.*, preventing the processing of transactions involving Al-Huda Bank and the transmittal of notification to certain correspondent account holders—does not impose a significant additional economic burden upon small U.S. financial institutions. For these reasons, FinCEN certifies that the requirements contained in this rulemaking do not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995²² (Unfunded Mandates Reform Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, adjusted for inflation.²³ If a budgetary impact statement is required, section 202 of the Unfunded Mandates Reform Act also requires an agency to identify and consider a reasonable number of

¹⁸ 5 U.S.C. 603.

¹⁹ 2 U.S.C. 1532, Public Law 104–4 (Mar. 22, 1995).

²⁰ 44 U.S.C. 3507(a)(1)(D).

²¹ 5 U.S.C. 603(a).

²² 2 U.S.C. 1532, Public Law 104–4 (Mar. 22, 1995).

²³ *Id.*

regulatory alternatives before promulgating a rule.²⁴

FinCEN has determined that this final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of an annual \$100 million or more, adjusted for inflation (\$184.7 million).²⁵ Accordingly, FinCEN has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

D. Paperwork Reduction Act

The recordkeeping and reporting requirements, referred to by the Office of Management and Budget (OMB) as a collection of information, contained in this final rule were submitted by FinCEN to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (PRA) and were assigned OMB Control Number 1506–0079.²⁶ Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB.

The notification requirement in section 1010.663(b)(3)(i)(A) is intended to aid cooperation from foreign correspondent account holders in preventing transactions involving Al-Huda Bank from being processed by the U.S. financial system. The information required to be maintained by section 1010.663(b)(4)(i) will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the notification requirements of section 663(b)(3)(i)(A). The collection of information is mandatory.

Frequency: As required.

Description of Affected Financial Institutions: Banks, broker-dealers in securities, futures commission merchants, introducing brokers in commodities, and mutual funds.

Estimated Number of Affected Financial Institutions: Approximately 15,000.²⁷

²⁴ *Id.*

²⁵ The Unfunded Mandates Reform Act requires an assessment of mandates that will result in an annual expenditure of \$100 million or more, adjusted for inflation. The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product (GDP) deflator in the first quarter of 1995, the year of the Unfunded Mandates Reform Act, as 66.452, and as 122.762 in the third quarter of 2023, the most recent available. See U.S. Bureau of Economic Analysis, “Table 1.1.9. Implicit Price Deflators for Gross Domestic Product” (accessed Dec. 14, 2023) available at <https://www.bea.gov/itable/>. Thus, the inflation adjusted estimate for \$100 million is $122.762/66.452 \times 100 = \$184.7$ million.

²⁶ 44 U.S.C. 3507(a)(1)(D).

²⁷ This estimate is informed by public and non-public data sources regarding both an expected

TABLE 1—ESTIMATES OF AFFECTED FINANCIAL INSTITUTIONS BY TYPE

Financial institution type	Number of entities
Banks ²⁸	²⁹ 9,209
Broker-Dealers in securities ³⁰ ...	³¹ 3,477
Mutual Funds ³²	³³ 1,495
Futures Commission Merchants ³⁴	³⁵ 62
Introducing Brokers in Commodities ³⁶	³⁷ 937

Estimated Average Annual Burden in Hours per Affected Financial Institution: The estimated average annual burden associated with the collection of information in this final rule is one hour per affected financial institution.

Estimated Total Annual Burden: Approximately 15,000 hours.

VI. Regulatory Text

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks, Banking, Brokers, Crime, Foreign banking, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 1010 is amended as follows:

maximum number of entities that may be affected and the number of active, or currently reporting, registered financial institutions.

²⁸ See 31 CFR 1010.605(e)(1)(i).

²⁹ Bank data is as of December 14, 2023, from Federal Deposit Insurance Corporation BankFind. See Federal Deposit Insurance Corporation, BankFind, available at <https://banks.data.fdic.gov/bankfind-suite/bankfind>. Credit union data is as of December 31, 2023, from the National Credit Union Administration Quarterly Data Summary Reports. See National Credit Union Administration, Quarterly Data Summary Reports, available at <https://ncua.gov/analysis/credit-union-corporate-call-report-data/quarterly-data-summary-reports>.

³⁰ 31 CFR 1010.605(e)(1)(ii).

³¹ According to the Securities and Exchange Commission (SEC), there are 3,477 broker-dealers in securities as of December 2023. See SEC, Company Information About Active Broker-Dealers, available at <https://www.sec.gov/help/foiadocsbdfia>.

³² 31 CFR 1010.605(e)(1)(iv).

³³ According to the SEC, as of the third quarter of 2023, there are 1,495 open-end registered investment companies that report on Form N-CEN. See SEC, Form N-CEN Data Sets, available at <https://www.sec.gov/dera/data/form-ncen-data-sets>.

³⁴ 31 CFR 1010.605(e)(1)(iii).

³⁵ According to the Commodity Futures Trading Commission (CFTC), there are 62 futures commission merchants as of October 31, 2023. See CFTC, Financial Data for FCMs, available at <https://www.cftc.gov/MarketReports/financialfcmdata/index.htm>.

³⁶ 31 CFR 1010.605(e)(1)(iii).

³⁷ According to National Futures Association, there are 937 introducing brokers in commodities as of November 30, 2023.

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 2006, Pub. L. 114–41, 129 Stat. 458–459; sec. 701 Pub. L. 114–74, 129 Stat. 599; sec. 6403, Pub. L. 116–283, 134 Stat. 3388.

■ 2. Add § 1010.663 to read as follows:

§ 1010.663 Special measures regarding Al-Huda Bank.

(a) Definitions. For purposes of this section, the following terms have the following meanings.

(1) *Al-Huda Bank.* The term “Al-Huda Bank” means all subsidiaries, branches, and offices of Al-Huda Bank operating as a bank in any jurisdiction.

(2) *Correspondent account.* The term “correspondent account” has the same meaning as provided in § 1010.605(c)(1)(ii).

(3) *Covered financial institution.* The term “covered financial institution” has the same meaning as provided in § 1010.605(e)(1).

(4) *Foreign banking institution.* The term “foreign banking institution” means a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law.

(5) *Subsidiary.* The term “subsidiary” means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) Prohibition on accounts and due diligence requirements for covered financial institutions—(1) Prohibition on opening or maintaining correspondent accounts for Al-Huda Bank. A covered financial institution shall not open or maintain in the United States a correspondent account for, or on behalf of, Al-Huda Bank.

(2) *Prohibition on processing transactions involving Al-Huda Bank.* A covered financial institution shall take reasonable steps not to process a transaction for the correspondent account in the United States of a foreign banking institution if such a transaction involves Al-Huda Bank.

(3) *Special due diligence of correspondent accounts to prohibit transactions.* (i) A covered financial institution shall apply special due diligence to its foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving Al-Huda Bank. At a minimum, that special due diligence must include:

(A) Notifying those foreign correspondent account holders that the covered financial institution knows or has reason to believe provide services to Al-Huda Bank that such correspondents may not provide Al-Huda Bank with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any use of its foreign correspondent accounts by Al-Huda Bank, to the extent that such use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its foreign correspondent accounts to process transactions involving Al-Huda Bank.

(iii) A covered financial institution that knows or has reason to believe that a foreign bank's correspondent account has been or is being used to process transactions involving Al-Huda Bank shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(3)(i)(A) of this section and, where necessary, termination of the correspondent account.

(4) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notification requirement set forth in paragraph (b)(3)(i)(A) of this section.

(ii) Nothing in this paragraph (b) shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Andrea M. Gacki,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2024-14415 Filed 7-2-24; 8:45 am]

BILLING CODE 4810-02-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2024-0579]

Safety Zones; Annual Events in the Captain of the Port Eastern Great Lakes Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce multiple safety zones located in federal regulations for recurring marine events taking place in July 2024. This action is necessary and intended for the safety of life and property on navigable waters during these events. During the enforcement periods, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Eastern Great Lakes or a designated representative.

DATES: The regulations listed in 33 CFR 165.939, table 165.939, will be enforced for the following events during the dates and times indicated below:

- Paragraph (b)(15) French Festival Fireworks (Cape Vincent French Festival)—from 9:15 p.m. through 10:30 p.m. on July 13, 2024, in St Lawrence River.

- Paragraph (b)(16) Lyme Community Days Fireworks (Chaumont Three-Mile Bay)—from 9 p.m. through 10:30 p.m. on July 27, 2024, in Chaumont Bay, Lake Ontario.

- Paragraph (b)(19) Brewerton Fireworks (Brewerton, NY)—from 8:30 p.m. through 11:30 p.m. on July 3, 2024, in Oneida Lake.

- Paragraph (b)(28) Oswego Harborfest (Oswego, NY)—from 9:30 p.m. through 10 p.m. on July 27, 2024, in Lake Ontario.

- Paragraph (b)(29) Oswego Independence Day Celebration Fireworks (Oswego, NY)—from 9 p.m. through 10:30 p.m. on July 7, 2024, in Oswego River.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Marine Safety Unit Thousand Islands' Waterways Management Division; telephone 315-774-8724, email SMB-MSUThousandIslands-WaterwaysManagement@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce multiple safety zones for annual events in the Captain of the Port Eastern Great Lakes Zone listed in 33 CFR 165.939, table 165.939, for events occurring in the month of July as listed in the 'Dates' section above.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Eastern Great Lakes or his designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Eastern Great Lakes via channel 16, VHF-FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Eastern Great Lakes or his designated representative.

While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Eastern Great Lakes determines that the safety zone need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone. This notification is being issued by the Coast Guard Sector Eastern Great Lakes Prevention Department Head at the direction of the Captain of the Port.

Dated: June 27, 2024.

J.B. Bybee,

Commander, U.S. Coast Guard, Sector Eastern Great Lakes Prevention Department Head.

[FR Doc. 2024-14613 Filed 7-2-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS-AKRO-36475; PPAKAKROZ5, PPMPLR1Y.L00000]

RIN 1024-AE70

Alaska; Hunting and Trapping in National Preserves

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service amends its regulations for sport hunting and trapping in national preserves in Alaska to prohibit bear baiting and clarify trapping regulations.

DATES: This rule is effective on August 2, 2024.

ADDRESSES:

Docket: For access to the docket to read comments received, go to <https://www.regulations.gov> and search for Docket ID: NPS-2023-0001.

Document Availability: The Revisiting Sport Hunting and Trapping on National Park System Preserves in Alaska Revised Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) provide information and context for this rule and are available online at <https://parkplanning.nps.gov/akro> by clicking the

link entitled “Revisiting Sport Hunting and Trapping on National Park System Preserves in Alaska” and then clicking the link entitled “Document List.”

FOR FURTHER INFORMATION CONTACT:

Sarah Creachbaum, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501; phone (907) 644–3510; email: AKR_Regulations@nps.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The Alaska National Interest Lands Conservation Act (ANILCA) allows harvest of wildlife in national preserves in Alaska for subsistence purposes by local rural residents under Federal regulations. ANILCA also allows harvest of wildlife for sport purposes by any individual under laws of the State of Alaska (referred to as the State) that do not conflict with Federal laws. ANILCA requires the National Park Service (NPS) to manage national preserves consistent with the NPS Organic Act of 1916, which directs the NPS “to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 54 U.S.C. 100101(a). Thus, the NPS recognizes that its conservation stewardship mandate for national preserves in Alaska includes both utilitarian uses of wildlife as well as recognition of their intrinsic value. The NPS also recognizes that both the utilitarian use and intrinsic value of wildlife are concepts that predate the NPS Organic Act, and thus the NPS.

On June 9, 2020, the NPS published a final rule (2020 Rule; 85 FR 35181) that removed restrictions on sport hunting and trapping in national preserves in Alaska that were implemented by the NPS in 2015 (2015 Rule; 80 FR 64325). These included restrictions on the following methods of taking wildlife that were and continue to be authorized by the State in certain locations: taking black bear cubs, and sows with cubs, with artificial light at den sites; harvesting bears over bait; taking wolves and coyotes (including

pups) during the denning season (between May 1 and August 9); taking swimming caribou; taking caribou from motorboats under power; and using dogs to hunt black bears. The 2015 Rule prohibited other harvest practices that were and continue to be similarly prohibited by the State. These prohibitions also were removed by the 2020 Rule. The 2020 Rule also removed a statement in the 2015 Rule that State laws or management actions that seek to, or have the potential to, alter or manipulate natural predator populations or processes in order to increase harvest of ungulates by humans are not allowed in national preserves in Alaska. The NPS based the 2020 Rule in part on direction from the Department of the Interior (DOI) to expand recreational hunting opportunities and align hunting opportunities with those established by states. Secretary’s Orders 3347 and 3356. The 2020 Rule also responded to direction from the Secretary of the Interior to review and reconsider regulations that were more restrictive than state provisions, and specifically the restrictions on harvesting wildlife found in the 2015 Rule.

On January 9, 2023, the NPS published a proposed rule (88 FR 1176) that would prohibit certain harvest practices, including bear baiting; and would prohibit predator control or predator reduction on national preserves. In developing the proposed rule, NPS sought input from Tribal entities, subsistence user groups, and the State of Alaska.

The harvest practices at issue in the 2015 Rule, 2020 Rule, and this final rule are specific to harvest under the authorization for sport hunting and trapping in ANILCA. None of these rules address subsistence harvest by rural residents under title VIII of ANILCA.

The 2015 Rule

Some of the harvest methods prohibited by the 2015 Rule targeted predators. When the NPS restricted these harvest methods in the 2015 Rule, it concluded that these methods were allowed by the State for the purpose of reducing predation by bears and wolves to increase populations of prey species (ungulates) for harvest by human hunters. The State’s hunting regulations are driven by proposals from members of the public, fish and game advisory entities, and State and Federal Government agencies. The State, through the State of Alaska Board of Game (BOG), deliberates on the various proposals publicly. Many of the comments made in the proposals and

BOG deliberations on specific hunting practices showed that they were intended to reduce predator populations for the purpose of increasing prey populations. Though the State objected to this conclusion in its comments on the 2015 Rule, the NPS’s conclusion was based on State law and policies;¹ BOG proposals, deliberations, and decisions;² and Alaska Department of Fish and Game actions, statements, and publications leading up to the 2015 Rule.³ Because NPS Management Policies state that the NPS will manage lands within the National Park System for natural processes (including natural wildlife fluctuations, abundances, and behaviors) and explicitly prohibit predator control, the NPS determined that these harvest methods authorized by the State were in conflict with NPS mandates. NPS Management Policies (4.4.1, 4.4.3) (2006). For these reasons and because the State refused to exempt national preserves from these authorized practices, the NPS prohibited them in the 2015 Rule and adopted a regulatory provision consistent with NPS policy direction on predator control related to harvest. The 2015 Rule further provided that the Regional Director would compile, annually update, and post on the NPS website a list of any State predator control laws or actions prohibited by the NPS on national preserves in Alaska.

As stated above, the 2015 Rule only restricted harvest for “sport purposes.” Although this phrase is used in ANILCA, the statute does not define the term “sport.” In the 2015 Rule, the NPS

¹ Alaska Statutes (AS) section 16.05.255(k) (definition of sustained yield); Findings of the Alaska Board of Game, 2006–164–BOG, Board of Game Bear Conservation and Management Policy (May 14, 2006) (rescinded in 2012).

² See, e.g., Alaska Board of Game Proposal Book for March 2012, proposals 146, 167, 232.

³ See, e.g., AS section 16.05.255(e); State of Alaska Department of Fish and Game Emergency Order on Hunting and Trapping 04–01–11 (Mar. 31, 2011) (available at *Administrative Record for Alaska v. Jewell et al.*, No. 3:17–cv–00013–JWS, D. Alaska pp. NPS0164632–35), State of Alaska Department of Fish and Game Agenda Change 11 Request to State Board of Game to increase brown bear harvest in game management unit 22 (2015); Alaska Department of Fish and Game Wildlife Conservation Director Corey Rossi, “Abundance Based Fish, Game Management Can Benefit All,” Anchorage Daily News (Feb. 21, 2009); ADFG News Release—Wolf Hunting and Trapping Season extended in Unit 9 and 10 in response to caribou population declines (3/31/2011); Alaska Department of Fish and Game Craig Fleener, Testimony to US Senate Committee on Energy and Natural Resources re: Abundance Based Wildlife Management (Sept. 23, 2013); Alaska Department of Fish and Game, Hunting and Trapping Emergency Order 4–01–11 to Extend Wolf Hunting and Trapping Seasons in GMU [Game Management Unit] 9 and 10 (LACL and KATM) (Nov. 25, 2014); ADFG Presentation Intensive Management of Wolves, Bears, and Ungulates in Alaska (Feb. 2009).

reasoned that harvest for subsistence is for the purpose of feeding oneself and family and maintaining cultural practices, and that “sport” or recreational hunting invokes Western concepts of fairness which do not necessarily apply to subsistence practices. Therefore, the 2015 Rule prohibited the practices of harvesting swimming caribou and taking caribou from motorboats under power which the NPS concluded were not consistent with generally accepted notions of “sport” hunting. This conclusion also supported restrictions in the 2015 Rule on the practices of taking bear cubs and sows with cubs; and using a vehicle to chase, drive, herd, molest, or otherwise disturb wildlife. To illustrate how the 2015 Rule worked in practice, a federally qualified local rural resident could harvest bear cubs and sows with cubs, or could harvest swimming caribou (where authorized under Federal subsistence regulations), but a hunter from Anchorage, Fairbanks, Juneau or other nonrural areas in Alaska, or a hunter from outside Alaska, could not.

In the 2015 Rule, the NPS also concluded that the practice of putting out bait to attract bears for harvest poses an unacceptable safety risk to the visiting public and leads to unnatural wildlife behavior by attracting bears to a food source that would not normally be there. The NPS based this conclusion on the understanding that bears are more likely to attack when defending a food source and therefore visitors who encountered a bait station would be at risk from bear attacks. In addition, the NPS concluded that baiting could cause more bears to become conditioned to human food, creating unacceptable public safety risks. The NPS based this conclusion on the fact that not all bears that visit bait stations are harvested; for example, a hunter may not be present when the bear visits the station, or a hunter may decide not to harvest a particular bear for a variety of reasons. Additionally, other animals are attracted to bait stations. Because bait often includes dog food and human food, including items like bacon grease and pancake syrup, which are not a natural component of animal diets, the NPS was concerned that baiting could lead to bears and other animals associating these foods with people, which would create a variety of risks to people, bears, and property. For these reasons, the 2015 Rule prohibited bear baiting in national preserves in Alaska.

The NPS received approximately 70,000 pieces of correspondence during the public comment period for the 2015 Rule. These included unique comment

letters, form letters, and signed petitions. Approximately 65,000 pieces of correspondence were form letters. The NPS also received three petitions with a combined total of approximately 75,000 signatures. The NPS counted a letter or petition as a single correspondence, regardless of the number of signatories. More than 99% of the public comments supported the 2015 Rule. Comments on the 2015 Rule can be viewed on regulations.gov by searching for “RIN 1024–AE21”.

The 2020 Rule

The 2020 Rule reconsidered the conclusions in the 2015 Rule regarding predator control, sport hunting, and bear baiting. First, the 2020 Rule reversed the 2015 Rule’s conclusion that the State intended to reduce predator populations through its hunting regulations. As explained above, the NPS’s conclusion in the 2015 Rule was based on BOG proposals, deliberations, and decisions; and Alaska Department of Fish and Game actions, statements, and publications that preceded the 2015 Rule. However, in their written comments on the 2015 and 2020 Rules, the State denied that the harvest practices for predators were part of their predator control or intensive management programs and therefore were not efforts to reduce predators. In its written comments, the State argued that the liberalized predator harvest rules were simply a means to provide new opportunities for hunters to harvest predators, in response to requests received by the BOG. The State argued that it provided these new opportunities under a “sustained yield” management framework, which is distinct from what the State considers “predator control.” The State asserted that it has a separate, formal predator control program which is not considered “hunting” by the State. According to the State, predator control occurs only through its “intensive management” program.

The NPS afforded the State’s written comments on the 2020 Rule more weight than it did on the State’s similar comments on the 2015 Rule, both of which were in conflict with other contemporaneous public State positions on the matter. The NPS took into account the analysis in the environmental assessment supporting the 2020 Rule, which concluded that the hunting practices in question would not likely alter natural predator-prey dynamics at the population level or have a significant foreseeable adverse impact to wildlife populations, or otherwise impair park resources. The NPS also reconsidered what it viewed as the legislative requirements of ANILCA

with respect to hunting in national preserves in Alaska. Based upon these considerations, the NPS concluded the hunting practices did not run afoul of NPS Management Policies section 4.4.3, which prohibits predator reduction to increase numbers of harvested prey species. This led the NPS to remove two provisions that were implemented in the 2015 Rule: (1) the statement that State laws or management actions intended to reduce predators are not allowed in National Park System units in Alaska, and (2) prohibitions on several methods of harvesting predators. With prohibitions on harvest methods removed, the 2020 Rule went back to deferring to authorizations under State law for harvesting predators. To illustrate how the 2020 Rule works in practice, Alaska residents, including rural and nonrural residents, and out-of-state hunters may take wolves and coyotes (including pups) for sport purposes in national preserves during the denning season in accordance with State law.

The 2020 Rule also relied upon a different interpretation of the term “sport” in ANILCA’s authorization for harvest of wildlife for sport purposes in national preserves in Alaska. As explained above, the 2015 Rule gave the term “sport” its common meaning associated with standards of fairness, and prohibited certain practices that were not compatible with these standards. In the 2020 Rule, the NPS stated that in the absence of a statutory definition, the term “sport” merely served to distinguish sport hunting from harvest under Federal subsistence regulations. Consequently, under the 2020 Rule, practices that may not be generally compatible with notions of “sport”—such as harvesting swimming caribou or taking cubs and pups or mothers with their young—may be used by anyone in national preserves in accordance with State law.

Finally, the 2020 Rule reconsidered the risk of bear baiting to the visiting public. The NPS noted that peer-reviewed data are limited on the specific topic of hunting bears over bait. Additionally, the NPS concluded that human-bear interactions are likely to be rare, other than for hunters seeking bears, due to a lack of observed bear conditioning to associate bait stations with humans and the relatively few people in such remote areas to interact with bears. In making this risk assessment, the NPS took into account State regulations on baiting that are intended to mitigate safety concerns, and NPS authority to enact local closures if and where necessary. For these reasons and because of policy

direction from the DOI and the Secretary of the Interior requiring maximum deference to state laws on harvest that did not exist in 2015, the 2020 Rule rescinded the prohibition on bear baiting that was implemented in the 2015 Rule. As a result, any Alaska resident, including rural and nonrural residents, or out-of-state hunter may take bears over bait in national preserves in Alaska in accordance with State law, including with the use of human and dog foods.

The NPS received 211,780 pieces of correspondence, with a total of 489,101 signatures, during the public comment period for the 2020 Rule. Of the 211,780 pieces of correspondence, approximately 176,000 were form letters and approximately 35,000 were unique comments. More than 99% of the public comments opposed the 2020 Rule. Comments on the 2020 Rule can be viewed on *Regulations.gov* by searching for “RIN 1024–AE38”.

Several environmental organizations sued NPS challenging the 2020 Rule, and Alaska and several hunting organizations intervened to defend the rule. NPS did not defend the rule on the merits but instead sought a voluntary remand, without vacatur, in light of its ongoing reassessment of the factual, legal, and policy conclusions underlying the rule. The district court denied that motion, and subsequently granted the plaintiffs’ motion for summary judgment in part and denied it in part. See *Alaska Wildlife Alliance v. Haaland*, 632 F. Supp. 3d 974 (D. Alaska 2022). The court held that the 2020 Rule violated the Administrative Procedure Act in three respects, ruling as follows:

- NPS acted contrary to law insofar as it determined that its statutory authority to regulate hunting on the National Preserves of Alaska is restricted to a “limited closure authority” and that ANILCA mandates that NPS defer to State hunting regulations.

- NPS’s finding that State of Alaska’s and Federal wildlife management requirements are equivalent is arbitrary and capricious.

- NPS’s disregard without explanation of its conclusion in 2015 that State regulations fail to address public safety concerns associated with bear baiting is arbitrary and capricious.

The court remanded the 2020 Rule to NPS, without vacatur, for further proceedings consistent with its opinion.

Final Rule

In this rule, the NPS reconsiders the conclusions that supported the 2020 Rule, while taking into account the defects in the Rule identified by the

district court. The proposed rule addressed three topics that were considered in the 2015 and 2020 Rules: (1) bear baiting; (2) the meaning and scope of hunting for “sport purposes” under ANILCA; and (3) State law addressing predator harvest. After reconsidering these topics, the NPS has decided to prohibit the practice of taking bears over bait based primarily on public safety concerns and new factual information pertaining to the risk posed to the visiting public. This rule also clarifies the regulatory definition of trapping. Although the district court confirmed in the challenge to the 2020 Rule that the agency possesses the authority to do so, the NPS has decided against addressing the other hunting practices outlined in the proposed rule at this time, though it may re-evaluate whether regulatory action is necessary in the future. The approach NPS takes in this final rule, which focuses on addressing the threat to public safety from bear baiting, is considerably narrower than the 2015 Rule. It is an improvement over the 2020 Rule because it is more consistent with NPS policies to protect wildlife and promote visitor safety.

Bear Baiting

This rule prohibits bear baiting in national preserves in Alaska. Bait that hunters typically use to attract bears includes processed foods like bread, pastries, dog food, and bacon grease. The NPS mission is broad and includes measures to promote the safety of those who visit System units (see 2006 NPS Management Policies, section 8.2.5) as well to protect natural wildlife populations (see 2006 NPS Management Policies, section 4.4.2). This rule will lower the probability of visitors encountering a bait station where bears may attack to defend a food source. Further, this rule will lower the risk that bears will associate food at bait stations with humans and become conditioned to eating human-produced foods, thereby creating a public safety concern. This action to prohibit baiting is supported by these two primary risk factors and other considerations that are discussed below.

Primary Risk Factor One: Bears Defending a Food Source

The risks caused by humans feeding bears (including baiting them with food) are widely recognized.⁴ Bears are more

likely to attack when defending a food source, putting visitors who encounter a bear at or near a bait station or a kill site at significant risk.⁵ Visitors to national preserves in Alaska may inadvertently encounter bears and bait stations while engaging in sightseeing, hiking, boating, hunting, photography, fishing, and a range of other activities. This is because despite the vast, relatively undeveloped nature of these national preserves, most visitation occurs near roads, trails, waterways, or other encampments (*e.g.*, cabins, residences, communities). Establishing and maintaining a bait station requires the transport of supplies, including bait, barrels, tree stands, and game cameras. Because of the effort involved, bear baiters typically establish stations close to access points used by other visitors, such as roads, trailheads, and waterways, and are not likely to travel beyond these locations into more remote and less visited areas. As a result, the same roads, trails, and waterways used by visitors are, therefore, also used by those setting up a bait station. Thus, despite the vast landscapes, bear baiting and many other visitor activities are concentrated around the same limited access points. Processed foods are most commonly used for bait because they are convenient to obtain and are attractive to bears. Processed foods do not degrade quickly nor are they rapidly or easily broken down by insects and microbes. As a result, they persist on the landscape along with the public safety risk of bears defending a food source.

The NPS recognizes that there are restrictions in State law intended to mitigate the risks described above. Bait

Practice within the National Forests. 1 Animal Law 47, 55–56 (1995). See also, Denali State Park Management Plan, 69 (2006) (“The practice has the potential for creating serious human-bear conflicts, by encouraging bears to associate campgrounds and other human congregation points with food sources.”); City and Borough of Juneau, Living with Bears: How to Avoid Conflict (available at https://juneau.org/wp-content/uploads/2017/03/2004_living_w_pamphlet_finaljustified.pdf), City and Borough of Juneau, Living in Bear Country (available at https://juneau.org/wp-content/uploads/2017/03/living_in_bear_country_color.pdf) (“It is well known that garbage kills bears—that is, once bears associate people with a food reward, a chain of events is set into motion and the end result, very often, is a dead bear.”); Biologists say trash bears in Eagle River will be killed—but people are the problem, Anchorage Daily News (available at <https://www.adn.com/alaska-news/wildlife/2018/06/18/biologists-say-trash-bears-in-eagle-river-will-be-killed-but-people-are-the-problem/>).

⁵ Herrero, S. 2018. Bear attacks: their causes and avoidance. Lyons Press, Guilford, Connecticut, USA. at p. 22; Glitzenstein, E., Fritschie, J. The Forest Service’s Bait and Switch: A Case Study on Bear Baiting and the Service’s Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 47, 55–56 (1995).

⁴ Herrero, S. 2018. Bear attacks: their causes and avoidance. Lyons Press, Guilford, Connecticut, USA at p. 22; Glitzenstein, E., Fritschie, J. The Forest Service’s Bait and Switch: A Case Study on Bear Baiting and the Service’s Struggle to Adopt a Reasoned Policy on a Controversial Hunting

stations are prohibited within $\frac{1}{4}$ mile of a road or trail and within one mile of a dwelling, cabin, campground, or other recreational facility. State regulations also require bait station areas to be signed so that the public is aware that a bait station exists. Although these mitigation measures may reduce the immediate risk of visitors approaching a bear defending bait, NPS records indicate that the majority of bait stations established at Wrangell-St. Elias National Preserve do not comply with the State's minimum distance requirements. Further, these requirements do not mitigate the risk of other adverse outcomes associated with baiting that are discussed below.

Primary Risk Factor Two: Habituated and Food-Conditioned Bears

Another aspect of bear baiting that poses a public safety and property risk is the possibility that bears become habituated to humans through exposure to human scents at bait stations and then become food conditioned, meaning they learn to associate humans with a food reward (bait). This is particularly true of processed foods that are not part of a bear's natural diet because virtually all encounters with processed foods include exposure to human scent.

It is well understood that habituated and food-conditioned bears pose a heightened public safety risk.⁶ The published works of Stephen Herrero, a recognized authority on human-bear conflicts and bear attacks, explain the dangers from bears that are habituated to people or have learned to feed on human food, highlight that habituation combined with food-conditioning has been associated with a large number of injuries to humans, and indicate that bears may become food-conditioned from exposure to human food at bait stations.

The 2020 Rule concluded that the State's mitigation measures described above would serve to mitigate risk to public safety. However, as a district court noted in setting aside that finding, the 2020 Rule did not account for the contrary information contained in the 2015 Rule. *See Alaska Wildlife Alliance v. Haaland*, 632 F. Supp. 3d 974 (D. Alaska 2022). The State's mitigation measures, including requirements for buffers and signage, do not adequately address the risk associated with

habituated and food-conditioned bears because bears range widely, having home ranges of tens to hundreds of square miles.⁷ The buffers around roads, trails, and dwellings are therefore inconsequential for bears that feed at bait stations but are not harvested there. These bears have the potential to become habituated to humans and conditioned to human-produced foods, resulting in increased likelihood of incidents that compromise public safety, result in property damage, and threaten the lives of bears who are killed in defense of human life and property.

In the 2020 Rule, the NPS revisited the issue of whether bear baiting poses safety concerns. In part, the 2020 NPS analysis relied on certain studies, including a study of black bear baiting in Alaska from 1992 to 2010. The 2020 Rule did not accurately describe the conclusions of this study. The study concludes that the practice is not likely to have population level effects on black bears. It explicitly states, however, that the challenge presented by bear baiting is that baiting is contrary to efforts to minimize food conditioning of bears and the goal of promoting public safety.

The NPS also reconsidered other studies of public safety risks associated with bear baiting that were cited in the 2020 Rule and determined that they were inconclusive insofar as they relied solely on observational data and thus lacked experimental rigor. The lack of peer-reviewed data that would support rigorous analysis of these risks is not surprising because rigorous studies specific to this point are neither logistically nor ethically feasible. Further, the 2020 Rule failed to fully consider the vast experience and knowledge of recognized bear experts and professional resource managers. To address this data gap, the NPS undertook an effort to obtain new and additional information in connection with this rulemaking. In April 2022, the NPS queried 14 NPS resource managers and wildlife biologists from 12 different National Park System units in Alaska about bear baiting. These technical experts had an average of more than 20 years of experience as natural resource managers and their unanimous opinion was that bear baiting will increase the likelihood of defense of life and property kills of bears and will alter the natural processes and behaviors of bears and other wildlife. In the winter of 2022–2023, the NPS queried 28 North

American bear management and research biologists from state and provincial agencies, universities, and non-NPS Federal agencies. On average, each of these individuals had 25 years of bear expertise at the time of the survey. All 28 agreed that baiting bears as allowed under State law was functionally equivalent to feeding bears. Twenty-six of the biologists thought bears would defend a bait station in a manner equivalent to how that bear would defend a carcass (the remaining two were neutral). Twenty-six of the 28 biologists thought baiting would lead to bears associating food with humans (*i.e.*, food conditioning). Twenty-five of the 28 biologists thought a $\frac{1}{4}$ mile buffer around trails would be insufficient to resolve the public safety concerns of a bear defending a bait station. Twenty-seven of the 28 biologists thought a one-mile buffer around dwellings would not resolve the public safety concerns of bears associating food with people. All 28 biologists thought that natural bear behavior would be altered by baiting and that the broader ecosystem potentially would be impacted by baiting with non-natural foods.

Considering the potential for significant human injury or even death, these experts considered the overall risk of bear baiting to the visiting public to be moderate to high. These findings generally agree with the universal recognition in the field of bear management that food conditioned bears result in increased bear mortality and heightened risk to public safety and property, and that baiting, by its very design and intent, alters bear behavior. The findings also are consistent with the State's management plan for Denali State Park. The management plan expresses concern that bear baiting "teaches bears to associate humans with food sources" and states that bear baiting is in direct conflict with recreational, non-hunting uses of the park. The plan further notes that bear baiting has "the potential for creating serious human-bear conflicts, by encouraging bears to associate campgrounds and other human congregation points with food sources."⁸

As a result of these more recent factual findings and renewed analysis, the NPS has determined that it has sound reasons based on the collective expertise of recognized bear managers and researchers from across North America to prohibit bear baiting. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 515 (2009). In doing so, the NPS acknowledges this is a change of policy

⁶Herrero, S. 2018. Bear attacks: their causes and avoidance. Lyons Press, Guilford, Connecticut, USA. at p. 22; Glitzenstein, E., Fritschie, J. The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 47, 55–56 (1995).

⁷ See, e.g., Glitzenstein, E., Fritschie, J. The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 52–53 (1995).

⁸Denali State Park Management Plan, 69 (2006).

from the 2020 Rule. This change is permissible under the relevant statutes and better advances the statutory goals and NPS duties relating to management of wildlife, and visitor experience and safety. There are good reasons to make this change—the 2020 Rule was not “instantly carved in stone” and NPS maintains, for various reasons, including changed factual circumstances, new information about bear baiting, and a change in policy direction, that prohibiting bear baiting is better for practical reasons and better complies with applicable law. *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005). As discussed above, the change also fully addresses and responds to the district court’s ruling that the 2020 Rule arbitrarily “disregard[ed] without explanation [our] conclusion in 2015 that State regulations fail to address public safety concerns associated with bear baiting.” *Alaska Wildlife Alliance*, 653 F. Supp. 3d at 1005.

Another Consideration

The two primary risk factors discussed above fully justify the bear-baiting prohibition in National Preserves implemented by this rule. In addition to those two factors explained above, the reasons for the NPS regulatory change are amplified by other considerations that support a prohibition on all bear baiting. The NPS is guided by its mandates under the NPS Organic Act to conserve wildlife and under ANILCA to protect wildlife populations. Food-conditioned bears are more likely to be killed by authorities or by the public in defense of life or property.⁹ While the NPS supports wildlife harvest as authorized in ANILCA, it cannot promote activities that increase non-harvest mortalities of bears.

⁹ See e.g., City and Borough of Juneau, *Living with Bears: How to Avoid Conflict* (available at https://juneau.org/wp-content/uploads/2017/03/2004_living_w_pamphlet_finaljustified.pdf), City and Borough of Juneau, *Living in Bear Country* (available at https://juneau.org/wp-content/uploads/2017/03/living_in_bear_country_color.pdf) (“It is well known that garbage kills bears—that is, once bears associate people with a food reward, a chain of events is set into motion and the end result, very often, is a dead bear.”); Biologists say trash bears in Eagle River will be killed—but people are the problem, Anchorage Daily News (available at <https://www.adn.com/alaska-news/wildlife/2018/06/18/biologists-say-trash-bears-in-eagle-river-will-be-killed-but-people-are-the-problem/>); Glitzenstein, E., Fritschie, J. The Forest Service’s Bait and Switch: A Case Study on Bear Baiting and the Service’s Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 52–53 (1995).

Feedback From Tribes and ANCSA Corporations on Bear Baiting

The NPS received feedback from Tribes and Alaska Native Claims Settlement Act (ANCSA) Corporations before publication of the proposed rule that indicated baiting bears is not a common activity in or near national preserves and not a common action by local rural residents. Many of the entities voiced support for prohibiting baiting altogether, limiting bait to natural items, increasing buffer zones around developments, or requiring a permit. On the other hand, a minority—mostly entities affiliated with the Wrangell-St. Elias area—recommended continuing to allow sport hunters to harvest bears over bait, including with use of processed foods like donuts and dog food. We have thoroughly considered these comments, including the comments in support of bear baiting, and we have decided for the reasons stated above to prohibit the practice in Alaska’s National Preserves.

The Meaning and Scope of Hunting for “Sport Purposes” Under ANILCA

Hunting is prohibited in National Park System units except as specifically authorized by Congress. 36 CFR 2.2(b). Title VIII of ANILCA allows local rural residents to harvest wildlife for subsistence in most, but not all, lands administered by the NPS in Alaska. Title VIII also created a priority for Federal subsistence harvest over other consumptive uses of fish and wildlife. See 16 U.S.C. 3112(2), 3114. Separate from subsistence harvest, ANILCA authorized anyone to harvest wildlife for “sport purposes” on NPS lands in Alaska designated as national preserves. When first authorized under ANILCA, the State managed subsistence harvest by local rural residents under title VIII as well as harvest for sport purposes by anyone. After a ruling from the State Supreme Court that the State Constitution barred the State from implementing the rural subsistence priority provisions of ANILCA, see *McDowell v. State*, 785 P.2d 1 (Alaska 1989), the Federal Government assumed management of subsistence harvest on Federal lands in Alaska under title VIII. Following this decision, the State only regulates harvest (concurrently with NPS) for sport purposes under ANILCA on national preserves.¹⁰ Under the

¹⁰ The State of Alaska also uses the term “subsistence” when referencing harvest of fish and wildlife by state residents. It is important to recognize, however, that state subsistence harvest is not the same as Federal subsistence harvest under title VIII of ANILCA, which is limited to only local rural residents. When the term “subsistence” is used in this document, it refers to subsistence

State’s current framework, Alaska residents have a priority over nonresidents but there is no prioritization based upon where one resides in Alaska. Accordingly, assuming satisfaction of preliminary requirements like obtaining a tag for any targeted species, all residents of Alaska have an equal opportunity to harvest wildlife for “sport purposes” in national preserves under State law.

The NPS re-evaluated whether it was appropriate for the 2020 Rule to change its interpretation of the term “sport” from the 2015 Rule. A fundamental principle of statutory interpretation is that each word is presumed to have meaning and that words generally carry their ordinary meaning. The 2020 Rule interpreted the term “sport” to merely distinguish sport hunting from harvest under Federal subsistence regulations. If Congress intended the term “sport” to have this meaning, however, it could have more simply and clearly allowed for the taking of fish and wildlife in national preserves for “subsistence uses and other uses” or “subsistence uses and non-subsistence uses.” See 16 U.S.C. 3201. The NPS believes a more faithful interpretation of this provision is to give a meaning to the term “sport” that recognizes its distinct ordinary definition. This is consistent with how Congress framed the purposes of ANILCA, which includes an intent of Congress “to preserve . . . recreational opportunities including but not limited to hiking, canoeing, fishing, and sport hunting” See 16 U.S.C. 3101(b) (emphasis added). The NPS maintains that the best understanding of this term, as explained more fully below, incorporates principles of fairness and, in the context of wildlife harvest, fair chase. Giving “sport” this meaning also is more consistent with the overall intent of Congress to provide a preference for subsistence harvest under title VIII of ANILCA. In contrast to harvest for sport or recreation, harvest for subsistence use is not bound by Western notions of fair chase. Rather, subsistence values an effort in support of sustenance and cultural traditions.

The interpretation of the term “sport” in this rule expands on the NPS interpretation from previous rulemakings. In addition, this expanded interpretation is consistent with the 2015 Rule and NPS statements in the **Federal Register** concerning a regulatory action that was finalized in 1995 (60 FR 18534) to prohibit same-day-airborne hunting of bear, caribou, Sitka black-tailed deer, elk, coyote,

under title VIII of ANILCA and harvest of fish and wildlife under Federal subsistence regulations.

arctic and red fox, mountain goat, moose, Dall sheep, lynx, bison, musk ox, wolf and wolverine (now codified at 36 CFR 13.42(d)). In 1989, when the prohibition was first proposed, the NPS stated that in national preserves, the prohibition of same-day-airborne hunting of wolves would be “consistent with the ‘fair chase’ philosophy of hunting” (54 FR 24853). The proposed rule further stated that the rulemaking action would not unduly restrict aircraft access for sport hunting purposes when the concept of “fair chase” is maintained (54 FR 24853). When the prohibition was proposed again in 1994, the NPS stated it “did not consider the use of aircraft in such proximate relation to the actual taking of wildlife as is the case with same-day-airborne hunting to be a sporting practice” and that “[a]lthough Congress clearly provided for continued sport hunting in national preserves, same-day-airborne hunting does not appear to be intended to be legitimately related to such sport” (59 FR 58806).

The meaning of “sport” is critical given how the NPS has implemented the 1916 Organic Act direction to conserve wildlife. Based upon this conservation mandate, hunting is prohibited in National Park System units except as authorized by Congress. 36 CFR 2.2(b). ANILCA authorizes harvest for Federal subsistence and for “sport purposes” in national preserves in Alaska. The NPS interprets the term “sport” to include the concept of fair chase as articulated by hunting organizations, as not providing an unfair advantage to the hunter and allowing the game to have a reasonable chance of escape. For example, the Boone and Crockett Club, the oldest wildlife conservation group in North America, defines the term “fair chase” as “the ethical, sportsmanlike, and lawful pursuit and taking of any free-ranging wild game animal in a matter that does not give the hunter an improper or unfair advantage over the game animals,” and states that “[t]he fair chase hunter . . . [d]efines ‘unfair advantage’ as when the game does not have reasonable chance of escape.”¹¹ Similarly, the Hunting Heritage Foundation defines “fair chase” as “the balance between the hunter and the hunted animal that occasionally allows the hunter to succeed while animals generally avoid being taken,” and states that “[f]air chase laws, outlawing unfair methods like poison, snares, or bait, ensure that the hunted animal has a

reasonable opportunity to elude the hunter.”¹²

The NPS requested comment on this concept of “sport”. Responses to comments received on the topic of “sport” are provided below.

State Law Addressing Predator Harvest

The 2020 Rule concluded that the “State’s constitutional mandate for sustained yield is consistent with NPS Management Policies, which state that the NPS manages [wildlife] harvest to allow for self-sustaining populations of harvested species.” However, as the district court explained in its 2022 opinion rejecting that conclusion, State and Federal wildlife management objectives are somewhat similar but not equivalent. Therefore, the NPS cannot fully rely on State management to ensure consistency with Federal law and policy. NPS policy interprets and implements the NPS Organic Act. NPS Management Policies require the NPS to manage National Park System units for natural processes, including natural wildlife fluctuations, abundances, and behaviors, and specifically prohibit the NPS from engaging in predator reduction efforts to benefit one harvested species over another or allowing others to do so on NPS lands. (NPS Management Policies 2006, Ch. 4). This policy is supported by the ANILCA’s legislative history. The Report of the Committee on Energy and Natural Resources, U.S. Senate, Report No. 96–413, at page 171, states that “[i]t is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem, and that concept should be maintained.”

In its 2022 opinion, the district court acknowledged that NPS Management Policies prohibit predator reduction efforts. The court nevertheless concluded that the 2020 Rule did not conflict with that policy “because substantial evidence supports NPS’s finding that the State hunting regulations at issue . . . do not have the effect of reducing the natural abundance of predator species in the National Preserves.” That conclusion does not address the conflict with NPS Management Policies, which provide that NPS “does not engage in activities

to reduce the numbers of native species *for the purpose of* increasing the numbers of harvested species (*i.e.*, predator control), nor does the Service permit others to do so on lands managed by the National Park Service” (emphasis added). Measures enacted for the purpose of predator control thus are prohibited by policy even if they do not actually reduce predator populations or increase the number of prey species available to hunters. For that reason, the limited data discussed in 2020 Rule and in the district court’s opinion suggesting that Alaska’s predator control measures may not impact predator population levels within national preserves do not lead to the conclusion that such measures are consistent with NPS policies. The position articulated in the 2020 Rule instead is in tension with these policies based upon the information NPS collected over a period of years before the publication of the 2015 Rule. This information indicates that the State allowed the predator harvest practices for the purpose of benefitting prey species over predators and that the practices are therefore contrary to NPS policy. For this reason, the NPS reaffirms its policy that actions intended to reduce predator species, whether effective or not, are not allowed on lands managed by the NPS. However, for the reasons discussed in the summary of changes to the final rule and in response to specific comments below, the NPS does not believe it is necessary at this time to incorporate this prohibition into the regulatory text of this final rule. The NPS may reconsider whether this policy statement should be incorporated into regulations in the future. Park superintendents in Alaska may also use this clarified policy in support of closures or other measures as appropriate.

Trapping Clarification

The rule also revises the definition of “trapping” to clarify that trapping only includes activities that use a “trap” as that term is defined in NPS regulations. The definition of “trapping” promulgated in the 2015 Rule inadvertently omitted reference to the use of traps and instead referred only to “taking furbearers under a trapping license.” The revision in this rule resolves any question about whether trapping can include any method of taking furbearers under a trapping license, which could include the use of firearms depending upon the terms of the license. This change more closely aligns the definition of “trapping” for System units in Alaska with the definition that applies to all other System units (see 36 CFR 1.4). This

¹¹ Boone and Crockett Club, *The Principles of Fair Chase*, <https://www.boone-crockett.org/principles-fair-chase> (last visited July 25, 2022).

¹² The Hunting Heritage Foundation, *Fair Chase*, <https://www.huntingheritagefoundation.com> (last visited July 25, 2022).

clarification is an improvement over the 2015 Rule and will facilitate better administration of, and participation in, trapping on national preserves in Alaska.

Severability

The NPS intends these regulations to be severable. This final rule amends NPS's existing regulations, and in general, NPS regulatory provisions related to hunting and trapping in Alaska national preserves can be functionally implemented if each revision in this final rule occurred on its own or in combination with any other subset of revisions. Bear baiting, the meaning of "sport hunting," predator control, and the definition of trapping are separate and discrete issues, and the provisions related to each of those issues can clearly and effectively be implemented independently of each other. As a result, if a court were to invalidate any particular provision of this final rule, allowing the remainder of the rule to remain in effect would still result in functional regulation of hunting and trapping in Alaska national preserves.

Summary and Responses to Comments

On January 5, 2023, the NPS sent letters to Tribal entities inviting them to consult on this rule. The NPS followed each of these letters with calls and emails. The NPS met with every Tribal entity that requested a meeting in the venue and format of their choosing to best facilitate meaningful engagement. On January 9, 2023, the NPS published the proposed rule in the **Federal Register** (88 FR 1176). The proposed rule was open for an initial 60-day public comment period. The NPS extended the comment period on March 10, 2023 (88 FR 14963), in response to requests from the public and the State for more time to review the proposal. In total, the comment period was open for 77 days including the extension. The comment period closed on March 27, 2023. The NPS invited comments through the mail, hand delivery, and through the Federal eRulemaking Portal at <https://www.regulations.gov>.

The NPS received 199,494 pieces of correspondence on the proposed rule, including 196,158 form letters and 3,336 unique pieces of correspondence. Following publication of the proposed rule, the NPS consulted with the State. Meetings were held on February 23, 2023, and March 6, 2023, between NPS Alaska Region staff and Alaska Department of Fish and Game staff specific to the proposed rule, and on March 6, 2023, between the NPS Director and Alaska Department of Fish

and Game leadership. Additionally, following publication of the proposed rule, the NPS presented the proposed rule at numerous public meetings, including BOG meetings, Subsistence Resource Commission meetings, and Regional Advisory Council meetings. NPS leadership also met with the Alaska Congressional Delegation several times following publication of the proposed rule.

A summary of the pertinent issues raised in the comments received and NPS responses are provided below. After consultation, considering public comments, revising the EA and issuing the FONSI, the NPS made the following changes in this final rule:

1. The NPS removed the table of 14 prohibited practices and instead only prohibits the use of bait, and specifically the practice of bear baiting, for the reasons stated above. Most of the remaining practices from the table are currently prohibited under state law. To the extent any of the remaining practices are currently allowed under state law, they typically only apply to a limited number of preserves. While the NPS believes the remaining listed practices are generally not appropriate under the NPS management framework for the reasons discussed in the proposed rule, the NPS has decided against taking action at this time for those practices. Information from user groups, including Alaska Native entities, that commonly harvest wildlife in national preserves in Alaska expressed their belief, consistent with NPS management observations, that there is little to no demand to engage in these harvest practices in national preserves (other than limited demand to bait bears primarily in a single preserve). The practice of bear baiting, however, poses significant public safety concerns, which urgently requires regulatory action. Concerns with the other practices do not carry the same degree of urgency. They are either already prohibited by the state or occur on a limited basis.

Additionally, park superintendents have authority to prohibit or restrict these practices if they deem it necessary. For these reasons, NPS has decided not to adopt regulatory prohibitions on these practices at this time. The NPS may re-evaluate regulatory action in the future.

2. The NPS decided not to incorporate the provision from NPS Management Policies regarding predator control into the regulatory text of this final rule. The NPS determined it is not necessary to incorporate this prohibition at this time in the regulatory text of this final rule. NPS may reconsider whether this policy

statement should be incorporated into regulatory provisions in the future.

3. Based on public comment that there is confusion on when a firearm can be used under a trapping license, the NPS modified the definition of trapping in § 13.1 to clarify that a firearm can be used to take a furbearer in conjunction with a trapping license when a furbearer is (1) ensnared in an intact trap; (2) ensnared by a trap that is no longer anchored; or (3) mortally wounded by a trap but has broken free from the trap, during an open trapping season for that species. This allows the humane dispatch of a furbearer that has been caught in a trap. Free-ranging furbearers may not be harvested with a firearm under a trapping license. Free-ranging furbearers may be harvested with a firearm under a hunting license during an open hunting season for the harvested species.

4. The NPS added a new paragraph (k) addressing the severability of the regulations in § 13.42.

Economic Costs and Benefits

1. *Comment:* Commenters suggested that the economic benefit of wildlife viewing, outdoor recreation, and tourism to Alaska's state economy are greater than the economic benefit of sport hunting.

NPS Response: The NPS agrees that several analyses, including ECONorthwest (2014), USDOJ-USDOC (2018), and The University of Alaska (2019),¹³ have estimated that wildlife viewing contributes more to Alaska's state economy in terms of jobs, labor income, and revenue, than hunting. However, the economic analysis for this rule evaluates costs, benefits, and impacts to small businesses relative to baseline conditions (the conditions absent the rule). The NPS does not expect the rule to affect visitation, or the number of days visitors come to national preserves to view wildlife or engage in other non-hunting recreational activities. Further, the NPS expects impacts to hunters to be small. Individuals who choose to hunt wildlife in national preserves would be mostly unaffected by the rule, and hunters that

¹³ ECONorthwest. 2014. The Economic Importance of Alaska's Wildlife in 2011. Summary Report to the Alaska Department of Fish and Game, Division of Wildlife Conservation, contract IHP-12-052. Portland, Oregon. USDOJ-USDOC. (U.S. Department of the Interior, U.S. Fish and Wildlife Service, and U.S. Department of Commerce, U.S. Census Bureau). 2018. 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation. Revised October 2018. The University of Alaska. 2019. Economic Development in Alaska. Outdoor Recreation Impacts and Opportunities. Presented to the Alaska Division of Economic Development <http://npshistory.com/publications/recreation/ak-outdoor-rec.pdf>.

are interested in the specific practices affected by this rule could substitute many other locations in Alaska (or other seasons) in which such hunting practices are still allowed. As a result, the NPS does not expect the rule to impact small businesses or the overall state economy.

2. Comment: Commenters suggested that the intrinsic value of protecting wildlife outweighs potential costs to sport hunters.

NPS Response: The NPS acknowledges that there are many ways to assess the value of wildlife. In economics, for example, value is measured by consumer surplus, which is calculated as an individual's willingness to trade off money (and thus other goods and services) for a resource or service as a measure of how much that resource or service is "worth" to that individual; how much they value it. While this is an anthropocentric concept of value based on the ways in which a resource or service benefits human well-being, it is a useful measure that allows for the comparison of benefits and costs in a consistent and well-understood metric of dollars. This is also a key component of the measure of value that Federal agencies are directed to use in cost-benefit analyses (Office of Management and Budget (OMB) Circular A-4; OMB Circular A-94). Importantly, however, such economic values do not have to involve any human use of, or interaction with, a resource. Passive, or nonuse values, capture the values people place on the existence of wildlife or the preservation of wildlife for future generations, independent of any "use" of that wildlife. Intrinsic value, on the other hand, is an eco-centric concept reflecting the perspective that wildlife has value in its own right, regardless of its contribution to human uses or well-being (Rea and Munns, 2017). Passive use value is the most closely related economic concept to intrinsic value, but still focuses on human well-being and human-ascribed values. As noted by Rea and Munns (2017), while passive use values can be quantified monetarily through economic valuation, there are no standard metrics or methods for describing intrinsic values. Methods to quantify intrinsic values are evolving and have not yet reached the same level of acceptance as economic valuation methods.

In the previous version of the cost-benefit analysis for this rule, the NPS included one example of relevant passive use values associated with wildlife in Alaska (bears) that could be affected by this rule. In response to these comments, the NPS has expanded

the discussion by including a definition of passive use value, a definition of intrinsic value, and how the two relate. The NPS has also included additional references for passive use values and intrinsic values.¹⁴

3. Comment: Commenters suggested that the value of a living animal spans time (e.g., through wildlife viewing) and is greater than that of the associated pelt or meat.

NPS Response: The NPS is aware of a study by Elbroch et al. (2017)¹⁵ that compared the tourism spending and business revenue generated by one commonly seen and photographed bobcat in Yellowstone National Park to the average price of a bobcat pelt and hunting license. The NPS is also aware of several analyses that have demonstrated the importance of wildlife viewing and the greater overall contributions such tourism makes to Alaska's state economy compared to hunting.

Cost-benefit analyses of Federal regulatory actions, however, evaluate and compare specific measures of economic value referred to as consumer surplus—e.g., the value of recreational opportunities such as hunting and wildlife viewing, and passive use values associated with the preservation and avoided loss of wildlife. This is the appropriate economic measure of societal welfare, allowing for a comparison of costs and benefits in consistent terms (OMB Circular A-4; OMB Circular A-94). Economic analyses of NPS regulatory actions also evaluate impacts to small businesses associated with potential changes in park visitation.

This regulatory action is not expected to affect visitation or the number of days visitors come to national preserves to view wildlife, and as a result, is not expected to have any associated economic effects on consumer surplus or impacts to guides and other small businesses. However, this rule could have a small impact on wildlife sightings for those visitors who already come to national preserves. The NPS acknowledges that a single animal has the potential to generate wildlife

viewing opportunities for many different people that spans a longer period of time and has discussed this issue in the updated cost-benefit analysis for this rule.

NPS Legal Authority

4. Comment: Commenters stated that the rule exceeds the NPS's authority under ANILCA. Commenters stated that ANILCA gives sole discretion to the State to regulate harvest of wildlife for sport purposes under 16 U.S.C. 3202(a) and that 16 U.S.C. 3201 limits NPS authority to implementing temporary closures in specific locations.

NPS Response: The NPS recognizes the State has responsibility and authority for management of fish and wildlife on national preserves in Alaska. 16 U.S.C. 3202(a). Similarly, however, the NPS has responsibility and authority over the management of these areas. 16 U.S.C. 3202(b). These principal statements in ANILCA establish a legal framework where authority and responsibility for managing wildlife on national preserves are shared between the State and Federal governments. In a separate section of the statute, ANILCA addresses the management of wildlife on national preserves specifically. 16 U.S.C. 3201. It begins by directing the NPS to administer national preserves as units of the National Park System in the same manner as national parks, provided that hunting and trapping must be allowed in accordance with State and Federal law and regulation. All units of the National Park System are governed by the NPS Organic Act, which, among other things, establishes a general mandate to conserve wildlife. 54 U.S.C. 100101(a). The NPS therefore must manage wildlife on national preserves to allow sport hunting, but in a manner that is consistent with the NPS Organic Act, and by inference NPS policies implementing the NPS Organic Act related to the taking of wildlife in System units. See NPS Management Policies section 4.4.3. ANILCA further states that the Secretary of the Interior (acting through the NPS) may promulgate regulations restricting sport hunting and trapping in national preserves after consultation with the State. 16 U.S.C. 3201. This section states specifically that the NPS may designate zones where and periods when no hunting or trapping may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment. 16 U.S.C. 3201. This provision does not narrow the NPS's general regulatory authority under ANILCA, 16 U.S.C. 3124, or its general authority to manage wildlife in national preserves; rather it

¹⁴ Rea, A.W. and Munns Jr, W.R., 2017. The value of nature: Economic, intrinsic, or both? Integrated environmental assessment and management, 13(5), p. 953. Richardson, L. and Loomis, J., 2009. The total economic value of threatened, endangered and rare species: an updated meta-analysis. Ecological economics, 68(5), pp.1535–1548. Subroy, V., Gunawardena, A., Polyakov, M., Pandit, R. and Pannell, D.J., 2019. The worth of wildlife: A meta-analysis of global non-market values of threatened species. Ecological Economics, 164, p.106374.

¹⁵ Elbroch, L.M., Robertson, L., Combs, K. and Fitzgerald, J., 2017. Contrasting bobcat values. Biodiversity and Conservation, 26, pp.2987–2992.

provides specific authority for geographic or temporary closures to hunting or trapping, which complements the NPS's broader regulatory authority. ANILCA authorizes the NPS to promulgate reasonable regulations concerning the take of wildlife in national preserves that are consistent with the mandates of the NPS Organic Act. ANILCA does not require that the NPS defer to State hunting regulations in all instances. This rule does not interfere with the State's authority and responsibility to manage wildlife on national preserves. It prohibits one specific harvest practice on national preserves. The vast majority of State regulations are, and are expected to remain, the governing laws concerning sport hunting in national preserves. This rule is consistent with ANILCA by preserving the status quo that the responsibility and authority for managing wildlife on public lands in Alaska is shared between the State and Federal governments.

5. Comment: Several commenters stated that the term "sport," as used in 16 U.S.C. 3201 and elsewhere in ANILCA, only serves to differentiate between subsistence and non-subsistence take of wildlife in national preserves.

NPS Response: The NPS explains the basis for its interpretation of the term "sport," and its incorporation of fair chase principles above. In short, this interpretation is more appropriate than the minimal meaning given to the term in the 2020 Rule, because it recognizes the decision by Congress to use the specific term "sport" and is therefore more consistent with principles of statutory interpretation, and it also adheres more closely to the intent of Congress to provide a preference for subsistence harvest under title VIII of ANILCA.

6. Comment: Several commenters stated that it is inappropriate to give meaning to the term "sport" in a manner that restricts harvest by individuals for subsistence purposes under state law.

NPS Response: These commenters conflate harvest for subsistence under Federal regulations implementing title VIII of ANILCA and harvest for subsistence under state law throughout Alaska, including on national preserves. The NPS acknowledges that some individuals who harvest wildlife in national preserves are doing so primarily for food, and many may have long standing family traditions doing so. Regardless of the hunter's intent or purpose, however, and regardless of how the State of Alaska labels hunting under state law, ANILCA allows

individuals to take wildlife in national preserves for two reasons only: (1) for Federal subsistence uses under title VIII; or (2) for "sport purposes." 16 U.S.C. 3201. It would be inappropriate for the NPS to allow harvest in national preserves for any purpose that is not identified in ANILCA.

7. Comment: One commenter stated that the NPS lacks authority to preempt state regulations for managing wildlife because of statements in 43 CFR part 24 about state authority over fish and wildlife, including on Federal lands within a state.

NPS Response: The NPS disagrees with this interpretation of 43 CFR part 24. This part recognizes state authority over wildlife in units of the National Park System. The provisions in this part, however, are policy statements that do not state or suggest that states have plenary or exclusive authority over wildlife in System units. To the contrary, they outline a policy recognizing the shared responsibility of states and the Federal Government for the management of wildlife, and specifically reaffirm Federal authority.

8. Comment: One commenter stated that because national preserve lands were withdrawn after Statehood, that NPS lacks authority to adopt the harvest restrictions in this rule. This commenter further stated that ANILCA removes the NPS's authority to promulgate this rule in 16 U.S.C. 3122 and 3125.

NPS Response: These comments fail to acknowledge ANILCA's recognition of the Secretary of the Interior's authority, acting through the NPS, in ANILCA 16 U.S.C. 3201, to restrict sport hunting and trapping in national preserves. Some of these comments acknowledge that this section allows the NPS to completely close an area to all hunting, but then argue that NPS lacks authority to close an area to a specific type of hunting (e.g., taking bears over bait). The NPS finds this argument without merit under the plain text of section 3201 for two reasons: first, to the extent these comments argue that section 3201 only allows complete closures, the NPS believe that these are complete closures to these specific forms of hunting, and second, the more logical reading of section 3201 is that if the NPS can prevent a type of hunting by completely closing an area to all harvest, surely it can prevent the same activity through less-restrictive measures that fall short of a complete closure.

9. Comment: Several comments argued it is inappropriate for the NPS to manage harvest for federally qualified subsistence differently than harvest by others and specifically questioned the

appropriateness of allowing Federal subsistence users to bait bears with natural food items and prohibiting others from doing so under state regulations.

NPS Response: The importance of subsistence is readily apparent in ANILCA. It is specifically identified as one of the primary purposes of the statute in section 3101(c), and there is an entire title in ANILCA devoted to allowing and managing this practice, recognizing the importance of subsistence not just for food but as a cultural practice. Furthermore, the text of ANILCA requires the NPS to prioritize subsistence take in national preserves.

With respect to bear baiting specifically, there are additional reasons to treat title VIII subsistence users differently. As mentioned elsewhere, subsistence brings a different set of values than harvest for sport purposes. In addition to valuing an economy of effort (as opposed to fair chase), subsistence values maximized use of resources. To that end, it is contrary to traditional harvest practices to use commercial food products to attract wildlife for harvest. Subsistence users traditionally harvested bears over remains from the kill of an ungulate that could not be harvested or salvaged. The NPS acknowledges that these natural items, which are authorized for Federal subsistence users in national preserves, can similarly attract bears, but would be left behind at the site of harvest. It is reasonable to allow this practice for a priority user group that fundamentally operates under a different set of values because (1) the number of federally qualified subsistence users is much smaller than those that could participate under state regulations, (2) offering a traditional harvest opportunity to subsistence users is more consistent with ANILCA's emphasis on the importance of subsistence, (3) bears are exposed to these items as part of their natural history and far less likely to associate them with humans, and (4) natural foods degrade more quickly. For these reasons, this allowance recognizes rural subsistence priority and reduces the safety risk posed by the authorization for non-subsistence users.

10. Comment: Comments were received stating that NPS inappropriately described the subsistence authorization in preserves by referring to "local rural residents."

NPS Response: NPS is not proposing to modify the existing statutory and regulatory construct pertaining to harvest of wildlife in national preserves. Under 36 CFR 13.410, subsistence uses

are authorized in national preserves in Alaska by “local rural residents.”

11. Comment: Several commenters stated that this rule is “substantially the same” as a rule promulgated by the U.S. Fish and Wildlife Service (FWS) in 2016 (81 FR 52248, August 5, 2016) (the Refuges Rule), which was disapproved by a joint resolution of the U.S. Congress in 2017 under the Congressional Review Act (CRA). 5 U.S.C. 801(b)(2); see Public Law 115–20, 131 Stat. 86. As a result, these commenters asserted that the CRA prohibits the NPS from promulgating this rule.

NPS Response: The NPS considered whether the final rule is “substantially the same” as the Refuges Rule and determines that it is not. As a threshold matter, a rule promulgated by a different bureau regarding different lands that are managed according to different legal standards is not “substantially the same.” The Refuges Rule addressed national wildlife refuge lands in Alaska managed by the FWS according to, among other authorities, ANILCA, the National Wildlife Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, and the 1964 Wilderness Act. The final rule, in contrast, addresses national preserves administered by the NPS according to the NPS Organic Act and ANILCA.

In addition to the fundamentally different legal regimes covering the different lands, they are also very different in scale and geographic scope. National wildlife refuge lands in Alaska comprise 54 million acres whereas national preserves comprise less than half that acreage (22 million acres). There is zero physical overlap between National wildlife refuge lands and national preserves in Alaska, meaning that nothing in the final rule changes the regulatory landscape, in any way, on a single acre of land that was previously governed by the Refuges Rule. This sort of geographic non-overlap has already been recognized by the Ninth Circuit as support for a conclusion that two rules are not “substantially the same” within the meaning of the Congressional Review Act. See *Safari Club Int’l v. Haaland*, 31 F.4th 1157, 1170 (9th Cir. 2022).

Even setting aside the fact the two rules were issued by different bureaus, under different statutory authorities, on different lands, the two rules also have significant substantive differences. The substantive difference between this rule and the Refuges Rule is evidenced by the fact that the NPS and the FWS have promulgated separate rules regarding take of wildlife in national preserves

and refuges, respectively. In 2015, NPS submitted the 2015 Rule under the CRA months before FWS submitted the Refuges Rule. Only one joint resolution of disapproval was passed and enacted, disapproving of the Refuges Rule.

Additionally, this final rule only prohibits the practice of baiting bears (black and brown) based on primarily on public safety risk to visitors, whereas the Refuges Rule prohibited several practices in addition to the baiting of brown bears, and also allowed the continuance of black bear baiting. The Refuges Rule was based on concerns for maintaining natural diversity, whereas this final rule for national preserves in Alaska is based predominantly on public safety. As discussed above, recent factual information from bear experts led the NPS to determine it is necessary to take action to mitigate public safety concerns that stem from bear baiting. While additional concerns outlined in this rule also support a prohibition on bear baiting, the risk to the visiting public, which could be catastrophic, is the primary justification.

The Refuges Rule included a prohibition on several hunting or predator-control practices that are not addressed by this final rule. These included prohibitions on using snares, nets, or traps to take any species of bear; taking wolves and coyotes during denning season (from May 1 through August 9); and taking bear cubs or sows with cubs. The Refuges Rule included a statement that predator control is prohibited on National Wildlife Refuges in Alaska unless specific determinations are made. None of these provisions are in this final rule.

NPS recognizes that it previously described certain aspects of the 2015 Rule as “nearly identical in substance” to the Refuges Rule. DOI, *Alaska; Hunting and Trapping in National Preserves*, 85 FR 35181 (June 9, 2020). In doing so, however, NPS did not intend to make any legal or factual determination or conclusion about the meaning of the phrase “substantially the same” in the Congressional Review Act. In addition, that prior statement from NPS failed to account for several of the significant differences between the previous rule and the Refuges Rule, as outlined above. Furthermore, this final rule has several additional substantive differences from both the previous rule and the Refuges Rule, including with respect to the coverage of different sorts of hunting practices and treatment of different bear species. So that prior statement does not change NPS’s current view and determination that the final rule is not “substantially the same” as the Refuges Rule.

Accordingly, the NPS determines that the final rule is not “substantially the same” as the Refuges Rule within the meaning of the Congressional Review Act. 5 U.S.C. 801(b)(2).

Bear Baiting for Individuals With Disabilities

12. Comment: Commenters stated that the NPS should allow bear baiting by individuals with disabilities because it is a more efficient and accessible method of harvest.

NPS Response: The NPS is primarily concerned in this rule with the risks that bear baiting poses for public safety, which are the same regardless of the abilities of the hunter.

Definition of Predator Control

13. Comment: Several commenters stated that predator harvest outside of a BOG-authorized intensive management plan is not predator control, as defined under State law.

NPS Response: The NPS acknowledges that the State and the NPS use different terminology for predator management. The State only considers actions implemented by plans authorized under its “intensive management” law as predator control. The term “intensive management” has no meaning under Federal law. The NPS is guided by NPS 2006 Management Policies, section 4.4.3, which prohibits the NPS from allowing others to engage in activities to reduce the numbers of native species for the purpose of increasing the numbers of harvested species (*i.e.*, predator control) on lands managed by the NPS.

Predator Control Ban

14. Comment: Several commenters stated that predator harvest should be managed by the State to provide moose and caribou for harvest. Commenters stated that the purpose of predator harvest should be to meet harvest needs for moose and caribou and to sustain healthy populations.

NPS Response: 2006 NPS Management Policies, section 4.4.3, states that activities to reduce the numbers of native species for the purpose of increasing numbers of harvested species (*i.e.*, predator control) are not allowed on lands managed by the NPS. This policy applies to national preserves in Alaska notwithstanding any competing purposes for such activities, such as providing a sustained yield of ungulates for human use. While NPS is not including this policy language in the text of the final rule, it remains NPS policy that activities (including by the State) to decrease the number of native species for the

purpose of increasing numbers of harvested species are not allowed on NPS managed lands.

Coyotes Are Not Native to Alaska

15. *Comment:* Some commenters stated that coyotes are not native to Alaska and therefore do not deserve the same protection from harvest as other species that historically occupied the lands within the state.

NPS Response: Coyotes are native to North America, and while coyotes may not have historically occupied all of their current range, their expansion most likely occurred through natural processes. Consequently, the NPS manages coyotes in the same manner as other native species consistent with NPS Management Policies, sections 4.1, 4.4.1, 4.4.1.2, and 4.4.2.

Prohibited Actions—Harvesting Swimming Caribou

16. *Comment:* Several commenters stated that harvesting swimming caribou is a traditional activity for people who are not federally qualified subsistence users and therefore should be allowed for those people. Commenters suggested that harvest levels for this activity are typically low and therefore have minimal impacts.

NPS Response: The NPS removed this provision from the final rule. As previously noted, the allowance for this practice is limited and this provision would have only applied on waters that are under NPS jurisdiction. See 36 CFR 1.2(f). NPS may reconsider taking action regarding this practice in the future.

NPS Authority on Navigable Waterways

17. *Comment:* Commenters stated that the NPS lacks authority to regulate the harvest of swimming caribou or taking wildlife from motorboats on waters where the NPS lacks jurisdiction.

NPS Response: NPS removed this provision from the final rule. As previously noted, this provision would have only applied to waters that are under NPS jurisdiction. See 36 CFR 1.2(f). NPS may reconsider taking action regarding this practice in the future.

Exceptions to Prohibited Methods of Harvest

18. *Comment:* Commenters suggested that prohibitions on methods of harvest should not apply uniformly across the state, and that there should be exceptions or deviations for specific regions of Alaska where those activities are traditional. One commenter suggested that the superintendents of national preserves should have discretionary authority to authorize

these harvest practices where they are traditional.

NPS Response: Most of the methods of harvest prohibited by this rule are currently prohibited under state law. To the extent any of the practices are currently allowed under state law, they typically only apply to a limited number of preserves. While the NPS believes these practices are generally not appropriate for the reasons discussed above in the preamble to this rule, the NPS has decided against taking action at this time for all the practices except using bait, specifically to take bears. Additionally, park superintendents do have authority to prohibit or restrict these practices if they deem it necessary. For these reasons, NPS has decided not to adopt regulatory prohibitions on these practices at this time. NPS may consider addressing the other practices included in the proposed rule in the future.

Prohibition on Bear Baiting

19. *Comment:* Several commenters asked the NPS what it considers to be bait, and specifically whether it includes smokehouses and gut piles from legally harvested animals.

NPS Response: The NPS considers bait to be any attractant, natural or processed, that is specifically placed on the landscape with the intent of attracting an animal to facilitate harvest. Neither a smokehouse nor a gut pile unmoved from the location of harvest will be considered bait under this rule.

20. *Comment:* Several commenters stated there is no evidence that identifies a public safety risk associated with bear baiting and/or that any risk that does exist can be mitigated. Commenters stated that the internal NPS query about the risks of bear baiting was insufficient.

NPS Response: As discussed in detail above, bear baiting is broadly recognized in the field of bear management to pose a risk to public safety because (1) bears may defend a bait station in the same manner they would defend any other food resource; (2) food conditioning of bears may result in increased bear mortality and heightened risk to public safety and property; and (3) baiting, by its very design and intent, alters bear behavior. Due to these known risks and impacts, avoiding bears defending food resources and preventing bears from associating humans with food are central to the educational messaging of all government agencies that manage areas where bears exist. This is done to promote public safety and reduce the need to kill bears for reasons other than hunting. While mitigations to minimize

the potential for negative consequences associated with bear baiting exist under State law, these mitigations do not adequately address safety concerns for the visiting public. The likelihood of a catastrophic consequence, including an injury or death, to a member of the public increases with the presence of a bait station.

21. *Comment:* Several commenters stated that bear baiting is a sporting practice due to the level of effort and skill required to be successful.

NPS Response: The public safety considerations associated with bear baiting are independent of the skill or effort associated with the practice. Bear baiting is not consistent with promoting visitor safety in national preserves.

Consultation Process

22. *Comment:* Several commenters raised concerns with the level of outreach, collaboration, and consultation with the State, Tribal entities, and the public.

NPS Response: In addition to extending the public comment period for the proposed rule, the NPS did considerable outreach leading up to publication of the proposed rule and during the public comment period.

In the eight months prior to the publication of the proposed rule, the NPS informed the State, Tribal entities, and potentially affected user groups that the NPS was likely to reconsider the 2020 Rule through a new rulemaking. The NPS shared this information at numerous public meetings, including at BOG meetings, Subsistence Resource Commission meetings, Federal Subsistence Regional Advisory Council meetings, and Federal Subsistence Board meetings. The NPS shared this information at the 2022 Alaska Professional Hunters Association annual meeting that was attended by the State, on monthly coordination calls between the State and the DOI, and in one-on-one meetings between State and NPS leadership in Alaska. Beginning in April 2022, the NPS reached out to Tribes and ANCSA Corporations, and attended meetings with those groups to share information. As mentioned above, the NPS followed those efforts with a letter sent to Tribal entities inviting formal consultation. The NPS met with every Tribal entity that requested a meeting in the venue and format of their choosing to best facilitate meaningful engagement.

Following publication of the proposed rule, the NPS held three consultations meetings with the State, presented the proposed rule at numerous public meetings, including BOG meetings, Subsistence Resource Commission

meetings, and Regional Advisory Council meetings.

Use of a Firearm Under a Trapping License

23. *Comment:* Several commenters asked the NPS to allow the use of a firearm under a trapping license to dispatch a wounded or trapped animal. Some commenters asked the NPS to allow harvest of free-ranging furbearers with a firearm under a trapping license consistent with State regulations.

NPS Response: Existing NPS regulations define a trap as “a snare, trap, mesh, or other implement designed to entrap animals other than fish” and trapping as “taking furbearers under a trapping license” (36 CFR 13.1). These definitions create uncertainty about whether an individual can use a firearm to take a furbearer if authorized under a State trapping license, even though the NPS definition of a trap does not include a firearm. This rule addresses this uncertainty and in response to public comment the NPS has added an allowance in the final rule for the use of a firearm to dispatch a furbearer in limited circumstances, as explained above.

Compliance With Other Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563 and 14094)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the OMB will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant. The NPS has assessed the potential costs and benefits of this rule in the report entitled “Cost-Benefit and Regulatory Flexibility Analyses: Alaska Hunting and Trapping Regulations in National Preserves” which can be viewed online at <https://www.regulations.gov> by searching for “1024-AE70.”

Executive Order 14094 amends Executive Order 12866 and reaffirms the principles of Executive Order 12866 and Executive Order 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive

impacts and equity, to the extent permitted by law.

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

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report entitled “Cost-Benefit and Regulatory Flexibility Analyses: Alaska Hunting and Trapping Regulations in National Preserves” which can be viewed online at <https://www.regulations.gov> by searching for “1024-AE70.”

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2) of the CRA. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on Tribal, State, or local governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on Tribal, State, or local governments or the private sector. It addresses public use of national preserves and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates

Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. As explained above, this rule is consistent with ANILCA by preserving the status quo that the responsibility and authority for managing wildlife on public lands in Alaska, including the harvest of wildlife for sport purposes in national preserves, is shared between the State and Federal governments. In developing the proposed and final rule, NPS sought and considered input from the State. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes and ANCSA Corporations (Executive Order 13175 and Department Policy)

The DOI strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The proposed rule was informed by feedback from Tribal entities. In January 2023, the NPS invited consultation with Tribes and ANCSA Corporations that would be most affected by this rule. The NPS met with all entities that requested a meeting and their input was considered in the development of this rule. The NPS has evaluated this rule under the criteria in Executive Order 13175 and under the Department’s Tribal consultation and ANCSA Corporation policies. Because the rule does not restrict title VIII subsistence harvest and feedback from Tribes and

ANCSA Corporations indicates these methods of harvest are not common, the rule will not have a substantial direct effect on federally recognized Tribes or ANCSA Corporation lands, water areas, or resources.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The NPS prepared the EA evaluating the effects of this rule and issued the FONSI concluding that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because of the FONSI. The EA and FONSI considered new information as appropriate and responded to comments received during the public comment period and during consultation by analyzing impacts under a range of alternatives.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. The rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy and has not otherwise been designated by the Administrator of Office of Information and Regulatory Affairs as a significant energy action. A Statement of Energy Effects is not required.

List of Subjects in 36 CFR Part 13

Alaska, National parks.

In consideration of the foregoing, the National Park Service amends 36 CFR part 13 as set forth below:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

■ 1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Pub. L. 104–333, Sec. 1035, 110 Stat. 4240, November 12, 1996.

■ 2. In § 13.1:

- a. Add in alphabetical order the definition “Furbearer”; and
- b. Revise the definition of “Trapping”.

The addition and revision read as follows:

§ 13.1 Definitions.

* * * * *

Furbearer means one of the following species: beaver, coyote, arctic fox, red fox, lynx, marten, mink, least weasel, short-tailed weasel, muskrat, land otter, red squirrel, flying squirrel, ground squirrel, Alaskan marmot, hoary marmot, woodchuck, wolf, and wolverine.

* * * * *

Trapping means taking furbearers under a trapping license with a trap, or with a firearm when a furbearer is:

- (1) Ensnared in an intact trap;
- (2) Ensnared in a trap that is no longer anchored; or
- (3) Mortally wounded by a trap but that has broken free from the trap.

* * * * *

■ 3. In § 13.42, add paragraphs (f) and (k) to read as follows:

§ 13.42 Taking of wildlife in national preserves.

* * * * *

(f) Using bait is prohibited except for taking furbearers with a trap under a trapping license. Using bait to attract or take bears is prohibited.

* * * * *

(k) The paragraphs of this section are separate and severable from one another. If any paragraph or portion of this section is stayed or determined to be invalid, or the applicability of any paragraph of this section to any person or entity is held invalid, it is NPS's intention that the validity of the remainder of those parts shall not be affected, with the remaining sections to continue in effect.

Signing Authority: On June 28, 2024, Shannon Estenoz, Assistant Secretary for Fish and Wildlife and Parks, approved this action for publication. On June 28, 2024, Shannon Estenoz also authorized the undersigned to sign this document electronically and submit it to the Office of the Federal Register for publication as an official document of the Department of the Interior.

Maureen Foster,

Chief of Staff, Office of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2024–14701 Filed 7–2–24; 8:45 am]

BILLING CODE 4312–52–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–76

[FMR Case 2023–102–03; Docket No. GSA–FMR–2023–0012; Sequence No. 1]

RIN 3090–AK76

Federal Management Regulation; Accessibility Standard for Pedestrian Facilities in the Public Right-of-Way

AGENCY: Office of Government-wide Policy (OGP), U.S. General Services Administration (GSA).

ACTION: Final rule with 60-day comment period.

SUMMARY: GSA is issuing a final rule amending the Federal Management Regulation (FMR) regarding real property design and construction to adopt the new accessibility guidelines issued by the Architectural and Transportation Barriers Compliance Board (Access Board).

DATES:

Effective date: September 3, 2024.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before September 3, 2024, to be considered in the formation of future rulemaking.

ADDRESSES: Submit comments in response to FMR case 2023–102–03 to: *Regulations.gov* at <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FMR Case 2023–102–03.” Select the link “Comment Now” that corresponds with FMR Case 2023–102–03. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FMR Case 2023–102–03” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite FMR Case 2023–102–03 in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal or business confidential information, or both, provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov> approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Coneeney, Director, Real Property Policy Division, Office of Government-

wide Policy, at 202–208–2956 or chris.coneeney@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FMR Case 2023–102–03.

SUPPLEMENTARY INFORMATION:

I. Background

GSA is revising its Architectural Barriers Act Accessibility Standard to adopt the accessibility guidelines for pedestrian facilities in the public right-of-way dedicated to transportation, as defined in 41 CFR 102–76.100 (hereafter, pedestrian facilities in the public right-of-way), issued by the Access Board in its final rule “Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way” that became effective on October 7, 2023 (36 CFR part 1190).¹ That final rule provides minimum guidelines for all newly constructed pedestrian facilities and altered portions of existing pedestrian facilities for pedestrian circulation and use in the public right-of-way. These guidelines, once adopted, will serve as the technical basis of enforceable standards issued by GSA under the Architectural Barriers Act of 1968, as amended (ABA), and would ensure that facilities used by pedestrians that are subject to the ABA, such as sidewalks and crosswalks constructed or altered in the public right-of-way by Federal, state, and local governments using Federal funds, are readily accessible to and usable by pedestrians with disabilities.

The purpose of the guidelines issued by the Access Board is to ensure that pedestrian facilities located in the public right-of-way to which the ABA applies (as defined in § 102–76.60) are readily accessible to and usable by persons with disabilities. As noted by the Access Board, these guidelines were developed with public input from disability advocacy organizations, technical experts, individual members of the public with disabilities, and Federal agencies.

The Federal Government, which seeks to be a leader in accessibility, has been without clear, specific, enforceable technical accessibility standards for pedestrian facilities in the public right-of-way that are subject to the ABA. The adoption of the Access Board’s guidelines as part of GSA’s Architectural Barriers Act Accessibility Standard will create and support a

consistent Federal standard to ensure accessibility in the public right-of-way.

The statutory underpinning for this rule is 42 U.S.C. 4152, which directs the Administrator of General Services to prescribe standards for the design, construction, and alteration of buildings (other than certain residential structures, and facilities of the Department of Defense and the United States Postal Service) to ensure, to the maximum extent feasible, that persons with disabilities have ready access to, and use of, such buildings.

The GSA standard would ensure that pedestrian facilities covered by the ABA in the public right-of-way would adhere to the Access Board’s accessibility guidelines for pedestrian facilities in the public right-of-way. All other facilities that are referenced in 41 CFR 102–76.65 would be covered by the ABA standard previously issued by GSA.

Key accessibility features of pedestrian facilities in the public right-of-way covered by the GSA standard would include:

- Pedestrian Routes
- Alternate Pedestrian Routes
- Pedestrian Signals
- Crosswalks
- On-Street Parking
- Transit Stops
- Passenger Loading Zones

The GSA standard is applicable to new construction and alterations of pedestrian facilities subject to the ABA as stated in 41 CFR 102–76.60 that are on public land acquired for or dedicated to transportation purposes, or on other land where there is a legally established right for use by the public for transportation purposes.²

Adopting this standard is another way for GSA to formalize its commitment to ensure accessibility for persons with disabilities by creating more accessible features in the public right-of-way.

Also, adopting this standard as part of its Architectural Barriers Act Accessibility Standard furthers GSA’s commitment to Diversity, Equity, Inclusion, and Accessibility, as included in GSA’s Strategic Plan³ and implementation of Executive Orders 13985,⁴ 14035,⁵ and 14091.⁶ GSA’s plan

² See 36 CFR part 1190, appendix, section R104.3 (definition of “public right-of-way”).

³ https://www.gsa.gov/system/files/GSA_Strategic_Plan_FY_2022_-_2026_FINAL_508.pdf.

⁴ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

⁵ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/25/executive-order-on-diversity-equity-inclusion-and-accessibility-in-the-federal-workforce/>.

⁶ <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-order->

advances accessibility in many ways, but, in particular, through outreach to persons with disabilities. By adopting the guidelines for pedestrian facilities in the public right-of-way as part of its Architectural Barriers Act Accessibility Standard, GSA is directly addressing its policy of outreach to persons with disabilities by requiring enhanced accessible features to help ensure a more welcoming and accessible path to Federal facilities covered under § 102–76.65(a).

II. Discussion of the Final Rule

A. Summary of Significant Changes

GSA is adding §§ 102–76.100 through 102–76.125 to subpart C of part 102–76 of the FMR to incorporate the Access Board’s “Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way” final rule, which became effective on October 7, 2023 (36 CFR part 1190), as part of its Architectural Barriers Act Accessibility Standard. If GSA did not adopt the Access Board’s guidelines into its ABA standard, the status quo would be that GSA and every other entity that is subject to the ABA would continue to work with the various state and local guidelines and standards. By adopting these guidelines, GSA is endorsing a consistent standard applied to pedestrian facilities in the public right-of-way. This will reduce confusion and enhance accessibility for facilities subject to the ABA.

B. Regulatory Impact Analysis

During the first and subsequent years after publication of the rule, new construction employees and alteration and renovation employees (which include a combination of project managers and subject matter experts (SME)) must comply with the standards for pedestrian facilities in the public right-of-way. These employees will conduct an accessibility standards comparison review on applicable projects between state and local accessibility standards and Federal accessibility standards. GSA estimates this cost by multiplying the time required to review the regulation and guidance implementing the rule by the estimated hourly compensation. For the following calculations, GSA calculates the estimated hourly compensation⁷ using the U.S. Office of Personnel Management’s 2023 General Schedule

on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.

⁷ Computing Hourly Rates of Pay Using the 2,087-Hour Divisor (<https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/computing-hourly-rates-of-pay-using-the-2087-hour-divisor/>).

¹ 88 FR 53604, August 8, 2023 (<https://www.federalregister.gov/documents/2023/08/08/2023-16149/accessibility-guidelines-for-pedestrian-facilities-in-the-public-right-of-way>).

(GS) Rest of United States Locality Pay Table,⁸ a full fringe benefit cost factor of 36.25 percent⁹ and an overhead cost factor of 12 percent as provided by Office of Management and Budget (OMB) Circular A–76.¹⁰ GSA assumes the new construction employees and the alteration and renovation employees will, on average, stay consistent in the subsequent years.¹¹ After publication of the rule, GSA anticipates additional construction costs will be incurred related to the accessibility improvements from this standard for applicable projects. GSA estimates this additional construction cost by multiplying the average construction costs by the accessibility improvements cost as a percentage of total construction cost. Below is a list of costs that GSA anticipates the Government will incur. GSA does not anticipate any costs to the public.

1. Governmentwide Training

The Government must educate its new construction employees and alteration and renovation employees on projects where the standard may apply through a governmentwide outreach to increase their familiarity with the standard. Below is a list of training and communication activities related to regulatory familiarization and compliance that GSA anticipates will occur. GSA assumes costs related to the development and updating of training materials are de minimis because the training materials to be used are already developed and updated and not as a result of this rule.¹²

GSA assumes it will take 1 GSA accessibility SME on average, with a GS–14 step 5 (as presumed based on prior experiences by the SME in the National Accessibility Office of GSA) with an average hourly rate of \$93.70/

hour, 2 hours in year 1 to review the Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way training content for new construction employees and alteration and renovation employees on projects where the standard applies. Therefore, GSA estimates the total annual estimated cost for this part of the rule for year 1 to be \$187 (= 1 × \$93.70 GS–14 step 5 rate × 2 hours).

GSA assumes it will take 1 GSA accessibility SME on average, with a GS–14 step 5 (as presumed based on prior experiences by the SME in the National Accessibility Office of GSA) with an average hourly rate of \$93.70/hour, 0.5 hour in years 2 through 10 to review the updated Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way training content for new construction employees and alteration and renovation employees on projects where the standard applies. Therefore, GSA estimates the total annual estimated cost for this part of the rule for years 2 through 10 to be \$47 (= 1 × \$93.70 GS–14 step 5 rate × 0.5 hour).

GSA assumes it will take 1 GSA attorney on average, with a Senior Executive Level (SES) Level 3 (as presumed based on prior experiences by the SME in the National Accessibility Office of GSA) with an average hourly rate of \$138.52/hour, 4 hours in year 1 to review the Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way training content for new construction employees and alteration and renovation employees on projects where the standard applies. Therefore, GSA estimates the total annual estimated cost for this part of the rule for year 1 to be \$554 (= 1 × \$138.52 SES Level 3 rate × 4 hours).

GSA assumes it will take 1 GSA attorney on average, with an SES Level

3 with an average hourly rate of \$138.52/hour, 1 hour in years 2 through 10 to review the updated Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way training content for new construction employees and alteration and renovation employees on projects where the standard applies. Therefore, GSA estimates the total annual estimated cost for this part of the rule for years 2 through 10 to be \$139 (= 1 × \$138.52 SES Level 3 rate × 1 hour).

GSA assumes it will take 2 Access Board employees on average, with a GS–13 step 5 with an average hourly rate of \$79.29/hour, 10 hours each in years 1 through 10 to deliver the Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way training content to GSA new construction employees and alteration and renovation employees on projects where the standard applies. Therefore, GSA estimates the total annual estimated cost for this part of the rule for years 1 through 10 to be \$1,586 (= 2 × \$79.29 GS–13 step 5 rate × 10 hours).

GSA assumes it will take 200 Federal project managers and SMEs on average, with a GS–13 step 5 with an average hourly rate of \$79.29/hour, 5 hours each in years 1 through 10 to receive the Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way training content¹³ on projects where the standard applies. Therefore, GSA estimates the total annual estimated cost for this part of the rule for years 1 through 10 to be \$79,290 (= 200 × \$79.29 GS–13 step 5 rate × 5 hours).

A breakdown of undiscounted total annual estimated Government training costs by year is provided in the table below.

Year	1	2	3	4	5	6	7	8	9	10
Government wide Training	\$81,617	\$81,061	\$81,061	\$81,061	\$81,061	\$81,061	\$81,061	\$81,061	\$81,061	\$81,061

2. New Construction

New construction employees on projects where the Federal Government scope of work extends into the public right-of-way will need to conduct activities in compliance with the new

standard. GSA anticipates additional construction costs will be incurred related to the accessibility requirements from this standard for applicable projects. Below is a list of compliance

activities that GSA anticipates will occur.

GSA assumes it will take 200 Federal project managers and SMEs on average, with a GS–13 step 5 with an average hourly rate of \$79.29/hour, 1.5 hours

⁸ General Schedule (<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2023/general-schedule>).

⁹ OMB Memo M–08–13, dated March 11, 2008 (https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2008/m08-13.pdf).

¹⁰ OMB Circular A–76 (https://georgewbush-whitehouse.archives.gov/omb/circulars/a076/a76_incl_tech_correction.html).

¹¹ GSA makes these assumptions based on historical familiarization hours and SME judgment.

¹² The ABA guidelines are nearly identical to the ADA guidelines, which are already developed and

updated and based on historical familiarization SME judgment. GSA assumes the ADA training materials will be used for ABA guidelines familiarization.

¹³ GSA makes these assumptions based on the Access Board’s historical familiarization hours and SME judgment.

each in years 1 through 10 to conduct an accessibility standards comparison review between state and local accessibility requirements and Federal accessibility requirements for federally owned and leased-to-own new construction projects where the standard applies. Therefore, GSA estimates the total annual estimated cost for this part of the rule for years 1 through 10 to be \$23,787 ($= 200 \times \$79.29$ GS-13 step 5 rate $\times 1.5$ hours).

GSA assumes the additional construction cost that will be incurred related to the accessibility improvements from this standard for applicable projects by multiplying the average construction costs by the accessibility improvements cost as a percentage of total construction cost. Average construction costs are based on internal GSA historical data sources.

GSA assumes, based on recently completed projects of a similar nature within the last 10 years, 1 large-scale GSA facility project covered by ABA will be newly constructed every 5 years with an average construction cost of \$300,000,000. GSA estimates, based on recently completed projects of a similar nature within the last 10 years, on average, the additional construction costs related to the accessibility improvements from this rule to be 0.35 percent of the total construction cost. Therefore, GSA estimates the total annual estimated cost for this part of the rule for years 1 and 6 to be \$1,050,000 ($= \$300,000,000 \times 0.35$ percent).

GSA assumes, based on recently completed projects of a similar nature

within the last 10 years, 2 smaller-scale GSA facility projects covered by ABA will be newly constructed every year with an average construction cost of \$45,000,000. GSA estimates, based on recently completed projects of a similar nature within the last 10 years, on average, the additional construction costs related to the accessibility improvements from this standard to be 0.75 percent of the total construction cost. Therefore, GSA estimates the total annual estimated cost for this part of the rule for years 1 through 10 to be \$675,000 ($= 2 \times \$45,000,000 \times 0.75$ percent).

Due to the lack of readily available data that identifies the new construction profile of other Federal agencies impacted by this rule, GSA extrapolated the burden to other Federal agencies impacted by this rule. Based on GSA's Federal Real Property Profile Management System (FRPP MS) data¹⁴ GSA comprises 36 percent of civilian building square footage. Therefore, GSA assumes GSA comprises 36 percent of Federal agency new construction and other Federal agencies comprise the remaining 64 percent of Federal agency new construction. GSA calculates an estimated new construction ratio of other Federal agencies to GSA to be 2 ($= 64$ percent/36 percent).¹⁵ GSA assumes other Federal agencies impacted by this standard to have similar average construction costs.

GSA extrapolates, on average, that if GSA has 2 large-scale Federal facility projects covered by ABA newly constructed over a 10-year period, then

by applying the ratio of 2, other Federal agencies will have an estimated 4 large-scale Federal facility projects covered by ABA newly constructed over a 10-year period. GSA assumes other Federal agencies impacted by this standard to have a similar average construction cost of \$300,000,000 per project and a similar additional construction cost related to the accessibility improvements from this standard of 0.35 percent of the total construction cost. Therefore, GSA estimates the total annual estimated cost for this part of the rule for years 1, 4, 7, and 10 to be \$1,050,000 ($= \$300,000,000 \times 0.35$ percent).¹⁶

GSA extrapolates, on average, that if GSA has 2 smaller-scale Federal facility projects covered by ABA newly constructed every year, then by applying the ratio of 2, other Federal agencies will have an estimated 4 smaller-scale Federal facility projects covered by ABA newly constructed every year. GSA assumes other Federal agencies impacted by this standard to have a similar average construction cost of \$45,000,000 per project and a similar additional construction cost related to the accessibility improvements from this standard of 0.75 percent of the total construction cost. Therefore, GSA estimates the total annual estimated cost for this part of the rule for years 1 through 10 to be \$1,350,000 ($= 4 \times \$45,000,000 \times 0.75$ percent).

A breakdown of the undiscounted total annual estimated cost by year is provided in the table below.¹⁷

Year	1	2	3	4	5	6	7	8	9	10
Accessibility Standards Comparison Review	\$23,787	\$23,787	\$23,787	\$23,787	\$23,787	\$23,787	\$23,787	\$23,787	\$23,787	\$23,787
GSA large-scale facilities	1,050,000	.....	.....	.....	.....	1,050,000	.....	.....	.....	.....
GSA smaller-scale facilities	675,000	675,000	675,000	675,000	675,000	675,000	675,000	675,000	675,000	675,000
Other Federal agency large-scale facilities	1,050,000	.....	.....	.....	1,050,000	.....	1,050,000	.....	.....	1,050,000
Other Federal agency smaller-scale facilities	1,350,000	1,350,000	1,350,000	1,350,000	1,350,000	1,350,000	1,350,000	1,350,000	1,350,000	1,350,000
Total New Construction Costs	4,148,787	2,048,787	2,048,787	3,098,787	2,048,787	3,098,787	3,098,787	2,048,787	2,048,787	3,098,787

3. Alteration and Renovation

Alteration and renovation employees on projects where the government's scope of work is affected by the standard will need to conduct activities in compliance with the new standard. GSA anticipates additional construction costs will be incurred related to the accessibility requirements from this standard for applicable projects. Below

is a list of compliance activities that GSA anticipates will occur.

GSA assumes it will take 200 Federal project managers and SMEs on average, with a GS-13 step 5 with an average hourly rate of \$79.29/hour, 1.5 hours each in years 1 through 10 to conduct an accessibility standards comparison review between state and local accessibility requirements and Federal accessibility requirements for federally

owned alteration and renovation projects where the standard applies. Therefore, GSA estimates the total annual estimated cost for this part of the rule for years 1 through 10 to be \$23,787 ($= 200 \times \$79.29$ GS-13 step 5 rate $\times 1.5$ hours).

GSA assumes the additional construction cost that will be incurred related to the accessibility improvements from this standard for

¹⁴ GSA used the Fiscal Year 2023 FRPP Summary Data Set at <https://www.gsa.gov/policy-regulations/policy/real-property-policy-division-overview/data-collection-and-reports/frpp-summary-report-library>.

¹⁵ This ratio is rounded to the nearest whole number.

¹⁶ GSA assumes the estimated total number of projects to be spread evenly over the 10-year period.

¹⁷ Costs in this table are presented in undiscounted and constant dollars.

applicable projects by multiplying the average construction costs by the accessibility improvements cost as a percentage of total construction cost. Average construction costs are based on internal GSA historical data sources.

GSA assumes, on average, 1 GSA alteration and renovation facility project covered by ABA will be constructed every 5 years with an average construction cost of \$5,000,000. GSA estimates, based on recently completed projects of a similar nature within the last 10 years, on average, the additional construction costs related to the accessibility improvements from this rule to be 5 percent of the total construction cost. Therefore, GSA estimates the total annual estimated cost for this part of the rule for years 1 and 6 to be \$250,000 (= \$5,000,000 × 5 percent).¹⁸

Due to the lack of readily available data that identifies the alteration and renovation profile of other Federal

agencies impacted by this rule, GSA extrapolated the burden to other Federal agencies impacted by this rule. To estimate the aggregate burden to other Federal agencies impacted by this rule, GSA assumes other Federal agencies impacted by this rule to have a similar alteration and renovation profile to GSA's. Based on GSA's FRPP MS data ¹⁹ GSA comprises 36 percent of civilian building square footage. Therefore, GSA assumes GSA comprises 36 percent of Federal agency alteration and renovation construction and other Federal agencies comprise the remaining 64 percent of Federal agency alteration and renovation construction. GSA calculates an estimated alteration and renovation construction ratio of other Federal agencies to GSA to be 2 (= 64 percent/36 percent).²⁰ GSA assumes other Federal agencies impacted by this standard to have similar average construction costs.

GSA extrapolates, on average, that if GSA has 2 alteration and renovation Federal facility projects covered by ABA over a 10-year period, then by applying the ratio of 2, other Federal agencies will have an estimated 4 alteration and renovation Federal facility projects covered by ABA over a 10-year period. GSA assumes other Federal agencies impacted by this standard to have a similar average construction cost of \$5,000,000 per project and a similar additional construction cost related to the accessibility improvements from this standard of 5 percent of the total construction cost. Therefore, GSA estimates the total annual estimated cost for this part of the rule for years 1, 4, 7, and 10 to be \$250,000 (= \$5,000,000 × 5 percent).²¹

A breakdown of the undiscounted total annual estimated cost by year is provided in the table below.²²

Year	1	2	3	4	5	6	7	8	9	10
Accessibility Standards Comparison Review	\$23,787	\$23,787	\$23,787	\$23,787	\$23,787	\$23,787	\$23,787	\$23,787	\$23,787	\$23,787
GSA Alteration and Renovation	250,000	.....	.....	.....	.....	250,000	.....	.....	.....	.....
Other Federal agencies Alteration and Renovation	250,000	.....	.....	250,000	.....	.....	250,000	.....	.....	250,000
Total Alteration and Renovation Costs	523,787	23,787	23,787	273,787	23,787	273,787	273,787	23,787	23,787	273,787

4. Total Government Costs

A breakdown of undiscounted total estimated Government costs by year is provided in the table below.

Year	1	2	3	4	5	6	7	8	9	10
Government wide Training	\$81,617	\$81,061	\$81,061	\$81,061	\$81,061	\$81,061	\$81,061	\$81,061	\$81,061	\$81,061
New Construction	4,148,787	2,048,787	2,048,787	3,098,787	2,048,787	3,098,787	3,098,787	2,048,787	2,048,787	3,098,787
Alteration and Renovation	523,787	23,787	23,787	273,787	23,787	273,787	273,787	23,787	23,787	273,787
Total Government Costs	4,754,191	2,153,635	2,153,635	3,453,635	2,153,635	3,453,635	3,453,635	2,153,635	2,153,635	3,453,635

5. Total Overall Costs

The discounted estimated total overall cost over a 10-year period is \$25,163,860 at a 3 percent discount rate and \$20,885,096 at a 7 percent discount rate, as there is no direct cost to the public under this rule. The following is a summary of the estimated costs calculated for a 10-year time horizon at a 3 and 7 percent discount rate:

Summary	Total costs
Present Value (3 percent)	\$25,163,860
Annualized Costs (3 percent)	2,949,972
Present Value (7 percent)	20,885,096

¹⁸ This information is based on internal GSA historical data sources.

¹⁹ GSA used the Fiscal Year 2023 FRPP Summary Data Set at <https://www.gsa.gov/policy-regulations/>

Summary	Total costs
Annualized Costs (7 percent)	2,973,568

Additional benefits that arise from GSA adopting the guidelines issued by the Access Board relate to safety and accessibility for pedestrians. Shortening travel distances from on-street parking to building entrances will enhance the accessibility of buildings for people with mobility-related disabilities while also being more efficient for everyone who uses street parking. It will also support the mobility of people with

policy/real-property-policy-division-overview/data-collection-and-reports/frpp-summary-report-library.

²⁰ This ratio is rounded to the nearest whole number.

disabilities by increasing the sidewalk sizes and by regulating the ground slope at passenger loading zones to prevent them from being too steep. Wider sidewalks will increase the ease of maneuverability when passing people on the sidewalk and, thereby, reduce accidental collisions, as well as better accommodate mobility aids, such as, but not limited to, walkers, rollators, and both manual and electric wheelchairs. Further, requirements for better audio and tactile warning systems, including, but not limited to, audio signal warnings, truncated domes, and

²¹ GSA assumes the estimated total number of projects to be spread evenly over the 10-year period.

²² Costs in this table are presented in undiscounted and constant dollars.

detectable warning pavers, will increase safety for some pedestrians with disabilities by alerting them to an imminent street crossing or to when they have the right-of-way to cross the street. These improvements also reduce anxiety for pedestrians when transitioning from a sidewalk to a street crosswalk.

In the Access Board final rule, section 7A, the Final Regulatory Impact Analysis, concluded that the rule, which covers state, local, and Federal public rights-of-way, would result in approximately \$15.5 billion in annualized benefits compared to \$196.7 million in annualized costs, using a 7% discounting rate.

6. Analysis of the Alternatives

The preferred process is the process laid out in the analysis above. However, GSA has analyzed two alternatives to the preferred process.

Alternative 1: GSA could decide to take no regulatory action. No action from the Government would prevent GSA from adopting the guidelines issued by the Access Board. The Government would not incur the additional costs associated with this final rule; however, the benefits of having a consistent Federal ABA standard for the accessibility of pedestrian facilities in the public right-of-way outweigh the costs. As a result, GSA rejected this alternative.

Alternative 2: GSA could adopt as an alternative more stringent accessibility standards. However, adopting more stringent accessibility standards would result in a higher cost than what is currently estimated. Multiple standards may also cause confusion as to the application of the Access Board's accessibility guidelines. As a result, GSA rejected this alternative.

III. Executive Orders 12866, 13563, and 14904

E.O. 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563, "Improving Regulation and Regulatory Review" (76 FR 3821, January 21, 2011), emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094, "Modernizing Regulatory Review" (88 FR 21879, April 11, 2023), amends section 3(f) of E.O.

12866 and supplements and reaffirms the principles, structures and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. The OMB Office of Information and Regulatory Affairs (OIRA) has determined that this rule is a significant regulatory action and, therefore, it was reviewed under subsection 6(b) of E.O. 12866.

IV. Congressional Review Act

OIRA has determined that this rule is not a "major rule" under 5 U.S.C. 804(2). Subtitle E of title II of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, unless excepted, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. This rule is excepted from CRA reporting requirements prescribed under 5 U.S.C. 801, as it relates to agency management or personnel under 5 U.S.C. 804(3)(B).

V. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it applies to agency management or personnel. This final rule is also exempt from the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management or personnel. Therefore, a Final Regulatory Flexibility Analysis was not performed.

VI. Administrative Procedure Act

This rulemaking is exempt from the advance notice-and-comment and delayed-effective-date requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) because this rulemaking relates to agency management or personnel or to public property, loans, grants, benefits, or contracts. This rulemaking applies to public property and how it relates to the public right-of-way so that the public property is accessible for persons with disabilities.

VII. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors or members of the

public, that require the approval of OMB under 44 U.S.C. 3501 *et seq.*

VIII. Severability

GSA is proposing to add a new provision on severability at 41 CFR 102–76.125, which states that all provisions included in subpart C of part 102–76 are separate and severable from one another.

If any particular term or provision in subpart C of part 102–76, or the application thereof to any agency or circumstance, is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining terms or provisions, or the application of such term or provision to agencies or circumstances other than those to which it is invalid or unenforceable, will not be affected thereby, and each term and provision of this rule will be valid and be enforced to the fullest extent permitted by law. For example, if any provision relating to the Architectural Barriers Act Accessibility Standard for pedestrian facilities in the public right-of-way is determined to be invalid, the other provisions of the Architectural Barriers Act Accessibility Standard, including the standards for pedestrian facilities, would remain in full force and effect.

Further, any cross-references that appear throughout subpart C of part 102–76 are duplicative and are intended only to make the regulations more user-friendly. Invalidation of a particular provision that is cross-referenced elsewhere will not materially alter the provision that contains the cross-reference.

In summary, removal of any particular provision from subpart C of part 102–76 would not render the entire regulatory scheme unworkable. Thus, GSA considers each of the provisions in subpart C of part 102–76 to be separate and severable from one another. In the event of a stay or invalidation of any particular provision, it is GSA's intention that the remaining provisions will continue in effect.

List of Subjects in 41 CFR Part 102–76

Energy conservation, Federal buildings and facilities, Government property management, Individuals with disabilities, Rates and fares, Security measures.

Robin Carnahan,

Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR part 102–76 as set forth below:

PART 102–76—DESIGN AND CONSTRUCTION

■ 1. The authority citation for part 102–76 is revised to read as follows:

Authority: 40 U.S.C. 121(c) (in furtherance of the Administrator's authorities under 40 U.S.C. 3301–3315 and elsewhere as included under 40 U.S.C. 581 and 583); 42 U.S.C. 4152.

■ 2. Add an undesignated center heading and §§ 102–76.100 through 102–76.125 to subpart C to read as follows:

Subpart C—Architectural Barriers Act

Sec.

* * * * *

Public Rights-of-Way

102–76.100 What definition applies to this part?

102–76.105 What standard must public rights-of-way subject to the Architectural Barriers Act and covered under § 102–76.65(a) meet?

102–76.110 Where pedestrian facilities subject to the standard in § 102–76.105(a) are altered, must an alteration to a pedestrian facility be connected by a compliant pedestrian access route to an existing pedestrian circulation path?

102–76.115 Who has the authority to waive or modify the standards in § 102–76.105(a)?

102–76.120 What recordkeeping responsibilities do Federal agencies have?

102–76.125 What portions of this subpart are severable?

* * * * *

Public Rights-of-Way

§ 102–76.100 What definition applies to this part?

Public right-of-way means public land acquired for or dedicated to transportation purposes, or other land where there is a legally established right for use by the public for transportation purposes.

§ 102–76.105 What standard must public rights-of-way subject to the Architectural Barriers Act and covered under § 102–76.65(a) meet?

(a) GSA adopts the appendix to 36 CFR part 1190 without additions or modification as the accessibility standard for pedestrian facilities in the public right-of-way. Pedestrian facilities in the public right-of-way subject to the Architectural Barriers Act (other than facilities in paragraphs (b) and (c) of this section) must meet the accessibility standard for pedestrian facilities in the public right-of-way so that pedestrian facilities located in the public right-of-way are readily accessible to and usable by pedestrians with disabilities.

Compliance with this accessibility standard is mandatory; provided, however, that this standard does not address existing pedestrian facilities in the public right-of-way under the Architectural Barriers Act unless the pedestrian facilities are altered at the discretion of a covered entity.

(b) Residential public rights-of-way subject to the Architectural Barriers Act must meet the standards prescribed by the Department of Housing and Urban Development.

(c) Department of Defense and United States Postal Service public rights-of-way subject to the Architectural Barriers Act must meet the standards prescribed by those agencies.

§ 102–76.110 Where pedestrian facilities subject to the standard in § 102–76.105(a) are altered, must an alteration to a pedestrian facility be connected by a compliant pedestrian access route to an existing pedestrian circulation path?

Yes, pedestrian facilities in public rights-of-way subject to the standard in § 102–76.105(a) that are altered must always be connected by a compliant pedestrian access route to an existing pedestrian circulation path.

§ 102–76.115 Who has the authority to waive or modify the standards in § 102–76.105(a)?

The Administrator of General Services has the authority to waive or modify the accessibility standards for buildings and facilities covered by the Architectural Barriers Act (ABA) in § 102–76.105(a) on a case-by-case basis if an agency head or a GSA department head submits a request for waiver or modification and the Administrator determines that the waiver or modification is clearly necessary. The Administrator of General Services must consult with the Access Board to ensure that the waiver or modification is based on findings of fact and not inconsistent with the ABA.

§ 102–76.120 What recordkeeping responsibilities do Federal agencies have?

(a) The head of each Federal agency must ensure that documentation is maintained on each contract, grant or loan for the design, construction, or alteration of a pedestrian facility in a public right-of-way subject to the standard in § 102–76.105(a) containing one of the following statements:

(1) The standard has been or will be incorporated in the design, the construction, or the alteration.

(2) The grant or loan has been or will be made subject to a requirement that the standard will be incorporated in the design, the construction, or the alteration.

(3) The standard has been waived or modified by the Administrator of General Services, and a copy of the waiver or modification is included with the statement.

(b) If a determination is made that a pedestrian facility in a public right-of-way is not subject to the standard in § 102–76.105(a) because the Architectural Barriers Act does not apply to the facility, the head of the Federal agency must ensure that documentation is maintained to justify the determination.

§ 102–76.125 What portions of this subpart are severable?

All provisions included in this subpart are separate and severable from one another. If any provision is stayed or determined to be invalid, it is GSA's intention that the remaining provisions will continue in effect.

[FR Doc. 2024–14424 Filed 7–2–24; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 19–310, 17–105; FCC 24–66; FR ID 228050]

Reinstatement of Radio Non-Duplication Rule for Commercial FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopted an Order on Reconsideration that responds to a petition requesting reinstatement of the prohibition on the duplication of commercial FM programming beyond a 25% threshold.

DATES: Effective August 2, 2024.

FOR FURTHER INFORMATION CONTACT: John Bat, Media Bureau, Industry Analysis Division, John.Bat@fcc.gov, (202) 418–7921.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration (*Order*), in MB Docket Nos. 19–310, 17–105, FCC 24–66, adopted on June 5, 2024, and released on June 10, 2024. The full text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at <https://docs.fcc.gov/public/attachments/FCC-24-66A1.pdf>. To request materials in accessible formats for people with

disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov (mail to: fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

1. By this *Order*, we grant the Petition for Reconsideration of REC Networks, the musicFIRST Coalition, and the Future of Music Coalition (Petitioners) requesting that the Commission reinstate § 73.3556 of the Commission's rules (the radio duplication rule) for commercial FM stations. We find that reinstating the prohibition on the duplication of FM programming beyond a 25% threshold serves the public interest by furthering the goals of competition, programming diversity, localism, and spectrum efficiency. We also find that the existing waiver process should address sufficiently the concerns of specific FM stations in unique circumstances.

Background

2. The Commission's radio duplication rule has evolved over time consistent with changes in the broadcast radio market. The Commission first limited the duplication of programming by commonly owned radio stations serving the same local area in 1964 when it prohibited FM stations in cities with populations over 100,000 from duplicating the programming of a co-owned AM station in the same local area for more than 50% of the FM station's broadcast day. The Commission observed that it had never regarded program duplication as an efficient use of FM frequencies; instead, it had allowed program duplication as, "at best, . . . a temporary expedient to help establish the FM service." Accordingly, the Commission envisioned "a 'gradual' process to end programming duplication once the number of applicants seeking licenses exceeded the number of vacant FM channels available in large cities."

3. In 1976, the Commission tightened the radio duplication restriction. It limited FM stations to duplicating only 25% of the average program week of a co-owned AM station in the same local area if either the AM or FM station operated in a community with a population of over 25,000. Based on its 12 years of experience observing the effects of the radio duplication rule, the Commission delayed implementation of the tightened 25% limit on smaller cities for approximately four years, establishing interim limits that prohibited FM stations from duplicating

more than 25% of average broadcast week programming of a commonly owned AM station in communities over 100,000 and 50% of programming of a commonly owned AM station in communities over 25,000 but under 100,000. At that time, the Commission observed that "the public does not have to depend on non-duplication to add diversity" when new broadcasting frequencies remain available. In 1986, in response to a petition for rulemaking seeking to exempt late-night hours when determining compliance with the radio duplication rule, the Commission eliminated the cross-service radio duplication rule entirely. It found that FM service had developed sufficiently to support the elimination of the rule and that FM stations were fully competitive, obviating the need to foster the development of an independent FM service through a requirement for separate programming.

4. In 1992, as part of a broad proceeding reviewing its national and local radio ownership rules, the Commission adopted a new radio duplication rule limiting the duplication of programming by commonly owned stations or stations commonly operated through a time brokerage agreement in the same service (AM or FM) with substantially overlapping signals to 25% of the average broadcast week. The Commission saw no public benefit to allowing commonly owned same-service stations in the same local market to duplicate more than 25% of their programming, observing that: ". . . when a channel is licensed to a particular community, others are prevented from using that channel and six adjacent channels at varying distances of up to hundreds of kilometers. The limited amount of available spectrum could be used more efficiently by other parties to serve competition and diversity goals." The Commission concluded, however, that limited programming duplication—specifically, below the 25% threshold—had benefits, stating "we are persuaded that limited simulcasting, particularly where expensive, locally produced programming such as on-the-spot news coverage is involved, could economically benefit stations and does not so erode diversity or undercut efficient spectrum use as to warrant preclusion."

5. The Commission issued the *NPRM* initiating this proceeding in November 2019, seeking comment on the radio duplication rule and whether it should be retained, modified, or eliminated. As the Commission noted in the *NPRM*, the broadcast industry has changed

significantly since the Commission adopted the latest version of the radio programming duplication rule in 1992. In particular, significant growth in the number of radio broadcasting outlets, the advent of digital HD Radio, and the evolution of new and varied formats in which to disseminate programming (*i.e.*, digital satellite radio, streaming via station websites, and mobile applications) have led to greater competition and programming diversity in radio broadcasting. Accordingly, the Commission asked commenters to address several issues, including the impact of market forces (*i.e.*, new sources of audio programming, increased number of stations, instances of consolidation in any aspect of the media marketplace) and the impact of the radio duplication rule on the Commission's public interest goals of competition, programming diversity, localism, and spectrum efficiency. The *NPRM* also sought comment on whether the Commission's prior rationale (in 1986) for eliminating the cross-service duplication programming rule—that duplication is preferable to curtailing programming or going off the air entirely where separate programming is not economically feasible—applies equally to the same-service duplication rule. The *NPRM* sought input on the benefits of allowing some level of programming duplication, as well as potential modifications to the rule. In addition, the *NPRM* asked whether the rule should treat stations in the AM service and the FM service differently in light of the particular economic and technical challenges facing AM stations. Finally, the *NPRM* asked commenters to discuss potential costs and benefits of modifying or eliminating the rule. Four parties filed comments in response to the *NPRM*, and two parties filed reply comments.

6. Prior to the Commission's elimination of the radio duplication rule for both AM and FM stations in August 2020, Commission staff publicly circulated a draft order that, if adopted, would have retained the rule for the FM band. The draft order concluded that the radio duplication rule for the FM service remained useful in furthering the goals of competition, programming diversity, localism, and spectrum efficiency. Among other things, the draft order concluded that the FM service does not face the same persistent challenges as the AM service, that the rule as applied to FM continued to "act as a useful guiderail" to encourage programming diversity and spectrum efficiency, and that the existing waiver

process was sufficient to provide flexibility where needed.

7. Following public release of the draft order, NAB submitted a letter advocating for elimination of the rule for FM service as well as AM. In the letter, NAB asserted that elimination of the rule entirely would provide needed flexibility and benefits to FM licensees and ease the burdens NAB alleged were caused by the rule. For instance, NAB contended that FM station staffs forced to quarantine due to the pandemic could find it difficult to produce original programming. NAB further suggested that were the Commission to eliminate the rule, stations could pool resources to simulcast emergency information without incurring the delay of a waiver or could inform listeners of format changes by simulcasting their new formats on multiple stations. NAB went on to assert that the rule as applied to FM stations produced no public interest benefits, that FM stations face considerable competition, and that market forces would naturally give commonly owned stations an incentive to air distinct programming, all of which warranted eliminating the rule to allow FM stations to repurpose costly programming, quickly and effectively, where appropriate.

8. In contrast to the draft order, the final *Order*, as adopted by the Commission, eliminated the radio duplication rule for both AM and FM services. Explaining its reasoning for the elimination of the rule for AM stations in the final *Order*, the Commission stated that AM stations could better serve the needs of the public if they were afforded greater regulatory flexibility for innovative experimentation with digital radio. The Commission pointed to unique pressures facing the AM service, such as escalated environmental and man-made noise, which has increased levels of harmful interference. The Commission also stressed that unlike with FM service, the AM service faces higher operational costs due to the larger and more complex physical plants that are necessary to maintain the band. In removing the rule for FM stations, the Commission relied primarily on its desire to afford flexibility to respond to the exigencies of the ongoing COVID-19 national emergency. Stating that the elimination of the rule was necessary for stations to inform listeners of emergency information and formatting changes, the Commission also asserted that programming duplication would in most cases not become a “common practice,” but rather a short-term response to unique circumstances.

9. On November 20, 2020, REC Networks, the musicFIRST Coalition, and the Future of Music Coalition filed a petition for reconsideration asking that the Commission reinstate the radio duplication rule for FM stations. NAB filed an Opposition to the Petition on January 5, 2021. Common Frequency filed a Reply to the Opposition on January 14, 2021, and REC Networks, the musicFIRST Coalition, and the Future of Music Coalition did the same on January 15, 2021. Petitioners do not request that the Commission reinstate the radio duplication prohibition for AM stations.

Discussion

10. As discussed further below, we reinstate § 73.3556 of our rules as to FM stations in order to further the goals of competition, programming diversity, localism, and spectrum efficiency. We find that Petitioners provide valid reasons to reconsider eliminating the radio duplication rule as applied to FM stations, and we conclude that the record supports reinstating the rule for FM service. Specifically, we find that the record does not provide sufficient evidence that the rule, as applied to FM service, has caused or will cause harm to FM licensees, that market forces alone would be sufficient to preserve the rule’s benefits, or that the 25% duplication allowance set forth in the former rule and the potential to seek a waiver to exceed that allowance in the event of special circumstances is insufficient to provide FM licensees with flexibility where needed. Furthermore, contrary to NAB’s assertion that unique economic pressures facing radio stations justified rescinding the rule for FM service, we find that the record lacks sufficient evidence to demonstrate that the rule actually contributes to such economic pressures or that eliminating the rule would reduce those pressures in any meaningful way. As a result, we believe that elimination of the rule for FM service in the final *Order* was, at best, premature given the absence of such evidence, and particularly as balanced against the countervailing public interest objectives the rule serves. Accordingly, we find that reinstating the radio duplication rule for FM service strikes the right balance between affording FM stations the ability to repurpose some amount of programming on commonly owned stations while continuing to further the public interest goals of competition, programming diversity, localism, and spectrum efficiency.

11. As an initial matter, we find that granting the Petition is within the

Commission’s discretion. Contrary to NAB’s assertion that the Petition should be denied because it does not raise new issues that were not already addressed by the Commission in the *Order*, we reiterate that “Commission precedent establishes that reconsideration is generally appropriate where the petitioner shows either a material error or omission in the original order.” In this instance, we are persuaded that the Commission’s prior decision erred in eliminating the radio duplication rule for FM stations. We note that Petitioners have questioned whether the process by which the Commission eliminated the rule with respect to FM service complied with the Administrative Procedure Act. Because we conclude that Petitioners make convincing arguments on the merits about the need to reinstate the rule for FM service to further the public interest goals of competition, programming diversity, localism, and spectrum efficiency, we need not reach Petitioners’ separate arguments about whether to reinstate the rule based on alleged inadequacies in the process by which it was eliminated.

12. We conclude that the record does not demonstrate that eliminating the radio duplication rule as applied to the FM service serves the public interest, and we are persuaded that the Commission’s earlier conclusion that it did so was in error. Although the Commission stated in the *Order* that “bare assertions as to the continued usefulness of the radio duplication rule for the FM service—for instance, that the rule ensures ‘some basic level of diversity and . . . prevent[s] spectrum warehousing’—are not persuasive,” we find that contrary conclusions used to justify eliminating the rule for FM service in fact rest on “bare assertions” derived from an exceedingly thin record proffered in support of that decision. Specifically, only a single commenter—NAB—advocated for elimination of the rule with regard to FM service. In so doing, NAB offered only general assertions regarding arguments supporting elimination of the rule for AM that it contended could also apply to FM and anecdotal suggestions that there could be select circumstances in which duplication would be “helpful” to FM stations. On reconsideration, we find NAB’s claims about the harms the rule causes to be lacking in concrete or credible support. By contrast, we find comments describing the benefits the rule is intended to foster and the harms that would accrue in its absence support retaining the rule. Moreover, we find that, in the absence of more convincing

evidence to assure us that elimination is wise at this time, there are various countervailing objectives that support reinstatement of the rule in the service of competition, programming diversity, localism, and spectrum efficiency, objectives that we find compelling for the reasons described herein.

13. Indeed, we find that the radio duplication rule acts as a useful guiderail in the FM service—where spectrum is in higher demand (than AM service) by consumers, advertisers, and owners—to encourage the diversification of programming on commonly owned FM stations, which then compete in the marketplace for listeners and advertisers. As Petitioners note, allowing duplication of FM programming beyond the 25% threshold can harm competition in the radio marketplace because, “[t]o the extent that larger clusters are allowed to slash programming costs by eliminating programming on one or more FM stations within a given single market, yet continue to sell advertising on such warehoused spectrum, it follows that competing independent radio stations in that shared market cannot take advantage of similarly drastic economies of scale.” We conclude that a quantifiable cap on duplication for FM stations properly balances stations’ economic and practical needs to offer some duplication with consumers’ needs for diverse and local programming, and addresses competition concerns as well. Given the potential economic incentives to duplicate programming (e.g., cost cutting), we share Petitioners’ concerns regarding the attendant harms to the public interest goals of diversity and localism—due to potential reduction of “local voices on local airwaves” providing “locally-relevant programming”—should we not reinstate the rule.

14. Regardless of any perceived benefits, we note that duplication of programming is an inherently inefficient use of spectrum. As recognized before by the Commission, where there is limited quantity of spectrum, duplication beyond a 25% allowance can be considered inefficient. While the Commission previously took the position that market forces give station owners an incentive to avoid duplicating programming that renders a prohibition on duplication unnecessary, on reconsideration we do not find sufficient evidence in the record to demonstrate that market forces would dictate against duplication above the rule’s threshold in all, or even most, instances. Conversely, we find that the record provides at least some evidence

of an incentive to duplicate programming where market forces apparently failed to prevent it. Notably, Kern Community Radio (Kern), a prospective non-commercial community broadcaster, stated that, in addition to the rebroadcast of programming being imported from outside the market, duplication also is occurring in its local market of Bakersfield, California. Given that other commenters failed to cite evidence either refuting or countering the market information provided by Kern, we are not convinced that the duplication in the Bakersfield-area market is somehow unique or isolated. While NAB notes that the radio duplication rule was eliminated three years ago, thus providing an opportunity to assess whether stations increased duplication after elimination of the rule, NAB provides no evidence on this point or otherwise refutes or counters the information in the record. Thus, we find that it was erroneous for the Commission to have ignored such evidence when it agreed with NAB in 2020 that stations obviously are incentivized by market forces not to duplicate, and relied on this reasoning to rescind the rule. While NAB contends that duplication could reduce the revenues that a station owner could otherwise earn by offering non-duplicative programming, duplication also allows a station owner to reduce costs substantially. Additionally, the ability to operate a station inexpensively using duplicative programming may, in fact, give a group station owner a disincentive to invest in new programming, or an incentive to occupy the frequency simply to avoid the potential introduction of a competitor. We find NAB’s theoretical arguments are insufficient to support the conclusion that market forces alone would be adequate to protect against duplication in the FM band. While experience with the AM band may, over time, provide some evidence relevant to such theoretical questions, without more or better evidence in the record of this proceeding, we find that it was premature to extend elimination of the rule to FM in the *Order*.

15. We further find that the Commission erred in abolishing the duplication rule in the context of the pandemic ongoing at the time. On reconsideration, we find that the record fails to demonstrate that the 25% duplication allowance set forth in the former rule and the potential to seek a waiver to exceed that allowance would not sufficiently address exigent circumstances. When eliminating the radio duplication rule, the Commission

stated that the COVID-19 national emergency “highlight[ed] the need to provide broadcasters increased flexibility to react nimbly to local needs, as circumstances have changed rapidly in different jurisdictions across the country since the beginning of the outbreak.” We acknowledge that there may be particular value in “allowing FM broadcasters to duplicate programming on a commonly owned station . . . in times of crisis, including the one our nation is currently undergoing” because “small broadcasters with fewer resources are especially vulnerable if one of their studio employees contracts the virus.” However, upon review we find that the record lacks sufficient evidence or examples of inefficiencies tied to the pandemic or other exigent circumstances that would justify permanent industrywide relief. In addition, the record lacks evidence that the existing 25% duplication allowance has proven to be insufficient for FM stations to respond to emergencies. Given what we believe to be the minimal burden of addressing by waiver what NAB terms, somewhat imprecisely, as “times of crisis,” and what we assume to be the relative infrequency of such occasions, we do not believe that burden outweighs the risks associated with essentially exempting FM stations from the nonduplication limitations on such a vague basis. However, we would expect to look favorably upon waivers premised on adequately documented weather or similarly unforeseen emergencies, sought promptly at the time of such emergencies.

16. As the Petitioners note, the COVID-19 national emergency is “a temporary event.” During this time, the Commission has taken a number of steps to accommodate Commission licensees and regulatees in light of disruptions to their businesses. As Petitioners state, “radio station owners whose financial struggles force a choice between duplicating programming or allowing one or more of their FM stations to go ‘dark’” may seek a waiver to exceed the 25% duplication allowance. Overall, we find that the clear potential harms arising from the Commission’s elimination of the rule—harms to competition, diversity, localism, and spectrum efficiency—when weighed against speculative potential benefits, if any, merit reinstating the rule for FM service. Benefits of rescinding the rule cited by NAB, including efficiencies in responding to emergencies, are inherently speculative. The record

contains no evidence demonstrating that such efficiencies could not be achieved with the 25% duplication allowance and existing waiver options. Further, we reject NAB's suggestion that potential efficiency-related benefits can only be achieved through revocation of the rule entirely when adequate regulatory relief was previously provided for in the rule with the 25% duplication allowance.

17. Although the Commission previously expressed concerns regarding costs and delay associated with waiver requests to exceed the 25% duplication allowance based on special circumstances, we find on reconsideration that in fact there is no information in the record demonstrating that the waiver process has proven unreasonably burdensome. We acknowledge that any waiver process inherently entails some level of cost and delay, but those costs must be balanced against the harms, noted above, that could ensue were the rule eliminated entirely. On balance, we do not find evidence that the waiver process entails costs or delay so unreasonable as to outweigh the legitimate safeguards the rule provides. Indeed, NAB has failed to provide concrete evidence demonstrating that FM stations have struggled to respond to weather and other emergency events because of the need to seek a waiver, despite raising such a concern. We find that the rule provides stations a sufficient buffer under the 25% duplication allowance so that stations may react responsively and nimbly to emergencies, format changes, and other special circumstances that might warrant a temporary level of duplication. We agree with Petitioners that the wholesale elimination of the radio duplication rule for FM stations across the industry "shortchange[d] the careful tailoring and analysis available through the waiver process," through which stations can seek relief. A waiver process exists precisely to account for temporary or unique circumstances that warrant a limited departure from the overall rule.

18. Finally, whatever the alleged or perceived economic challenges facing the FM service may be, we conclude that the record does not establish that elimination of the prohibition on duplication as it pertains to FM service is an appropriate, or likely to be an effective, means to address those challenges. In its support of the elimination of the duplication rule, NAB has repeatedly emphasized how FM stations have encountered significant financial stress—in part due to listener demands for higher fidelity in an "expanding universe" of platforms and economic shocks from COVID-19.

However, as stated above, the rule was created in service of other objectives, which would be jeopardized in its absence. Moreover, we cannot conclude that the duplication rule's impacts are sufficiently tied to FM stations' economic and listenership challenges such that revocation of the rule entirely would meaningfully address these larger concerns. We find that the rule already provides adequate flexibility for those FM stations that choose partial or short-term duplication of programming in response to either economic challenges or other temporary emergency or reformatting needs.

19. We are not persuaded by NAB's *ex parte* request to pause this *Order* until the Commission first collects and analyzes new data on the nature and prevalence of programming duplication, and/or information regarding recent changes to stations' operations, since the Commission's elimination of the duplication rule. We note that NAB has not submitted such data. In any event, regardless of whether and to what extent duplication has begun to take place, it does not follow that the Commission should delay further the restoration of a useful guiderail. As noted above, in those instances where duplication is occurring or will occur in the future, and where there is a legitimate need for it, the 25% duplication allowance and waiver process will remain available to stations.

20. Although we reject calls to wait further to act, we provide a six-month grace period to the extent that some FM stations are currently employing duplication that exceeds the limits of the reinstated rule. In order to minimize possible service disruptions and burdens for these stations, and to provide them with an ample runway back to compliance with the reinstated rule, we will provide a six-month grace period after the rule's effective date to come into compliance. The six-month grace period will begin when the reinstated rule becomes effective thirty days after publication in the **Federal Register**. Consistent with this grace period, we strongly encourage any FM station that currently exceeds the duplication allowance, and that intends to seek a waiver, to submit its request for a waiver within the first ninety days after the new rule becomes effective. We believe that adherence to this timeframe will benefit such stations by permitting them to take advantage of the grace period and continue their current practices while any waiver request is under review. Nevertheless, we will permit FM stations currently employing duplication that exceeds the 25% duplication allowance to continue to

transmit their programming in excess of the 25% duplication allowance unless and until the waiver request is denied. In the event that a waiver request is denied, we direct the Media Bureau to provide the licensee with additional time to come into compliance, not to exceed six months from waiver denial. In addition, we emphasize that the grace period and our guidance on waivers for those FM stations currently duplicating in excess of the 25% duplication allowance, as described directly above, does not preclude an FM station that later finds itself interested in pursuing a waiver from seeking one. The general process for seeking a waiver of the reinstated rule will continue to remain available beyond, and apart from, the grace period and ninety-day recommendation for requesting a waiver described in this paragraph.

21. In conclusion, we agree with Petitioners that the Commission erred by enacting a permanent rule change for the FM service when the existing duplication allowance and waiver option, adequately address issues that may arise. The reinstated rule will function as a useful guiderail promoting the public interest and will provide sufficient flexibility to serve the particularized needs of FM stations. For the reasons stated above, we find that any costs associated with reinstating the rule for FM service are outweighed by the benefits associated with the rule in furthering the public interest objectives of competition, programming diversity, localism, and spectrum efficiency. Accordingly, we grant the Petition and reinstate the radio duplication rule as to FM stations.

Procedural Matters

22. *Supplemental Final Regulatory Flexibility Act Analysis.* In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Order*, to the extent that changes adopted on reconsideration require changes to the information included and conclusions reached in the FRFA. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* that initiated this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission received no comments in response to the IRFA. This present Supplemental FRFA conforms to the RFA.

23. *Paperwork Reduction Analysis.* This document does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. 3501 through 3520). In addition, therefore, it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4).

24. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Order on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Supplemental Final Regulatory Flexibility Act Analysis

25. *Supplemental Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* that initiated this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission received no comments in response to the IRFA. This present Supplemental FRFA conforms to the RFA.

A. Need For, and Objectives of, the Order on Reconsideration

26. The radio duplication rule prohibited any commercial AM or FM radio station from devoting “more than 25% of the total hours in its average broadcast week to programs that duplicate those of any other station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours . . . of the stations overlap and the overlap constitutes more than 50% of the total principal community contour service area of either station.” In this Order on Reconsideration, we restore the radio duplication rule as applied to FM stations in order to better serve the public interest.

27. We find that the record does not demonstrate that eliminating the radio duplication rule as applied to the FM service serves the public interest, as the FM service does not face the same persistent challenges as the AM service that eliminating the rule for AM stations

was intended to mitigate. We find that there are likely benefits to restoring the radio duplication rule for FM stations. The radio duplication rule will act as a useful guiderail in the FM service—where spectrum is especially scarce—to encourage the diversification of programming on commonly owned FM stations. Accordingly, we restore the radio duplication rule for FM stations, while recognizing the 25% duplication allowance and the potential to seek a waiver to exceed that allowance in the event of special circumstances will provide FM licensees with flexibility where needed.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

28. There were no comments to the IRFA or FRFA filed.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

29. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Apply

30. 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 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. The rule changes adopted herein will directly affect certain small radio broadcast stations, specifically commercial FM radio stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

31. *Radio Stations.* This industry is comprised of “establishments primarily

engaged in broadcasting aural programs by radio to the public.” Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than \$25 million per year. Based on this data and the SBA’s small business size standard, we estimate a majority of such entities are small entities.

32. The Commission estimates that as of March 31, 2024, there were 4,427 licensed commercial AM radio stations and 6,663 licensed commercial FM radio stations, for a combined total of 11,090 commercial radio stations. Of this total, 11,088 stations (or 99.98%) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on April 4, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of March 31, 2024, there were 4,320 licensed noncommercial (NCE) FM radio stations, 1,960 low power FM (LPFM) stations, and 8,913 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA’s large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

33. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to

which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of “small business” is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

E. Description of Projected Reporting, Record Keeping and Other Compliance Requirements

34. The Order on Reconsideration restores the radio duplication rule as applied to FM stations. Accordingly, the Order on Reconsideration reinstates prior reporting, recordkeeping, and compliance requirements for small entities. Therefore, the Order on Reconsideration will not impose additional obligations or expenditure of resources on small businesses.

F. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

35. 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 small entities.

36. In this proceeding, we reinstate the radio duplication rule for FM stations. This action reinstates prior reporting, recordkeeping, and compliance requirements for all commercial FM radio stations, including small entities. We determined in this Order on Reconsideration that reinstating the radio duplication rule for FM stations would better serve the public interest and anticipate that reinstatement of the rule will positively impact broadcasters, including small entities, and avoid the potential harms described by Petitioners. We believe that the reinstated rule for FM broadcasters affords small businesses sufficient flexibility under the 25%

duplication allowance. Because we do not anticipate that a large number of broadcasters will exceed the allowance, we find that the allowance by itself provides adequate accommodation for small businesses. For those few cases in which FM stations would surpass the duplication allowance, we permit stations to submit waiver requests which specify the need for and special circumstances justifying duplication beyond the allowance. For those FM stations that duplicate programming in excess of the 25% duplication allowance, we will provide a six-month grace period to come into compliance with the reinstated rule. The period will begin when the reinstated rule becomes effective thirty days after publication in the **Federal Register**. In addition, we direct the Media Bureau to provide the licensee with additional time to come into compliance, not to exceed six months if a duplication waiver request is denied. We conclude that extending such flexibility to FM stations, especially for small entities, will mitigate some of the compliance burdens associated with the rule change. Taken together, these provisions allow for all stations, no matter their size and resources, to comply with the rule without being unduly burdened.

G. Report to Congress

37. The Commission will send a copy of this Order on Reconsideration, including this Supplemental FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order on Reconsideration, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

H. Federal Rules That May Duplicate, Overlap, or Conflict With the Rule

38. None.

Ordering Clauses

39. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1, 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 303(r), this Order on Reconsideration *is adopted* and *will become effective* thirty days after publication in the **Federal Register**.

40. *It is further ordered* that the Petition for Reconsideration filed by REC Networks, the musicFIRST

Coalition, and the Future of Music Coalition *is granted*.

41. *It is further ordered* that, pursuant to the authority found in sections 1, 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 303(r), the Commission’s rules *are amended* as set forth in Appendix A and such rule amendment will become effective thirty days after publication in the **Federal Register**.

42. *It is further ordered* that the Commission’s Office of the Secretary, *shall send* a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

43. *It is further ordered* that, pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission’s Office of the Managing Director, Performance Program Management *shall send* a copy of the Order on Reconsideration to Congress and to the Government Accountability Office.

44. *It is further ordered* that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19–310 *shall be terminated* and its docket closed.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Add § 73.3556 to read as follows:

§ 73.3556 Sponsorship identification; list retention; related requirements.

(a) No commercial FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted 3.16 mV/m) of the

stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station.

(b) For purposes of this section, duplication means the broadcasting of identical programs within any 24-hour period.

[FR Doc. 2024–14496 Filed 7–2–24; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 512, 527, 532, 536, 541, and 552

[GSAR Case 2022–G506; Docket No. 2022–0020; Sequence No. 1]

RIN 3090–AK57

General Services Administration Acquisition Regulation; Standardizing the Identification of Deviations in the General Services Administration Acquisition Regulation

AGENCY: Office of Acquisition Policy,
General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing this final rule amending the General Services Administration Acquisition Regulation (GSAR) to standardize the language used to identify and communicate when there has been an approved FAR deviation within the GSAR. This action is necessary in order to provide consistency for readers of the GSA regulations. The intended effects of this rule are: first, the standardized text will allow readers consulting the table of contents of a given GSAR subpart to easily locate sections containing FAR deviations; and second, standardized language at the beginning of individual GSAR subdivisions containing FAR deviations will both identify the use of and specify the actions authorized by the deviation.

DATES: Effective August 2, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Daniel Frias or Mr. Bryon Boyer, GSA Acquisition Policy Division, at gsarpolicy@gsa.gov or 817–850–5580. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755 or GSARegsec@gsa.gov. Please cite GSAR Case 2022–G506.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the General Services Administration Acquisition

Regulation (GSAR) to standardize the language used to identify and communicate FAR deviations within the GSAR. FAR deviations are currently identified using inconsistent language, and the location of deviations is not readily apparent to readers. In light of this issue, GSA is publishing this amendment with the aim of enhancing the visibility of FAR deviations within the GSAR by ensuring their visibility in the table of contents for each relevant subpart, as well as within specific subdivisions. Additionally, GSA seeks to standardize language used to introduce the impact of individual FAR deviations within the text.

II. Discussion and Analysis

The naming convention for GSAR sections containing FAR deviations will be revised to incorporate the label “(FAR DEVIATION)” at the end of the section title. This change aims to enhance the visibility of the deviation when referencing the table of contents of the respective subpart.

Within sections containing FAR deviations, the deviating subdivision will begin “GSA has a deviation from FAR (section number) that allows . . .” This standardized language ensures easy identification and understanding of the implications of the deviation.

III. Publication of This Final Rule for Public Comment Is Not Required

The statute that applies to the publication of the GSAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This rule is not required to be published for public comment, because it is merely conforming the references to FAR deviations throughout the text of the GSAR and does not have a significant effect or impose any new requirements on contractors or offerors.

III. Executive Order 12866, 13563, and 14094

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. OIRA has determined this rule not to be a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866 (Regulatory Planning and Review).

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a “major rule” may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. OIRA has determined this rule is not a “major rule” under 5 U.S.C. 804(2).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VI. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 512, 527, 532, 536, 541, and 552

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA amends 48 CFR parts 512, 527, 532, 536, 541, and 552 as set forth below:

PART 512—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

- 1. The authority citation for 48 CFR part 512 continues to read as follows:

Authority: 40 U.S.C. 121(c).

- 2. Amend section 512.216 by revising the section heading to read as follows:

512.216 Unenforceability of unauthorized obligations (FAR DEVIATION).

* * * * *

512.301 [Amended]

- 3. Amend section 512.301 by—
- a. Removing “commercial Services” wherever it appears and adding “commercial services (FAR DEVIATION)” in its place; and
- b. Removing from paragraph (b) “FAR deviation that” and adding “deviation from FAR 52.212–4 that” in its place.

PART 527—PATENTS, DATA, AND COPYRIGHTS

- 4. The authority citation for part 527 continues to read as follows:

Authority: 40 U.S.C. 486(c).

- 5. Amend section 527.409 by revising the section heading and the introductory text to read as follows:

527.409 Contract clauses (FAR DEVIATION).

GSA has a deviation from FAR 52.227–17 that allows use of the clauses in paragraphs (a) and (b) of this section in lieu of the FAR clause at 52.227–17.

* * * * *

PART 532—CONTRACT FINANCING

- 6. The authority citation for part 532 continues to read as follows:

Authority: 40 U.S.C. 121(c).

532.111 [Amended]

- 7. Amend section 532.111 by—
- a. Removing from the section heading “non-commercial purchases” and adding “non-commercial purchases (FAR DEVIATION)” in its place; and
- b. Removing from the first sentence of paragraph (a) “a FAR deviation” and

adding “a deviation from FAR 52.232–1” in its place.

- 8. Amend section 532.706–3 by revising the section heading and introductory text to read as follows:

532.706–3 Contract clauses for unenforceability of unauthorized obligations (FAR DEVIATION).

GSA has a deviation from FAR 52.232–39 that allows use of the clause in paragraph (a) of this section in lieu of the FAR clause at 52.232–39.

* * * * *

532.908 [Amended]

- 9. Amend section 532.908 by revising the section heading and paragraph (b)(1) introductory text to read as follows:

532.908 Contract clauses (FAR DEVIATION).

* * * * *

(b) * * *

(1) *FAR deviation.* GSA has a deviation from FAR 52.232–25 to authorize payment within 10 days of receipt of a proper invoice. The deviation applies only to:

* * * * *

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

- 10. The authority citation for part 536 continues to read as follows:

Authority: 40 U.S.C. 121(c).

- 11. Amend section 536.7107 by—
- a. Revising the section heading; and
- b. Removing from paragraph (a) “a FAR deviation that” and adding “a deviation from FAR 52.216–17 that” in its place.

The revision reads as follows:

536.7107 Contract clauses (FAR DEVIATION).

* * * * *

PART 541—ACQUISITION OF UTILITY SERVICES

- 12. The authority citation for part 541 continues to read as follows:

Authority: 40 U.S.C. 121(c).

- 13. Amend section 541.501 by—
- a. Removing from the section heading “Contract clauses” and adding “Contract clauses (FAR DEVIATION)” in its place; and
- b. Removing from paragraph (a) “a FAR deviation” and adding “a deviation from FAR 52.232–19” in its place.

541.501 Contract clauses (FAR DEVIATION).

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 14. The authority citation for part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

- 15. Amend section 552.103 by revising paragraph (b) to read as follows:

552.103 Identification of provisions and clauses.

* * * * *

(b) *Deviations.* (1) Federal Acquisition Regulation deviations. When a GSAR provision or clause is used with an authorized deviation in lieu of a FAR provision or clause in a solicitation or contract, it shall be identified by—

(i) The addition of “(FAR DEVIATION)” after the date of the GSAR provision or clause.

(ii) The addition of standardized language at the beginning of the prescription that reads “*FAR deviation.* GSA has a deviation from FAR (provision or clause number) . . .”.

(2) General Services Administration Acquisition Regulation deviations. When a GSAR provision or clause is used with an authorized deviation in a solicitation or contract, it shall be identified by—

(i) The addition of “(GSAR DEVIATION)” after the date of the GSAR provision or clause.

(ii) The addition of standardized language at the beginning of the prescription that reads “*GSAR deviation.* GSA has a deviation from GSAR (provision or clause number) . . .”.

* * * * *

- 16. Amend section 552.107–70 by revising the introductory text to read as follows:

552.107–70 Solicitation provision and contract clause.

GSA has a deviation from FAR 52.252–5 that allows use of the following provisions and clauses in lieu of the FAR provision at 52.252–5 and the FAR clause at 52.252–6.

* * * * *

552.212–4 [Amended]

- 17. Amend section 552.212–4 by—
- a. Removing from the section heading “(FAR DEVIATION 52.212–4)” and adding “(FAR DEVIATION)” in its place; and
- b. Removing from the clause heading “(FAR DEVIATION) (JAN, 2022)” and adding “(DEVIATION FAR 52.212–4) (JAN 2023)” in its place.

[FR Doc. 2024–14416 Filed 7–2–24; 8:45 am]

BILLING CODE 6820–61–P

**GENERAL SERVICES
ADMINISTRATION****48 CFR Parts 532 and 552**

[GSAR Case 2022–G513; Docket No. GSA–GSAR–2023–0008; Sequence No. 1]

RIN 3090–AK55

**General Services Administration
Acquisition Regulation; Removing the
GSA Payments Clause for Non-
Commercial Contracts**

AGENCY: Office of Acquisition Policy,
General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the General Services Administration Acquisition Regulation (GSAR) to remove clause 552.232–1 *Payments*. This clause requires the Government to pay a contractor without submission of an invoice or voucher for non-commercial fixed price contracts for supplies or services.

DATES: *Effective:* August 2, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Taylor McDaniels, Procurement Analyst; Mr. J. Curtis Hauschildt, Procurement Analyst; or Mr. Bryon Boyer, Procurement Analyst, at gsarpolicy@gsa.gov or 817–850–5580. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at GSARegSec@gsa.gov or 202–501–4755. Please cite GSAR Case 2022–G513.

SUPPLEMENTARY INFORMATION:**I. Background**

This final rule amends the General Services Administration Acquisition Regulation to remove clause 552.232–1 *Payments*. The General Services Administration conducts routine reviews of its acquisition regulations to identify outdated content and to ensure there is no unnecessary duplication of or conflict with the Federal Acquisition Regulation (FAR), pursuant to FAR 1.304. Through one of these reviews in Fiscal Year (FY) 2022, GSA identified that GSAR clause 552.232–1 *Payments* conflicts with FAR clause 52.232–1 *Payments* and should be removed. As this GSAR clause is over 10 years old, GSA does not have any historical information that explains why the GSAR clause was initially created. This rule seeks to rectify the issue.

II. Discussion and Analysis**A. Summary of Significant Changes**

There are no changes from the proposed rule in this final rule.

B. Analysis of Public Comments

A proposed rule was submitted for public comment on February 28, 2023, and no comments were received by the closing date of May 1, 2023.

C. Expected Cost Impact to the Public

This rule removes one conflicting GSAR clause regarding payments for non-commercial fixed price contracts for supplies or services. GSA believes the exception to invoicing in the GSAR clause is not currently followed, and applicable contractors are already following the invoice requirements of the FAR clause. However, GSA conducted the analysis below demonstrating that the expected impact of this rule is not significant.

With this change, contractors with non-commercial, fixed-price, contracts for supplies or services will now have to submit proper invoices in order to receive payments in accordance with FAR 52.232–1 *Payments*. Information generated from the System for Award Management (SAM.gov) for FY 2023 reflects approximately 142,120 GSA contracts were awarded for non-commercial fixed price contracts for supplies or services across approximately 735 separate contractors.

Consistent with the methodology and analysis for the FAR clause information collection¹, the affected contracts on average are estimated to have 6 invoices per contract per year, for a total of 852,720 total responses. Each response is estimated to require 0.25 hours, for a total of 213,180 hours of total burden. Applying a GS–12 pay rate, the total cost is estimated to be \$12,517,930², or approximately \$17,031 per contractor which is not significant.

III. Executive Orders 12866, 13563 and 14904

Executive Order (E.O.) 12866 (Regulatory Planning and Review) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. OIRA has determined this rule to not be a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

IV. Congressional Review Act

OIRA has determined that this rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a “major rule” may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**.

V. Regulatory Flexibility Act

GSA does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this is a noncontroversial action that only impacts the agency’s internal operating procedures, and GSA anticipates no significant adverse comments. Therefore, a Final Regulatory Flexibility Analysis has not been prepared.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget Control Number 9000–0073, *Certain Federal Acquisition Regulation Part 32 Requirements*.

¹ Office of Management and Budget Control Number 9000–0073, *Certain Federal Acquisition Regulation Part 32 Requirements*.

² The hourly rate for GS–12 is \$58.72 (\$43.10 as a GS–12/step 5 salary OPM 2023 pay scale Rest of US, with a 36.25% fringe factor pursuant to OMB memorandum M–08–13).

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA amends 48 CFR parts 532 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 532 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 532—CONTRACT FINANCING

■ 2. Revise section 532.111 to read as follows:

532.111 Contract Clauses for non-commercial purchases.

Construction contracts. Insert the clause at 552.232–5, Payments under Fixed-Price Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**552.232–1 [Removed and Reserved]**

■ 3. Remove and reserve section 552.232–1.

552.232–5 [Amended]

■ 4. Amend section 552.232–5 by removing from the introductory text “552.111(b)” and adding “532.111” in its place.

[FR Doc. 2024–14352 Filed 7–2–24; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Parts 23 and 26**

[Docket No. DOT–OST–2022–0051]

RIN 2105–AE98

Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise Program Implementation Modifications; Corrections

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT or the Department).

ACTION: Correcting amendments.

SUMMARY: The U.S. Department of Transportation (DOT or Department) is correcting a final rule that appeared in

the **Federal Register** on April 9, 2024, concerning the Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) program regulations.

DATES: Effective on July 3, 2024.

FOR FURTHER INFORMATION CONTACT: For questions related to the final rule or general information about the DBE and ACDBE Program regulations, please contact Marc D. Pentino, Associate Director, Disadvantaged Business Enterprise Programs Division, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W78–302, Washington, DC 20590 at 202–366–6968/marc.pentino@dot.gov or Lakwame Anyane-Yeboah, ACDBE and DBE Compliance Lead, Disadvantaged Business Enterprise Programs Division, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W78–103, Washington, DC 20590, at 202–366–9361/Lakwame.Anyane-Yeboah@dot.gov. Questions concerning part 23 amendments should be directed to Marcus England, Office of Civil Rights, National Airport Civil Rights Policy and Compliance (ACR–4C), Federal Aviation Administration, 600 Independence Ave. SW, Washington, DC 20591 at 202–267–0487/marcus.england@faa.gov or Nicholas Giles, Office of Civil Rights, National Airport Civil Rights Policy and Compliance (ACR–4C), Federal Aviation Administration, 600 Independence Ave. SW, Washington, DC 20591, at 202–267–0201/nicholas.giles@faa.gov. Office hours are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Background**

The Department identified technical errors in the **Federal Register** Document 2024–05583 published in the **Federal Register** on April 9, 2024 (89 FR 24898); “Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise Program Implementation Modifications”. This document corrects technical/typographical errors. It also clarifies that the current personal net worth (PNW) limit as of May 9, 2024 is \$2.047 million, as detailed in sections §§ 23.35(a) and 26.68(a) and as indicated in the preamble to the final rule. Adjustments to this limit will start on May 9, 2027, based on the formula in sections §§ 23.35(b), (c) and 26.68(d). For FTA-assisted programs, FTA Tier II

recipients do not need to set goals if they operate a race-neutral DBE program. Additionally, this document clarifies that Good Faith Efforts are required in certain situations described in 26.53(g).

List of Subjects in 49 CFR Part 23 and 26

Administrative practice and procedure, Airports, Civil Rights, Government contracts, Grant programs—transportation; Mass transportation, Minority Businesses, Reporting and recordkeeping requirements.

Accordingly, 49 CFR parts 23 and 26 are corrected by making the following correcting amendments.

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

■ 1. The authority citation for part 23 is revised to read as follows:

Authority: 49 U.S.C. 47107 and 47113; 42 U.S.C. 2000d; 49 U.S.C. 322; E.O. 12138, 44 FR 29637, 3 CFR, 1979 Comp., p. 393.

■ 2. Revise § 23.35 to read as follows:

§ 23.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) An owner whose PNW exceeds \$2,047,000 is not presumed economically disadvantaged.

(b) The Department will adjust the PNW cap by May 9, 2027 by multiplying \$1,600,000 by the growth in total household net worth since 2019 as described by “Financial Accounts of the United States: Balance Sheet of Households (Supplementary Table B.101.h)” produced by the Board of Governors of the Federal Reserve (<https://www.federalreserve.gov/releases/z1/>), and normalized by the total number of households as collected by the Census in “Families and Living Arrangements” (<https://www.census.gov/topics/families/families-and-households.html>) to account for population growth. The Department will adjust the PNW cap every 3 years on the anniversary of the adjustment date described in this section. The Department will post the adjustments on the Departmental Office of Civil Rights’ web page, available at <https://www.Transportation.gov/DBEPNW>. Each such adjustment will become the currently applicable PNW limit for purposes of this regulation.

(c) The Department will use formula 1 to this paragraph (c) to adjust the PNW limit:

Formula 1 to Paragraph (c)

Future Year PNW Cap

= [\$1,600,000] *

Q1-Q4 Average Household Net Worth of Future Year / Total Households of Future

Year _____

Q1-Q4 Average Household Net worth of 2019 (\$106,722,704 million / Total Households of 2019 (128,579)

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

■ 3. The authority citation for part 26 continues to read as follows:

Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 47113, 47123; Sec. 1101(b), Pub. L. 114–94, 129 Stat. 1312, 1324 (23 U.S.C. 101 note); Sec. 150, Pub. L. 115–254, 132 Stat. 3215 (23 U.S.C. 101 note); Pub. L. 117–58, 135 Stat. 429 (23 U.S.C. 101 note).

■ 4. Revise § 26.5 section heading to read as follows:

§ 26.5 Definitions.

* * * * *

§ 26.29 [Amended]

■ 5. In § 26.29 amend paragraph (f) by adding the word “all” before text “lower-tier subcontractors”.

§ 26.31 [Amended]

■ 6. In § 26.31, in the second sentence of paragraph b, removing the citation “§ 26.81(n)(1) and (3)” and adding the citation “§ 26.73(a)” in its place.

■ 7. In § 26.45, revise paragraph (a)(2) to read as follows:

§ 26.45 How do recipients set overall goals?

(a) * * *

(2) If you are an FTA Tier II recipient who intends to operate a race-neutral DBE program, or if you are an FAA recipient who reasonably anticipates awarding \$250,000 or less in FAA prime contract funds in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA, respectively, for that Federal fiscal year.

* * * * *

■ 8. In § 26.53, revise paragraph (g) to read as follows:

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

* * * * *

(g) When a DBE subcontractor or any portion of its work is terminated by the prime contractor as provided in paragraph (f) of this section, or the firm fails to complete its work on the contract for any reason, including when work committed to a DBE is not countable or reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days, if necessary, at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

* * * * *

§ 26.55 [Amended]

■ 9. Amend § 26.55 by:

■ a. In paragraph (e)(2)(ii), by removing the text “and-operates” and adding the text “and operates” in its place: and

■ b. In paragraph (e)(2)(iv)(B), by removing the text “, operating, or maintaining” and adding the text “and operating” in its place.

■ 10. In § 26.65, revise paragraph (b) to read as follows:

§ 26.65 Business Size Determinations.

* * * * *

(b) *Statutory Cap.* Even if a firm is a small business under paragraph (a) of this section, it is ineligible to perform DBE work on FHWA or FTA assisted contracts if its affiliated annual gross receipts, as defined in 13 CFR 121.104, averaged over the firm’s previous three fiscal years exceed \$30.72 million (as of March 1, 2024). The Department will adjust this amount annually and post the adjusted amount on its website available at [https://](https://www.transportation.gov/DBESizeStandards)

www.transportation.gov/DBESizeStandards.

§ 26.67 [Amended]

■ 11. In § 26.67, in the last sentence of paragraph (a)(3)(iv), remove the text “paragraph (e)” and add the text “paragraph (d)” in its place.

■ 12. In § 26.68, revise paragraphs (a) and (d) to read as follows:

§ 26.68 Personal net worth.

(a) *General.* An owner whose PNW exceeds \$2,047,000 is not presumed economically disadvantaged. The Department will adjust the PNW cap pursuant to paragraph (d) of this section.

* * * * *

(d) *Regulatory adjustments.* (1) The Department will adjust the PNW cap by May 9, 2027 by multiplying \$1,600,000 by the growth in total household net worth since 2019 as described by “Financial Accounts of the United States: Balance Sheet of Households (Supplementary Table B.101.h)” produced by the Board of Governors of the Federal Reserve (<https://www.federalreserve.gov/releases/z1/>), and normalized by the total number of households as collected by the Census in “Families and Living Arrangements” (<https://www.census.gov/topics/families/families-and-households.html>) to account for population growth. The Department will adjust the PNW cap every 3 years on the anniversary of the adjustment date described in this section. The Department will post the adjustments on the Departmental Office of Civil Rights’ web page, available at <https://www.Transportation.gov/DBEPNW>. Each such adjustment will become the currently applicable PNW limit for purposes of this regulation.

(2) The Department will use formula 1 to this paragraph (d)(2) to adjust the PNW limit:

Formula 1 to Paragraph (d)

Future Year PNW Cap = [\$1,600,000] *	Q1-Q4 Average Household Net Worth of Future Year / Total Households of Future Year
	Q1-Q4 Average Household Net worth of 2019 (\$106,722,704 million / Total Households of 2019 (128,579)

* * * * *

■ 13. Amend § 26.81 by:

- a. Revising section heading; and
- b. In paragraph (d) removing the phrase “home state” and adding in its place the phrase “Jurisdiction of Original Certification”.

The revision reads as follows:

§ 26.81 Unified Certification Programs.

* * * * *

§ 26.83 [Amended]

■ 14. Amend § 26.83 by:

- a. In paragraph (c)(2), removing phrase “provided in Appendix F to this part” and adding phrase “available at <https://transportation.gov/DBEFORMS>” in its place;
- b. In paragraph (d) removing the word “recipient” wherever it appears and adding the word “certifier” in its place;
- c. In paragraph (i) removing the word “recipient” and adding the word “certifier” in its place; and
- d. Removing paragraph (l)(2) and redesignating paragraph (l) introductory text as paragraph (l)(1) and paragraph (l)(1) as paragraph (l)(2).

§ 26.85 [Amended]

■ 15. Amend § 26.85 by:

- a. In paragraph (c)(1), removing the phrase “A cover letter with its application that specifies that the DBE is applying for interstate certification” and adding the phrase “A cover letter that specifies that the DBE is applying for interstate certification” in its place;
- b. In paragraph (h)(6),
- i. Removing the phrase “this paragraph (h)(6)” and adding the phrase “paragraph (h)” in its place; and
- ii. Removing the text “26.87(e)(6) (failure to cooperate)” and adding the text “26.109(c) (failure to cooperate)” in its place.

- 16. Amend § 26.87 by revising paragraphs (h) and (j) to read as follows:

§ 26.87 Decertification.

* * * * *

(h) *Status of firm during proceeding.*
A DBE remains certified until the certifier issues a NOD.

* * * * *

(j) *Consequences.* Decertification has the following effects on contract and overall goals and DBE participation:

(1) When a prime contractor has made a commitment to use a DBE, but a subcontract has not been executed before the certifier issues the NOD as provided for in paragraph (g) of this section, the committed firm does not count toward the contract goal. The recipient must direct the prime contractor to meet the contract goal with an eligible DBE or demonstrate to the recipient that it has made good faith efforts to do so.

(2) When the recipient has made a commitment to using a DBE prime contractor, but a contract has not been executed before the certifier issues the NOD, the decertified firm does not count toward the recipient’s overall DBE goal.

(3) If a prime contractor has executed a subcontract with a DBE before the certifier issues the NOD, the prime contractor may continue to receive credit toward the contract goal for the firm’s work. In this case, however, the prime contractor may not extend or add work to the contract without prior written consent from the recipient.

(4) If a prime contractor has executed a subcontract with a DBE before the certifier issues the NOD, the prime contractor may continue to receive credit toward the contract goal as set forth in paragraph (j)(3) of this section; however, the portion of the decertified firm’s continued performance of the contract must not count toward the recipient’s overall goal.

(5) If the recipient executed a prime contract with a DBE that was later decertified, the portion of the decertified firm’s performance of the contract remaining after the certifier issued the NOD must not count toward an overall goal, but the DBE’s performance of the contract may continue to count toward satisfying any contract goal.

(6) The following exceptions apply to this paragraph (j):

(i) If a certifier decertifies a firm solely because it exceeds the business size

standard during the performance of the contract, the recipient may continue to count the portion of the decertified firm’s performance of the contract remaining after the certifier issued the NOD toward the recipient’s overall goal as well as toward the contract goal.

(ii) If the certifier decertifies the DBE because it was acquired by or merged with a non-DBE, the recipient may not continue to count the portion of the decertified firm’s performance on the contract remaining, after the certifier issued a NOD, toward either the contract goal or the overall goal, even if a prime contractor has executed a subcontract with the firm or the recipient has executed a prime contract with the DBE that was later decertified. In this case, if eliminating the credit of the decertified firm will affect the prime contractor’s ability to meet the contract goal, the recipient must direct the prime contractor to subcontract to an eligible DBE to the extent needed to meet the contract goal or demonstrate to the recipient that it has made good faith efforts to do so.

§ 26.88 [Amended]

■ 15. Amend § 26.88 by:

- a. In paragraph (d)(1)(iii), removing the phrase “lieu of or in addition to attending the hearing” and adding the phrase “in lieu of or in addition to attending the hearing” in its place;

- b. Redesignating paragraph (d)(6) as paragraph (d)(5);

- c. In paragraph (e)(1):

- i. Removing the phrase “under paragraph (c)(5)(iv)” and adding the phrase “under paragraph (d)(4)(iv) of this section” in its place; and

- ii. Removing the phrase “unless paragraph (d)(2)” and adding the phrase “unless paragraph (e)(2)” in its place; and

- d. In paragraph (e)(2)(ii), removing the text “paragraph (c)(6)” and adding the text “paragraph (d)(5)” in its place.

Signed pursuant to authority delegated at 49 CFR 1.27(c) in Washington, DC.

Subash Iyer,

Acting General Counsel.

[FR Doc. 2024–14318 Filed 7–2–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2020–0076;
FXES1111090FEDR–245–FF09E21000]

RIN 1018–BE71

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Mount Rainier White-Tailed Ptarmigan With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status for the Mount Rainier white-tailed ptarmigan (*Lagopus leucura rainierensis*), a bird subspecies in Washington, under the Endangered Species Act of 1973, as amended (Act). This rule adds the subspecies to the List of Endangered and Threatened Wildlife and extends the Act's protections to the subspecies. We also finalize a rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of the Mount Rainier white-tailed ptarmigan.

DATES: This rule is effective August 2, 2024.

ADDRESSES: This final rule is available on the internet at <https://www.regulations.gov> under Docket No. FWS–R1–ES–2020–0076 and at <https://www.fws.gov/office/washington-fish-and-wildlife>. Comments and materials we received are available for public inspection at <https://www.regulations.gov> under Docket No. FWS–R1–ES–2020–0076. Supporting materials we used in preparing this rule, such as the species status assessment report, are also available at <https://www.regulations.gov> under Docket No. FWS–R1–ES–2020–0076.

FOR FURTHER INFORMATION CONTACT: Brad Thompson, State Supervisor, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Suite 102, Lacey, WA 98503; telephone 360–753–9440. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a

speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Mount Rainier white-tailed ptarmigan meets the Act's definition of a threatened species; therefore, we are listing the Mount Rainier white-tailed ptarmigan as a threatened species. Listing a species as an endangered species or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This rule makes final the listing of the Mount Rainier white-tailed ptarmigan as a threatened species under the Act and adopts a rule under section 4(d) of the Act for the subspecies.

The basis for our action. Under the Act, we may determine that a species is an endangered species or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We have determined that the Mount Rainier white-tailed ptarmigan meets the definition of a threatened species due to habitat loss and degradation resulting from climate change within the foreseeable future. Rising temperatures associated with climate change are expected to have direct and rapid impacts on individual birds. Changing habitat conditions, such as loss of suitable alpine vegetation and reduced snow quality and quantity, are

expected to cause populations to decline. This threat and responses are reasonably foreseeable because some are already evident in the range of the subspecies, and the best available information indicates that the effects of climate change will continue to alter the subspecies' habitat within the foreseeable future. Furthermore, it is unlikely that the Mount Rainier white-tailed ptarmigan will adapt to the changing climate by moving northward because alpine areas north of the subspecies' current range are expected to undergo similar impacts due to climate change and any potential connectivity to areas north of the current range is expected to decline.

Previous Federal Actions

Please refer to the proposed listing rule (86 FR 31668; June 15, 2021) for a detailed description of previous Federal actions concerning the Mount Rainier white-tailed ptarmigan.

Peer Review

A species status assessment (SSA) team prepared an SSA report for Mount Rainier white-tailed ptarmigan. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the subspecies, including the impacts of past, present, and future factors (both negative and beneficial) affecting the subspecies. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the draft SSA report. We sent the draft SSA report to seven independent peer reviewers including scientists with expertise in white-tailed ptarmigan as well as climate science; we received three responses. The peer reviews and the draft SSA report they commented on can be found at <https://www.regulations.gov>. We also sent the draft SSA report to three agency partners for review; we received comments from one agency—the Washington Department of Fish and Wildlife. We incorporated the results of these reviews, as appropriate, into the 2021 SSA report (version 1.0, USFWS 2021, entire), which was the foundation for the proposed rule and this final rule. Additionally, new information provided to us during the public comment period on the proposed rule was incorporated into both the final rule as well as version 2.0 of the SSA report (USFWS 2023, entire). A summary of the peer review comments and our responses can

be found in the Summary of Comments and Recommendations below.

Summary of Changes From the Proposed Rule

In preparing this final rule, we reviewed and fully considered comments and new information received from the public on the June 15, 2021, proposed rule. This final rule does not make any substantive changes to the determinations made in the proposed rule. We updated the SSA report to version 2.0 (USFWS 2023, entire), revising it based on all new information and comments received. The new information received from our agency partners and others on genetics, diet, habitat characteristics, adaptive divergence, and range and distribution was incorporated into version 2 of the SSA but not incorporated into this final rule because it did not lead to substantive changes in the determinations made in the proposed rule. The changes we made to this final rule are as follows:

(1) We shorten the Background section to a condensed discussion of the general information for the subspecies on taxonomy/genetics, species description, range/distribution, life history, and habitat (for the full updated discussion on these topics see version 2 the SSA Report (USFWS 2023));

(2) We shorten the Summary of Biological Status and Threats section to include only a brief discussion of recreation and the full discussion of the effects of climate change (for the full updated discussion on factors influencing the status of the subspecies see version 2 the SSA Report (USFWS 2023));

(3) We make many clarifications and minor corrections in this rule to ensure better consistency with the updated SSA report (USFWS 2023), we clarify some information, and we update or add new references.

(4) We remove language referencing low connectivity between populations from this final rule.

(5) We revise table 6 in the final rule (and table 17 the SSA (USFWS 2023, p. 81) by correcting the following:

- We adjust the future condition score under Scenario 4 for the North Cascades-West Population Unit to poor, to be consistent with that unit's Scenario 2 score. Under both scenarios, we predict a lack of future availability of breeding and post-breeding habitat (USFWS 2023, chapter 6.0).
- We adjust the future condition scores for Mount Adams under Scenarios 1 and 3 from good to fair, to better reflect predicted future conditions for Mount Adams, as explained in the

SSA report (version 2.0, USFWS 2023, chapter 6.0).

(6) In light of the April 5, 2024, regulation revisions to 50 CFR 424.12, that pertain to circumstances when a designation of critical habitat may be not prudent, we indicate we will reevaluate the prudency analysis for the ptarmigan and issue a critical habitat determination in a separate **Federal Register** document.

(7) We make revisions to the description of the prohibitions and exceptions in our rule issued under section 4(d) of the Act ("4(d) rule") in the preamble of this final rule to be consistent with the regulatory text that sets forth the 4(d) rule.

(8) We revise the regulatory text that sets forth the 4(d) rule by making the following changes:

- In § 17.41(i)(1), we add the full suite of section 9 prohibitions. We want to prevent declines in the species' status, and section 4(d) provides that the Secretary shall promulgate regulations that are necessary and advisable to provide for the conservation of the species. Although threatened species are not currently in danger of extinction like endangered species, we have determined those species are likely to become in danger of extinction within the foreseeable future, and we have an opportunity to try to prevent that from happening for newly listed species. Further, we often lack a complete understanding of the causes of a species' decline, and taking a precautionary approach to applying protections would proactively address potentially unknown threats. In addition, the initial listing of a species may bring new attention to the species and that attention may increase the risk of collection or sale. Therefore, this approach of applying section 9 prohibitions assists our goal of putting in place protections that will both prevent the species from becoming endangered and promote the recovery of species. As we learn more about the Mount Rainier white-tailed ptarmigan and the reasons for its decline over time, we have the option to revise the 4(d) rule accordingly.

- In § 17.41(i)(2)(ii), we remove reference to 17.21(c)(5) as this was an error in the proposed rule.

- In § 17.41(i)(2)(v), we remove the exception for Law Enforcement and On-the-job Wildlife Professionals. The intent of this exception is already satisfied by exceptions in § 17.41(i)(2)(i)–(iv), making this stand-alone this exception duplicative.

- In § 17.41(i)(2)(iv)(F), we add developed ski areas and helicopter landing pads to the list of examples of

infrastructure where incidental take of Mount Rainier white-tailed ptarmigan can occur during routine maintenance. This revision ensures consistency between our description of the exception in the preamble of this document and in the regulatory text that sets forth the 4(d) rule. In addition, we keep references to trails as part of infrastructure, but remove any references to trails separate from infrastructure to eliminate redundancy in both the preamble and promulgation.

We conclude that the information we received during the comment period for the June 15, 2021, proposed rule did not change our previous analysis of the magnitude or severity of factors influencing the subspecies or our determination that the Mount Rainier white-tailed ptarmigan meets the definition of a threatened species.

Summary of Comments and Recommendations

Prior to developing the proposed rule, we solicited peer review and received comments on the draft SSA report (USFWS 2021) as discussed below. In our June 15, 2021, proposed rule (86 FR 31668), we requested that all interested parties submit written comments on the proposal by August 16, 2021. We also contacted appropriate Federal and State agencies, Tribes, scientific experts and organizations, and other interested parties and invited them to comment on the proposed rule. Newspaper notices inviting general public comment were published in the Seattle Times on June 21, 22, and 23, 2021, and we did not receive any requests for a public hearing. All substantive information provided during the public comment period either has been incorporated directly into this final rule or is addressed below.

Peer Reviewer Comments

As discussed in Peer Review, above, we received comments from three peer reviewers on the draft SSA report. We reviewed all comments we received from the specialists for substantive issues and new information regarding Mount Rainier white-tailed ptarmigan. The reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the SSA report and this final rule. The SSA peer review comments mainly fell into categories pertaining to the subspecies' life history, influence factors, and population needs. Revisions per peer reviewer comments and expert opinions are incorporated into the SSA report (version 1.0, USFWS 2021, entire;

version 2.0, USFWS 2023, entire) and this final rule as appropriate.

Public Comments

We received 14 public comment letters in response to the June 15, 2021, proposed rule. We reviewed all comments we received during the public comment period for substantive issues and new information regarding the proposed rule. A majority of the commenters supported the listing determination and one opposed the determination. Eight commenters provided substantive comments or new information concerning the proposed listing and 4(d) rule for Mount Rainier white-tailed ptarmigan. Below, we provide a summary of the substantive issues raised in the public comments we received; however, comments outside the scope of the proposed rule, and those without supporting information, did not warrant an explicit response and, thus, are not presented here. Identical or similar comments have been consolidated. As noted below in Critical Habitat, any substantive comments regarding critical habitat received during the comment period on the 2021 proposed rule will be responded to in a separate determination in the future in the **Federal Register**.

Comments From Federal Agencies

(1) *Comment:* The U.S. Forest Service (USFS) asked for clarification regarding species and habitat responses to climate change, including why the representative concentration pathway (RCP) 8.5 model predicted good food abundance if there is overall habitat loss and whether habitat loss is related to heat.

Our Response: We determined with our expert elicitation group that Mount Rainier white-tailed ptarmigan need both an adequate quality and quantity of foraging habitat in each season, but habitat quality is no longer relevant if habitat quantity is zero. The expert elicitation group included biologists from USFS, the Washington Department of Fish and Wildlife (WDFW), and the National Park Service (NPS) with local expertise on the subspecies and its habitat.

As described in the SSA report (USFWS 2023, chapter 3.0), we developed a list of species' needs and their indicators prior to the future condition analysis that includes the RCP8.5 scenario. The USFS comment is correct in noting an apparent contradiction between the ratings for habitat loss and food abundance, but the term "abundance of food resources" was chosen to represent the quality and quantity of foraging habitat within

remaining breeding, post-breeding, and wintering habitat. We used a variety of indicators to represent "abundance of food resources," including acres of winter forage vegetation, distance to water during the breeding season, Normalized Difference Vegetation Index (NDVI; an index of plant growth) during early brood rearing, peak timing of NDVI, soil moisture, and the width of the unvegetated area of the glacial forefront not yet colonized by forage plants. Of these, the only indicator available for future scenarios was a measure of soil moisture. In forb-dominated alpine environments, soil moisture will drive productivity in the face of climate warming (Walker et al. 1994, p. 402; Winkler et al. 2016, p. 1553). Soil moisture was projected to remain within one standard deviation of historical means (Northwest Climate Toolbox, developed by members of the Applied Climate Science Lab at the University of Idaho (Pacific Northwest Climate Impacts Research Consortium, CIRC, 2019)), and therefore remains within the range of a "good" rating for some of the population units in some future scenarios. We chose measures within one standard deviation of historical means as representative of a "good" rating because our expert elicitation group concluded that historical forage vegetation conditions adequately support populations of the Mount Rainier white-tailed ptarmigan.

With regard to the potential relationship of habitat loss and heat, the overall loss of ptarmigan habitat is not directly due to a warming climate or desiccation of alpine meadows, but to a shift from open meadow vegetation to forest (Intergovernmental Panel on Climate Change (IPCC) 2019, p. SPM-25; Jackson et al. 2015, p. 440; Steuve et al. 2009, entire; USFWS 2023, pp. 57–61). This future shift to forest represents a loss of habitat for the Mount Rainier white-tailed ptarmigan, and for other species dependent on alpine tundra vegetation.

(2) *Comment:* USFS questioned why alpine meadow habitat would not expand into areas where glaciers have retreated.

Our Response: In the June 15, 2021, proposed rule, and as explained in the SSA report (USFWS 2023, p. 60), as glaciers retreat and expose soil-less, unvegetated bedrock (called the glacial forefront), we estimate a minimum of 20 years for the development of white-tailed ptarmigan forage plants, and 70 to 100 years for maturation to full meadow and shrub habitat within that area. This represents a time gap in development of breeding and post-breeding habitat of 5 to 24 generations

of ptarmigan (86 FR 31668, June 15, 2021, p. 31681), and thus in the foreseeable future, habitat loss is expected to exceed habitat gains. At some point after glacial retreat (beyond our projected timeline), the exposed areas will be suitable ptarmigan habitat with alpine meadows and remain so for a period of time. Eventually, however, any alpine habitat that develops there will become forest (USFWS 2023, pp. 57–61).

(3) *Comment:* USFS questioned our use of 50- to 80-year climate models as "foreseeable" and asked for clarification on the projected effects of warming temperatures on forage plant growth.

Our Response: As discussed below under *Regulatory Framework*, the foreseeable future extends as far into the future as the Service can make reasonably reliable predictions about the threats to the species and the species' responses to those threats. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics and the species' biological response. For the Mount Rainier white-tailed ptarmigan, we could make reasonably reliable predictions 50 to 80 years into the future with respect to the primary driver of the subspecies' status (climate change) and our understanding of information available on the subspecies' survival, generational framework, and physiology (see the discussion in *Climate Change* under Summary of Biological Status and Threats, below, and section 6.1 of SSA report (USFWS 2023, p. 73)).

(4) *Comment:* USFS asked what metric we used to estimate the low connectivity between populations discussed under *Status Throughout all its Range* in the proposed rule, given that the subspecies is able to fly relatively long distances.

Our Response: In the June 15, 2021, proposed rule, we erred in stating that connectivity between populations is currently low (86 FR 31668 at p. 31685). Current connectivity levels between populations are not negatively impacting the viability of the subspecies; therefore, we removed language referencing low connectivity between populations from this final rule. For the SSA, we analyzed current connectivity between types of habitat within each population. Appendix F in the SSA report (USFWS 2023, pp. 120–138) provides information on current connectivity between breeding, post-breeding, and winter habitat within

each population unit. The categories of “poor,” “fair,” “good,” and “very good” are based on the size and abundance of habitat gaps within a population unit. Current connectivity for each population was categorically rated based on expert opinion (WDFW partners), but future condition estimates of connectivity were left blank (see appendix G in the SSA report (USFWS 2023, pp.138–156) because available vegetation models are not sensitive enough to model small-scale areas, which would be necessary to make a definitive statement of future condition of this indicator. Therefore, this indicator was not used to rate future condition of any population unit or the subspecies.

We clarified the language under Executive Summary, above, and *Status Throughout All of Its Range*, below, to make clear that this information was for evaluating connectivity between breeding, post-breeding, and winter habitat within populations, as opposed to connectivity between populations. We also clarified that the metric was only used for analysis of current condition for each population.

(5) *Comment:* The British Columbia Ministry of Environment and Climate Change remarked that the amount of existing recreation in British Columbia is similar to that occurring in the United States, with the same resultant effects to the species. USFS noted that recreational use of high-elevation habitats has been increasing, exponentially in recent years, but did not provide data to support or further explain this statement.

Our Response: We agree that factors influencing Mount Rainier white-tailed ptarmigan populations in British Columbia are similar to those affecting populations in the State of Washington. We thoroughly analyzed the best available information on the scope, magnitude, and intensity of recreation in the range of the subspecies (USFWS 2023, pp. 42–48). Based on this analysis, recreation of any type or timing in the range does not appear to currently affect any more than individual ptarmigan in localized areas. Although both established recreation in designated areas as well as recreation away from established roads and trails will likely increase in the future, we do not have information at this time to analyze whether future increases in recreation would rise beyond individual-level impacts such that it is likely to affect the resiliency of populations of Mount Rainier white-tailed ptarmigan.

(6) *Comment:* Three commenters, including British Columbia Ministry of Environment and Climate Change and

USFS’s Region 6, questioned the wording in the discussion of taxonomy and genetics in the June 15, 2021, proposed rule and suggested the Service refer to Taylor (1920, entire) and specific sections within Langin et al. (2018) in our final rule. These commenters questioned our identified boundary for the northern white-tailed ptarmigan, further suggesting the Mount Rainier white-tailed ptarmigan may not be a valid subspecies based on peer review comments and statements in Langin et al. (2018, entire).

Our Response: The June 15, 2021, proposed rule provided only a summary of the taxonomic and genetic information from the SSA report for the Mount Rainier white-tailed ptarmigan. As noted in the SSA report (USFWS 2023, p. 23), the 1957 American Ornithological Union (AOU, now American Ornithological Society (AOS)) taxonomic classification of the subspecies relies on a 1920 description (Taylor 1920, entire) of the subspecies based on a comparison of specimens taken only from Mount Rainier National Park. We adopted the 1957 AOU classification of the subspecies for delineating the range of the subspecies for the SSA analysis and explain in the SSA report that the AOU mapping of the subspecies’ border at the international boundary was likely a convenience; the range of the subspecies likely extends slightly farther north than the U.S.-Canada border because habitat is contiguous across the border (USFWS 2023, p. 23; Langin et al. 2018, figures S10 and S14).

As explained in our June 15, 2021, proposed rule, a combination of sightings, dispersal distance, occurrence and distribution of suitable alpine/subalpine habitat, and forests, agriculture, cities, and highways that occur west of the range of the subspecies in British Columbia was used to determine the northern range limit. A 2018 genetics study referenced by commenters (Langin et al. 2018) raised some uncertainty regarding the taxonomic validity of several of the subspecies of white-tailed ptarmigan. However, Langin et al. (2018) stated that sampling was sparse in the area at the border of Washington and British Columbia, “. . . making it infeasible to identify the start and end points of putative genetic groups.” Furthermore, additional research by another group found that individuals are genetically clustered largely by their recognized subspecies (Zimmerman et al. 2021, p. 125).

We acknowledge there is some remaining uncertainty over the relationship between the subspecies in

question and the exact boundary between *L. l. rainierensis* and other subspecies in the genus. However, there has been no change to the official nomenclature of Mount Rainier white-tailed ptarmigan, and the best available science leads us to find that the Fraser River represents the northern terminus of the range of the *L. l. rainierensis* subspecies. We have incorporated additional information in the discussion of taxonomy and genetics in the SSA report (USFWS 2023, pp. 4–6). All substantive peer review and expert elicitation comments were incorporated into the SSA report (version 1.0, USFWS 2021, entire; version 2.0, USFWS 2023, entire) and considered in development of the June 15, 2021, proposed rule and this final rule.

Comments From States

Section 4(i) of the Act states that the Secretary shall submit to the State agency a written justification for the failure to adopt regulations consistent with the agency’s comments or petition. Comments we received from State agencies regarding the proposal to list the Mount Rainier white-tailed ptarmigan as threatened under the Act are addressed below. We received comments from WDFW related to biological information, influence factors, and the 4(d) rule. WDFW provided a number of recommended technical corrections, clarifications, or edits to the proposed listing determination for the Mount Rainier white-tailed ptarmigan. As noted in the Summary of Changes from the Proposed Rule, we have evaluated and incorporated this information into this final rule where appropriate to clarify the final listing determination.

(7) *Comment:* Citing a 1905 text by Judd, WDFW indicated the historical range of the Mount Rainier white-tailed ptarmigan may have extended south to Mt. Hood and Mount Jefferson in Oregon.

Our Response: We contacted biologists at WDFW to discuss this comment. Past research by WDFW biologists has shown that such historical observations may be in error. Because the Judd text did not provide any information on who or when someone may have seen the subspecies in that area, their recommendation was to mention the possible past occupancy of the subspecies in the area of Mt. Hood and Mount Jefferson, but not to list the area as a historical population. A clarification to this effect has been added to the SSA report (USFWS 2023).

(8) *Comment:* WDFW suggested that sections of the proposed rule that cite results from research conducted within

the range of the southern white-tailed ptarmigan should be cited as such, as those results may not accurately represent conditions or life-history traits for the Mount Rainier white-tailed ptarmigan.

Our Response: In this final rule, we clarify where information came from in studies of southern white-tailed ptarmigan and other subspecies of white-tailed ptarmigan under the Summary of Biological Status and Threats, below.

Other Comments

(9) **Comment:** Several commenters from nongovernmental organizations and other groups noted their repeated and extensive, yet unsuccessful, searches for Mount Rainier white-tailed ptarmigan over the last several years, concluding that the subspecies' range is likely contracting.

Our Response: We incorporated the search effort information provided by the commenters into the final SSA report and this rule (see Background, below), and we considered the information in our determination.

I. Final Listing Determination

Background

We completed a comprehensive assessment of the biological status of the Mount Rainier white-tailed ptarmigan and prepared a report of the assessment (SSA report; USFWS 2023, entire), which provides a thorough account of the subspecies' overall viability and risks to that viability. Please refer to the SSA report as well as our June 15, 2021, proposed rule (86 FR 31668) for a full summary of subspecies information. Both are available at <https://www.regulations.gov> under Docket No. FWS-R1-ES-2020-0076. Below, we summarize the key results and conclusions of the SSA report.

The Mount Rainier white-tailed ptarmigan, one of five subspecies of white-tailed ptarmigan (AOU 1998, p. xii; ITIS 2019; Clements et al. 2019, entire), is found in alpine and subalpine areas of the Cascade Mountains (Cascades) in Washington State and southern British Columbia, Canada. Mount Rainier white-tailed ptarmigan's historical range extended along the Cascade Range from southern Canada south to and including Mount St. Helens and Mount Adams. Mount Rainier white-tailed ptarmigan regularly occurred on Mount St. Helens before the active volcano lost approximately 400 meters (m) (1,314 feet (ft)) of elevation when it erupted in 1980 (Brantley and Myers 1997, p. 2). The population on Mount St. Helens is now presumed

extirpated (Schroeder et al. 2021, p. 4). We consider the current range of the Mount Rainier white-tailed ptarmigan to include alpine and subalpine areas in the Cascade Mountains, extending from the southern edge of Mount Adams in Washington State to approximately Lytton, British Columbia, Canada, east of the Fraser River. Recent searches for the subspecies noted the recession or loss of previously permanent snowfields, as well as a marked decline in sightings or density of sightings of individuals (Garner 2021, in litt.; Isley 2021, in litt.).

The four other recognized subspecies of white-tailed ptarmigan are the southern white-tailed ptarmigan (*L. l. altipetens*) primarily in Colorado; the Kenai white-tailed ptarmigan (*L. l. peninsularis*) in Alaska; the Vancouver Island white-tailed ptarmigan (*L. l. saxatilis*) in British Columbia, Canada; and the northern white-tailed ptarmigan (*L. l. leucura*) in northern Montana, and the provinces of British Columbia and Alberta, Canada. In the following paragraphs, we rely on studies conducted on other subspecies of white-tailed ptarmigan because most life-history studies either do not differentiate between the subspecies or focus on the more well-studied southern white-tailed ptarmigan subspecies. Mount Rainier white-tailed ptarmigan are cryptic birds that are resident or short-distance elevation migrants with numerous adaptations for snow and extreme cold in winter, including snow roosting behavior and heavily feathered feet that act as snowshoes to support them as they walk across the snow (Braun et al. 2011, Distinguishing Characteristics section). The subspecies molts frequently throughout the year to remain cryptic, appearing entirely white in winter (except for black eyes, dark toenails, and a black beak), mottled with brown and white in spring, and brown in summer; the tail feathers remain white year-round and distinguish the white-tailed ptarmigan from other ptarmigan species (Braun et al. 2011, Distinguishing Characteristics section; Braun et al. 1993, Appearance section; Hoffman 2006, p. 12). Males and females share similar body size and shape, with adult body lengths up to 34 centimeters (cm) (13.4 inches (in)), and body masses up to approximately 378 grams (g) (0.83 pounds (lb)) (Martin et al. 2015, table 3).

Pairs of ptarmigan form shortly after females arrive on breeding areas in late April to mid-May (Martin et al. 2015, Phenology section). Due to the short breeding season, female white-tailed ptarmigan raise only one brood per year (Sandercock et al. 2005, p. 2177).

Within 6 to 12 hours after all eggs have hatched, broods gradually move upslope, depending on where forage and cover for chicks are found (Braun 1969, p. 140; Schmidt 1988, p. 291; Giesen and Braun 1993, p. 74; Hoffman 2006, p. 21; Martin et al. 2015, Young Birds section). Records of longevity for wild white-tailed ptarmigan include a 12-year-old female and a 15-year-old male (Martin et al. 2015, Life Span and Survivorship section). There have been no population-scale density estimates for populations in the range of the Mount Rainier subspecies but estimates for other subspecies range from fewer than 1 to about 14 birds per square kilometer (km²) (2.6 to 36 birds per square mile (mi²)) (Clarke and Johnson 1990, p. 649). Mount Rainier white-tailed ptarmigan populations may or may not be within this wide range reported for other subspecies (USFWS 2023, p. 26).

Chicks younger than 3 weeks old primarily eat invertebrates (May 1975, p. 28), but adult white-tailed ptarmigan, as well as chicks older than approximately 5 weeks old, are herbivorous (May 1975, pp. 28–29). Mount Rainier white-tailed ptarmigan in the North Cascades were observed eating, in order of preference: dwarf huckleberry (*Vaccinium deliciosum*), red mountain heather (*Phyllodoce empetrifolias*), black-headed sedge (*Carex nigricans*), white mountain heather (*Cassiope mertensiana*), crowfoot (*Luetkea pectinata*), Tolmie's saxifrage (*Saxifraga tolmiei*), spiked wood rush (*Luzula spicata*), and mosses (Skagen 1980, p. 4). A suitable microclimate is important for this cold-adapted bird. Because white-tailed ptarmigan have the lowest evaporative cooling efficiency of any bird (Johnson 1968, entire) and will pant at temperatures above 21 °C (70 °F), adults are likely limited by warm temperatures during the breeding and post-breeding seasons. Thermal behavioral adaptations include seeking cool microsites such as the edges of snowfields, near snowbanks, in the shade of boulders, or near streams where temperatures are cool; the absence of these microsites may preclude presence of the species (Johnson 1968, p. 1012). Use of snow in late summer may be important.

Breeding and brood-rearing habitat of white-tailed ptarmigan is within the alpine zone, defined by treeline at its lower elevation limit and permanent snow or barren rock at its upper elevation limit. As with breeding habitat, the lower elevation limit of post-breeding habitat is likely defined by treeline and proximity to water (Frederick and Gutierrez 1992, p. 895).

At high elevations in the Pacific Northwest, winter snowpack can store a significant portion of winter precipitation and release it to the soil during spring and early summer, thereby reducing the duration and magnitude of summer soil water deficits (Peterson et al. 2014, p. 26). At the basin scale, glacier melt supplies 2 to 14 percent of summer discharge in the Cascades and up to 28 percent of discharge by September (Frans et al. 2018, p. 11); the proportion is likely much greater in the high-elevation subbasins occupied by Mount Rainier white-tailed ptarmigan, which have a smaller catchment area to supply discharge from snow or rain.

No studies of the Mount Rainier white-tailed ptarmigan's use of winter habitat have been conducted, however, white-tailed ptarmigan in Colorado shelter from winter wind and cold in snow roosts (Braun et al. 1976, p. 2; Braun and Schmidt 1971, p. 245). Snow-

roosting sites for white-tailed ptarmigan have deep, fluffy snow with high insulation value; this generally means snow that is cold, is relatively dry, and has abundant air spaces. Wind influences snow deposition patterns and the availability of snow roosts (Braun et al. 1976, p. 3). During the day when ptarmigan are not feeding, they seek shelter beneath or on the lee side of dwarf conifers growing along ridges, but snow on the ridges is often shallow and covered with a hard crust, making conditions unsuitable for night roosting. Thus, at dusk, the birds move from ridges to areas of deeper and softer snow along treeline, where they can burrow beneath the surface of the snow (Braun and Schmidt 1971, p. 245). When weather conditions are harsh, flocks will move below treeline to stream bottoms and avalanche paths (Braun et al. 1976, p. 4).

The Cascades of the Pacific Northwest have some of the deepest snowpack in

North America. Willow stands along valley bottoms similar to those relied on by southern white-tailed ptarmigan are rare and are likely buried by heavy winter snows on the steep slopes within the range of the Mount Rainier white-tailed ptarmigan (Schroeder 2019, pers. comm.). Based on limited observations and information from other subspecies, we expect wintering Mount Rainier white-tailed ptarmigan will use alpine areas, open areas in subalpine parklands, and openings created by stream courses, landslides, and avalanches within subalpine forests, and refer to these habitat types as "alpine" or "potentially suitable" habitat herein. Approximately 76.5 percent of the total suitable habitat for the Mount Rainier white-tailed ptarmigan is found in the United States, and almost all of that area is federally owned (94.5 percent, see table 1, below).

TABLE 1—MOUNT RAINIER WHITE-TAILED PTARMIGAN SUITABLE HABITAT BY LAND OWNERSHIP, IN HECTARES [Acres]

Population unit	Alpine Lakes	Goat Rocks	Mount Adams	Mount Rainier	North Cascades East	North Cascades West	William O. Douglas	Total	Percent ownership
Federal:									
USFS	132,208 (326,693)	34,901 (86,242)	14,116 (34,881)	36,090 (89,180)	354,484 (875,949)	366,774 (906,318)	25,096 (62,014)	963,669 (2,381,277)	59
NPS	0	0	0	55,917 (138,174)	18,860 (46,604)	139,639 (345,056)	0	214,416 (529,833)	13
Other Federal	275 (680)	0	0	0	402 (993)	0	0	677 (1,673)	<1
State	161 (398)	8,522 (21,058)	0	0	24,396 (60,283)	2,576 (6,364)	29 (71)	35,684 (88,177)	2
Tribal	0	17,940 (44,331)	8,087 (19,983)	0	0	0	0	26,027 (64,314)	2
Private/Other	876 (2,166)	3,488 (8,619)	1,248 (3,084)	360 (889)	141 (348)	1,562 (3,860)	0	7,675 (18,965)	<1
British Columbia:									
Provincial Parks	0	0	0	0	60,479 (149,448)	39,596 (97,845)	0	100,075 (247,291)	6
Private/Other	0	0	0	0	188,077 (464,748)	95,801 (236,730)	0	283,878 (701,477)	17
Total	133,520 (329,935)	64,851 (160,250)	23,451 (57,949)	92,367 (228,244)	646,839 (1,598,374)	645,948 (1,596,172)	25,125 (62,085)	1,632,101 (4,033,009)	

Regulatory and Analytical Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. On April 5, 2024, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR 424 regarding how we add, remove, and reclassify endangered and

threatened species and what criteria we apply when designating listed species' critical habitat (89 FR 24300). On the same day, the Service published a final rule revising our protections for endangered species and threatened species at 50 CFR 17 (89 FR 23919). These final rules are now in effect and are incorporated into the current regulations. Our analysis for this final decision applied our current regulations. Given that we proposed listing for this species under our prior regulations (revised in 2019), we have also undertaken an analysis of whether our decision would be different if we had continued to apply the 2019 regulations; we concluded that the

listing decision would be the same. However, we will reevaluate our not prudent determination, as discussed below under Critical Habitat, in a separate **Federal Register** notice. The analyses under both the regulations currently in effect and the 2019 regulations are available on <https://www.regulations.gov>.

The Act defines an "endangered species" as a species that is in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine

whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term "threat" to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term "threat" includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term "threat" may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an "endangered species" or a "threatened species." In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an "endangered species" or a "threatened species" only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term "foreseeable future," which appears in the statutory definition of "threatened species." Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M-37021, January 16, 2009; "M-Opinion," available online at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf>). The foreseeable future extends as far into the future as the Services can make reasonably reliable predictions about the threats to the species and the species' responses to those threats. The Services need not identify the foreseeable future in terms of a specific period of time. The Services will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. "Reliable" does not mean "certain"; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

Analytical Framework

The SSA report (USFWS 2023, entire) documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of a species, including an assessment of the potential threats to that species. The SSA report does not represent our decision on whether a species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the Mount Rainier white-tailed ptarmigan's viability for the SSA, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of a species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of a species to withstand catastrophic events (for example, droughts, large pollution events); and

representation is the ability of a species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions or pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the Mount Rainier white-tailed ptarmigan's ecological requirements for survival and reproduction at the individual, population, and subspecies levels, and described the beneficial and risk factors influencing the subspecies' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Analysis Units

Occurrence data are quite limited, and we do not know whether the abundance of Mount Rainier white-tailed ptarmigan has changed over time. To facilitate the assessment of the current and projected future status of the subspecies across its range, we used the limited occurrence data and expert elicitation to delineate representation areas and population units. We separated the range into two representation areas, the North Area and the South Area, to represent the known ecological variation between the two regions. Within those two representation areas, we identified seven current population units based on observations, elevation, and vegetation types from Landfire vegetation maps (see table 2, below).

We refined the boundaries of these units by selecting vegetation types on recently refined NPS vegetation maps and Landfire vegetation maps for USFS lands. Our refined population unit maps contain nearly all observations of the subspecies obtained from agency partners. One of the population units in the South Area, William O. Douglas, has suitable habitat but unknown occupancy. Another historical population in the South Area is

considered extirpated due to the 1980 eruption of the Mount St. Helens volcano. We did not include the presumed extirpated Mount St. Helens

population unit in our analysis of current or future condition because we conclude that it does not constitute suitable habitat now and is unlikely to

within the foreseeable future. Similarly, we did not consider Mt. Hood or Mount Jefferson because records there are more than 100 years old and are questionable.

TABLE 2—NUMBER OF MOUNT RAINIER WHITE-TAILED PTARMIGAN OBSERVATIONS BY POPULATION UNIT

Representation area	Population unit	Number of observations
North	North Cascades—East	484
North	North Cascades—West	315
North	Alpine Lakes	98
South	Mount Rainier	289
South	William O. Douglas	0
South	Goat Rocks	4
South	Mount Adams	2

The following is a summary of the key results and conclusions from the SSA report (USFWS 2023); the full SSA report can be found at <https://www.regulations.gov> under Docket No. FWS–R1–ES–2020–0076.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of Mount Rainier white-tailed ptarmigan and its resources, and the threats that influence the subspecies’ current and future condition, in order to assess the subspecies’ overall viability and the risks to that viability.

Factors Influencing the Status of Mount Rainier White-Tailed Ptarmigan

The petition to list the southern and Mount Rainier white-tailed ptarmigan subspecies as threatened (Center for Biological Diversity (CBD) 2010, entire) identified the following influences as threats: effects to habitat from global climate change, recreation, livestock grazing, and mining; hunting; predation; inadequacy of regulatory mechanisms; population isolation or limited dispersal distances; and population growth rates and physiological response to a warming climate. Our 90-day finding on the petition (77 FR 33143; June 5, 2012)

concluded that the petition presented substantial information to indicate that the Mount Rainier white-tailed ptarmigan may warrant listing due to the effects of climate change on habitat and population growth rates, and the physiological response of the subspecies to a warming climate.

As part of our analysis of the viability of the Mount Rainier white-tailed ptarmigan, we looked at the previously identified potential environmental and anthropogenic influences on viability, as well as any new ones identified since the publication of our 90-day finding. We analyzed population isolation and limited dispersal distances in the context of our resiliency, redundancy, and representation analysis for the subspecies. We also looked at the regulatory and voluntary conservation mechanisms that may reduce or ameliorate the effect of those stressors. To provide the necessary context for our discussion of the magnitude of stressors, we first discuss our understanding of existing regulatory and voluntary conservation mechanisms.

Regulatory and Voluntary Conservation Mechanisms

A majority of the land (70 percent) within the national parks and forests in

the U.S. portion of the range of the Mount Rainier white-tailed ptarmigan is congressionally designated wilderness under 16 U.S.C. 1131 *et seq.* and 54 U.S.C. 100101 *et seq.* This designation bans roads along with the use of motorized and nonmotorized vehicles. In North Cascades National Park, 94 percent of the land is designated as the Steven Mather Wilderness (259,943 ha (642,333 ac) of the total 275,655 ha (681,159 ac)) (NPS 2020, entire). There are 16 designated wilderness areas on USFS land in the Mount Rainier white-tailed ptarmigan’s range; the percentage of designated wilderness in each population unit is summarized below in table 3. Additionally, 6 percent of the total suitable habitat for Mount Rainier white-tailed ptarmigan is located on land owned by British Columbia Provincial Parks (BC-Parks 2020, entire). Provincial parks are multiuse areas that contain some remote wilderness and allow activities such as hiking, camping, and winter recreation. The wilderness designation areas and Provincial Park lands in the range of Mount Rainier white-tailed ptarmigan are shown below in figure 1.

TABLE 3—PERCENT OF MOUNT RAINIER WHITE-TAILED PTARMIGAN HABITAT IN U.S. DESIGNATED WILDERNESS BY POPULATION UNIT

Population unit	Total hectares (acres) of habitat	Hectares (acres) of habitat in wilderness	Percent of habitat in unit designated as wilderness
North Cascades—East (U.S. portion)	398,283 (984,179)	232,041 (573,387)	58
North Cascades—West (U.S. portion)	510,551 (1,261,599)	394,529 (974,902)	77
Alpine Lakes	133,520 (329,935)	100,566 (248,504)	75
Mount Rainier	92,367 (228,244)	83,339 (205,935)	90

TABLE 3—PERCENT OF MOUNT RAINIER WHITE-TAILED PTARMIGAN HABITAT IN U.S. DESIGNATED WILDERNESS BY POPULATION UNIT—Continued

Population unit	Total hectares (acres) of habitat	Hectares (acres) of habitat in wilderness	Percent of habitat in unit designated as wilderness
William O. Douglas	25,125 (62,085)	19,468 (48,106)	78
Goat Rocks	64,851 (160,250)	25,375 (62,703)	39
Mount Adams	23,451 (57,949)	13,266 (32,781)	57
Total	1,248,148 (3,084,241)	868,584 (2,146,318)	70

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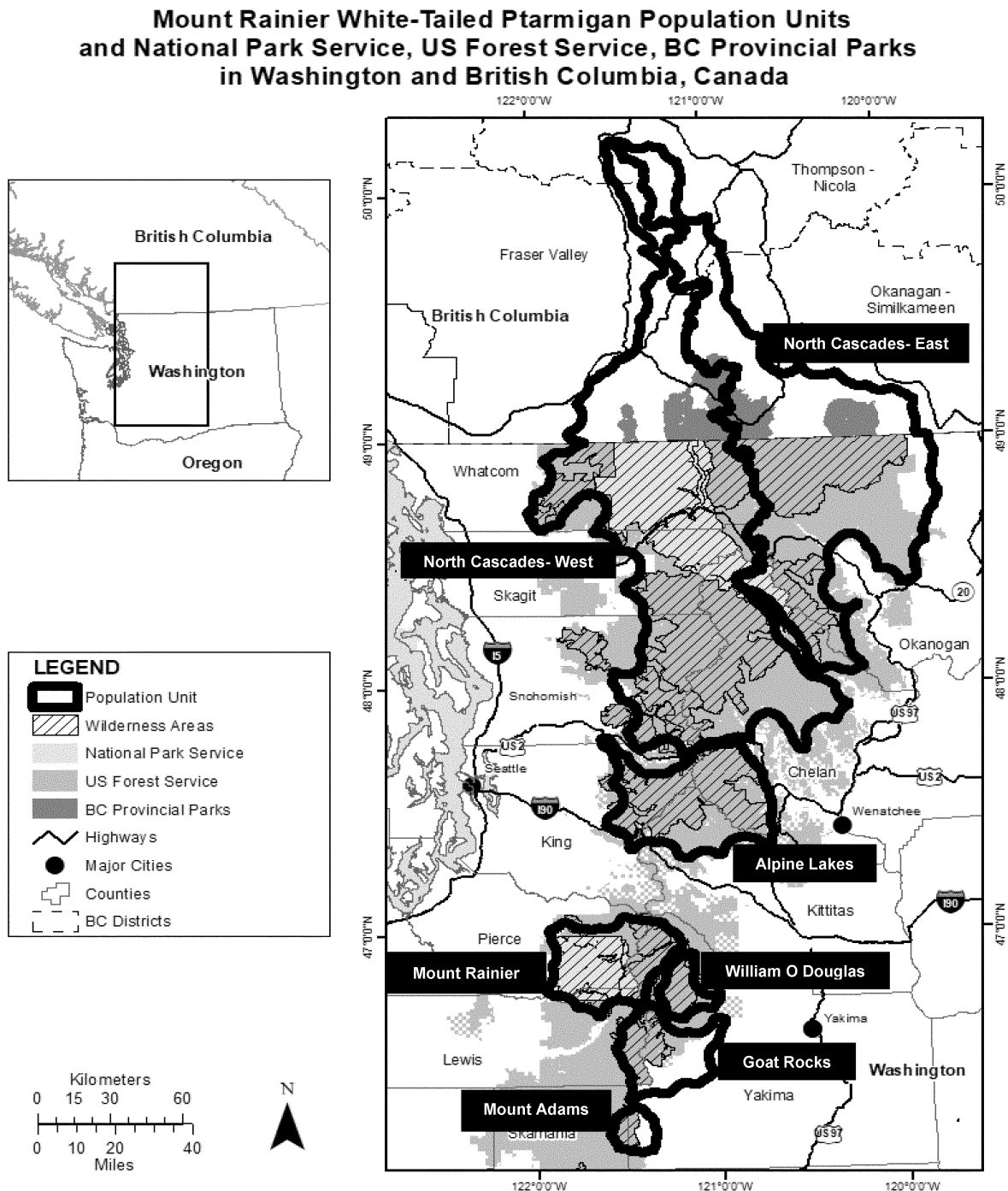


Figure 1. Mount Rainier white-tailed ptarmigan population units, land ownership, and designated wilderness areas in the subspecies' range.

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The WDFW considers the white-tailed ptarmigan a game bird but does not have a hunting season on the species. Take or possession of the species would be a violation of the Revised Code of Washington, section 77.15.400

(Washington State Legislature 2020, entire). Hunting of ptarmigan is allowed in a relatively small portion of the Canadian portion of the North Cascades-West population unit from mid-September through mid-December (BC-Parks Canada 2020, entire).

White-tailed ptarmigan are a "Species of Greatest Conservation Need" in the Washington State Wildlife Action Plan (WDFW 2015, pp. 3–18). The WDFW is making efforts to better understand the distribution and abundance of the species by soliciting observations from

birding enthusiasts, hikers, backpackers, mountaineers, skiers, snowshoers, and other recreationists that visit ptarmigan habitat. The Transboundary Connectivity Project (Krosby et al. 2016, entire) included white-tailed ptarmigan as a focal species, and members created conceptual models of stressors to the species and designed strategies to abate threats.

Critical habitat for Canada lynx (*Lynx canadensis*) overlaps the range of the Mount Rainier white-tailed ptarmigan in most of the North Cascades—East population unit, and about half of the North Cascades—West population unit (79 FR 54782, September 12, 2014; 50 CFR 17.95(a)). One of the identified physical and biological features essential to the conservation of Canada lynx is snow conditions (winter conditions that provide and maintain deep fluffy snow for extended periods). This critical habitat designation may provide some benefit to the Mount Rainier white-tailed ptarmigan if it results in the regulation of activities that would reduce the quantity and quality of snow within these population units, but such a situation would not likely happen at a scale that would benefit the resiliency of the population unit.

Stressors

We analyzed a variety of stressors that potentially influence the current status of the Mount Rainier white-tailed ptarmigan or may influence the subspecies' future status. We again reviewed all of the factors identified in the petition, as well as any potential additional influences in the range of the subspecies. Neither the petition nor our 90-day finding identified disease as a threat, and we did not find information in our analysis to indicate that disease is currently, or is likely to be in the future, a threat to the resiliency of any population unit or the overall viability of the subspecies. Our SSA concluded that the available information on several potential stressors, including mining, hunting, grazing, browsing, the invasive willow borer beetle (*Cryptorhynchus lapathi*), predation, and infrastructure development, indicated that these did not operate at a level affecting the resiliency of any population unit, or the overall viability of the subspecies (USFWS 2023, pp. 37–41).

While the effects from recreation have not been investigated in the field, recreation is the primary human activity throughout the range of the subspecies. As discussed in the Proposed Rule and the SSA Report (USFWS 2023, section 4.8), a wide array of recreation regularly occurs year-round within all Mount Rainier white-tailed ptarmigan

population units. Although no published studies exist that directly link recreation to individual-level, population-level, or subspecies-level effects to the Mount Rainier white-tailed ptarmigan, effects to individual Mount Rainier white-tailed ptarmigan have been observed, and studies have shown effects of recreation on closely related species (USFWS 2023, p. 42–43). However, available information does not indicate that recreation has impacted the historical abundance and distribution of Mount Rainier white-tailed ptarmigan. Further, although we do not know the true overlap of recreational areas (mainly trails) with concentrated Mount Rainier white-tailed ptarmigan use areas, the history of established recreation, the overall small amount of area occupied by trails in Mount Rainier white-tailed ptarmigan habitat (0.02 percent as shown in Table 9, USFWS 2023, p. 47), and the large percentage of protected wilderness in the range (70 percent of the range of the subspecies in the United States as shown in Table 4, USFWS 2023, p. 41) all likely reduce the risk of exposure of the subspecies to this stressor. The best available information does not indicate that recreation currently has a population-level effect on the Mount Rainier white-tailed ptarmigan. Although both established recreation in designated areas as well as recreation away from established roads and trails will likely increase in the future, available information does not indicate that future increases in recreation would rise beyond individual-level impacts such that it is likely to affect subspecies' redundancy or representation.

The effects of climate change are already evident in Mount Rainier white-tailed ptarmigan habitat, and the projected future increase in those effects may decrease the viability of the subspecies. The Intergovernmental Panel on Climate Change (IPCC) (2019, pp. 2–9) projects with very high confidence that surface air temperatures in high mountain areas will rise by 0.54 °F (0.3 °C) per decade, generally outpacing global warming rates regardless of future emission scenario. As temperatures increase, glaciers initially melt quickly and contribute an increased volume of water to the system, but as glacial mass is lost, their contribution of meltwater to the system decreases over time. Global climate models project declines in current glacier area throughout the Washington and northern Oregon Cascades (Frans et al. 2018, p. 13) that will result in a corresponding decline in associated snowpack and glacial melt contribution

to summer discharge. Scenario representation concentration pathway (RCP) 4.5 is a moderate emissions scenario, and RCP8.5 is a high emissions scenario (Alder and Hostetler 2016, entire). In the North Cascades, glaciers are projected to retreat 92 percent between 1970 and 2100 under RCP4.5, and 96 percent between 1970 and 2100 under RCP8.5 (Gray 2019, p. 34).

The effects of climate change have already led to some glacial recession in Mount Rainier white-tailed ptarmigan habitat (Snover et al. 2013, pp. 2–3). Geologic mapping data, old maps and aerial photos, and recent inventories indicate that glacier area declined 56 percent in the North Cascades between 1900 and 2009 (Dick 2013, p. 59). On Mount Adams, total glacier area decreased by 49 percent from 1904 to 2006, at about 0.15 km² (0.06 mi²) per year (Sitts et al. 2010, p. 384). Other individual glaciers in Washington have receded from 12 percent (Thunder Creek; 1950–2010) to 31 percent (Nisqually River; 1915–2009) (Frans et al. 2018, p. 10), and throughout the Cascades, glaciers continue to recede in both area and volume (Snover et al. 2013, pp. 2–3; Dick 2013, p. 59).

Glacier melt in many of the watersheds of the eastern Cascade Range and low-moderate elevation watersheds of the western Cascades has already peaked or will peak in the current decade (Frans et al. 2018, p. 20). The variation in the timing of peak discharge from glacier to glacier will initially lead to decreases in available moisture to some alpine meadows but increases in others. Later in the century, we expect all areas to suffer significant losses of glacier melt (Frans et al. 2018, p. 20). Total discharge in August and September from snowmelt, rain, and glacial melt in a sample of Cascades watersheds is already below the 1960–2010 mean and is expected to continue to drop through 2080 (Frans et al. 2018, p. 15). Glaciers on the east side of the Cascade crest, where the precipitation regime is drier, show the strongest response to climate in both historical and future time periods, and will be the most sensitive to a changing climate (Frans et al. 2018, p. 17).

Spring snowpack fluctuates substantially from year to year in Washington but has declined overall by 30 percent from 1955 to 2016 and is expected to further decline by up to 38 percent under RCP4.5 and up to 46 percent under RCP8.5 by midcentury (Roop et al. 2019, p. 6). Changes in snowpack in the colder interior mountains will largely be driven by decreases in precipitation, while

changes in snowpack in the warmer maritime mountains will be driven largely by increases in temperature (Hamlet 2006, pp. 40–42). Although some high-elevation sites that maintain freezing winter temperatures may accumulate additional snowpack as additional winter precipitation falls as snow, overall, perennial snow cover is projected to decrease with climate change (Peterson et al. 2014, p. 25). A substantial decrease in perennial snow cover is projected for the North Cascades, with many areas of current snow cover replaced by bare ground (Patil et al. 2017, pp. 5600–5601). Field studies in the North Cascades-East population unit of the Mount Rainier white-tailed ptarmigan indicate that despite above-average snowfall in the winter of 2020–2021, the date of complete melt and disappearance of an important snowbank for male flocks and some broods was the earliest recorded in 13 field seasons since 1997 (Schroeder et al. 2021, p. 11).

Projected increases in air temperatures will also lead to changes in the quality of available snow through increases in rain-on-snow events and the refreezing of the surface of snowpack that melts in the heat of the day. The refreezing of snow creates a hard surface crust (Albert and Perron, Jr. 2000, p. 3208) that may make burrowing for roosting sites difficult for ptarmigan, who prefer soft snow for their roosts (Braun and Schmidt 1971, p. 244; Braun et al. 1976, pp. 3–4). Furthermore, warm winter temperatures that create wet, heavy snow may also make burrowing difficult for ptarmigan, and thus less suitable for snow roosts.

Reduced snowpack, earlier snowmelt, elimination of permanent snowfields, and higher evapotranspiration rates are likely to enhance summer soil drying and reduce soil water availability to alpine vegetation communities in the Cascades (Elsner et al. 2010, p. 245). As the climate becomes warmer, vegetation communities are also expected to shift their distributions to higher elevations. Globally, treelines have either risen or remained stable, with responses to recent warming varying among regions (Harsch et al. 2009, entire). Strong treeline advances have already been found in some areas of Washington, such as Mount Rainier National Park (Stueve et al. 2009, entire). As treeline rises at the lower limit of the alpine zone, Mount Rainier white-tailed ptarmigan habitat will be lost as open, alpine vegetation communities become forested. Creation of new habitat by upward expansion of the alpine zone will be constrained by cliffs, parent rock material, ice, remaining glaciers,

permanent snow, and the top of mountain ranges. Where glaciers and permanent snow recede, primary succession will need to occur before the underlying parent material can support alpine meadows. Succession of the Lyman glacial forefront (the newly exposed area under a receding glacier) in the North Cascades took 20–50 years to develop early successional plant species.

Decreased winter wind associated with climate change may be contributing to observed declines in snowpack and stream flows (Luce et al. 2013, p. 1361). Continued decreases in wind are expected throughout the Cascades (Luce 2019, p. 1363), potentially decreasing the availability of forage for Mount Rainier white-tailed ptarmigan, as well as allowing some krummholz to grow taller into tree form, which can reduce the suitability of habitat. Decreased wind may reduce snowbanks and thereby limit the availability of snow roosting sites for the subspecies, increasing the exposure of Mount Rainier white-tailed ptarmigan to temperatures below their tolerance, or increasing stress levels in the winter. Delayed snowfall could also create plumage mismatch, leading to increased predation. White-tailed ptarmigan are adapted to be cryptic through all seasons by changing plumages frequently to match the substrate as snow cover changes. A change in timing of molt, or timing of snow cover, could limit the effectiveness of this strategy, leading to higher predation risk to individuals. Mount Rainier white-tailed ptarmigan in white plumage have already been detected in snow-free areas in fall (Riedell 2019, in litt.).

Climate change may affect Mount Rainier white-tailed ptarmigan through direct physiological effects on the birds such as increased exposure to heat in the summer. White-tailed ptarmigan experience physiological stress when ambient temperatures exceed 21 °C (70 °F; Johnson 1968, p. 1012), so their survival during warmer months depends on access to cool microrefugia in their habitat; these cooler areas are created by boulders and meltwater near glaciers, permanent snowfields, snowbanks, and other areas of snow in alpine areas. The projected increases in temperature and related decreases in snowpack and meltwater will reduce the availability of these microrefugia in the foreseeable future to populations of the Mount Rainier white-tailed ptarmigan.

The timing of peak plant growth influences the availability of appropriate seasonal forage to ptarmigan, as well as the availability of

insects. When the peak of plant abundance falls outside a crucial post-hatch period, the resulting phenological mismatch affects chick survival (Wann et al. 2019, entire). Projected effects of climate change could alter the growing season and abundance of the ptarmigan's preferred vegetation and the timing of the emergence and abundance of the insects necessary for foraging. If these changes result in significant asynchrony, populations of Mount Rainier white-tailed ptarmigan may not have adequate forage availability.

Where upslope migration of alpine plant communities is able to occur in the face of climate change, breeding and post-breeding habitat for white-tailed ptarmigan will still not be available unless, or until, primary succession proceeds to the stage where dwarf willows, sedges, and other ptarmigan forage species are present in sufficient abundance and composition to support foraging ptarmigan and insect populations for chicks. If it takes at least 20 years to develop limited white-tailed ptarmigan forage plants (*Saxifrage* species), and 70–100 years to mature to full habitat with lush meadows and ericaceous subshrubs, this would represent a gap in breeding and post-breeding habitat for 5 to 24 generations (assuming a generation length of 4.1 years) (Bird et al. 2020, supplement table 4). Thus, we do not expect new breeding and post-breeding habitat for the subspecies to be created at the same rate at which it is lost. Climate change will also convert subalpine forest openings (e.g., meadows) to subalpine forests, which are not suitable winter habitat for white-tailed ptarmigan. Infill of subalpine openings with trees has already occurred at Mount Rainier National Park (Stueve et al. 2009, entire). Subalpine tree species have increasingly filled in subalpine meadows throughout northwestern North America (Fagre et al. 2003, p. 267).

Species distribution models for all three species of ptarmigan in British Columbia (rock ptarmigan (*Lagopus muta*), willow ptarmigan (*Lagopus lagopus*), and white-tailed ptarmigan)) project that all three species will experience upward shifts in elevation and latitude, habitat loss, and subsequent range reductions throughout the province (Scridel et al. 2021, p. 1764). The white-tailed ptarmigan, including individuals in the area southeast of the Fraser River Valley included in our SSA, is projected to experience an upward elevation gain of 254 m (833 ft), an upward latitude shift of 1.11°, and a range decline of 86 percent by the 2080s (Scridel et al. 2021,

p. 1764). Projected distribution maps indicate that all habitat within the range of the Mount Rainier white-tailed ptarmigan in British Columbia will be lost by the 2080s (Scridel et al. 2021, p. 1765). Although this study focused on British Columbia, climate change projections for vegetation in Washington State are comparable, and range declines of Mount Rainier white-tailed ptarmigan in Washington State are expected to be similar in both area and timing to those predicted for British Columbia. As the distribution of white-tailed ptarmigan habitat in British Columbia contracts, the habitat gap between white-tailed ptarmigan in Washington and white-tailed ptarmigan north of the Fraser River Valley will increase (Scridel et al. 2021, p. 1765). This increased habitat gap will decrease the likelihood of genetic exchange between the subspecies.

A 1998 study assessed the potential vulnerability of wildlife species within the Interior Columbia River Basin to effects of climate change and reported that the species of white-tailed ptarmigan (*Lagopus leucura*) seemed particularly at risk (Marcot et al. 1988, pp. 58–63). The study noted this species occurs only in alpine tundra habitats within the Interior Columbia River Basin, in isolated locations that, under climate change projections, would potentially undergo upward shifts in elevation, further isolation, and reduction in area or local elimination. The study determined white-tailed ptarmigan (at the species level) was most at risk of all species in their analysis area, as it uses only alpine tundra habitats (Marcot et al. 1998, p. 60).

In summary, the future condition of Mount Rainier white-tailed ptarmigan habitat will likely be affected by several factors associated with climate change, including the following: exposure to heat stress (caused by increasing ambient temperatures coupled with decreasing availability of the cool summer refugia supplied by snow and glaciers); loss of winter snow roosts that protect ptarmigan from winter storms; changes in snow deposition patterns that may affect both snow roosts and forage availability; loss of alpine vegetation due to both hydrologic changes caused by decreases in

meltwater from snowpack and glaciers as well as rising treelines; and phenological mismatch between ptarmigan hatch and forage availability. These changes are likely to impact the habitat at levels that measurably affect the resiliency of all populations. Although a reasonable projection of future population trend is limited by the lack of demographic data, the projected degradation and loss of habitat, as well as likelihood of increased physiological stress of individuals across the range, would have negative effects on the future population growth rate of the subspecies. The scope and intensity of these combined effects is likely to affect the future resiliency of every extant population of the Mount Rainier white-tailed ptarmigan and the redundancy and representation of those units across the range. Therefore, the effects of climate change are likely to affect the overall viability of the subspecies.

Summary of Factors Influencing the Status of the Species

We reviewed the environmental and anthropogenic factors that may influence the viability of the Mount Rainier white-tailed ptarmigan, including regulatory and voluntary conservation measures and potential stressors. The subspecies is provided some measure of protection from the large amount of Federal management and congressionally designated wilderness in its range, the management of some of its range in Canada by British Columbia Provincial Parks, the subspecies' State designation in Washington, and the overlap of its range with designated critical habitat for the Canada lynx.

The best available information does not indicate that disease has previously, is currently, or will in the future affect the resiliency of any Mount Rainier white-tailed ptarmigan population units. Although mining, hunting, grazing, browsing, the invasive willow borer beetle, predation, infrastructure development, and recreation may have localized effects to individual Mount Rainier white-tailed ptarmigan, the best available information does not indicate they affect the overall viability of the subspecies, and adequate future projections are not available to determine if these influence factors

increase in the future to a level that will affect the viability of the subspecies. However, the effects of climate change are already evident in Mount Rainier white-tailed ptarmigan habitat, and the likely projected future increase in the scope, magnitude, and intensity of those effects will decrease the viability of the subspecies.

Current Condition

Based on our assessment of the biological information on the subspecies, we identified 10 key resiliency attributes for populations of the Mount Rainier white-tailed ptarmigan: (1) connectivity among seasonal use areas, (2) cool ambient summer temperatures, (3) a suitable hydrologic regime to support alpine vegetation, (4) winter snow quality and quantity, (5) abundance of forage, (6) cool microsites, (7) suitable population structure and recruitment, (8) adequate population size and dynamics, (9) total area of alpine breeding and post-breeding habitat, and (10) total area of winter habitat. We developed a table of these key population needs with one or more measurable indicators of each population need (USFWS 2023, pp. 68–69).

To evaluate current condition, we took information for the current value of each indicator and assigned it to a condition category (USFWS 2023, pp. 68–69). We created condition categories based on what we consider an acceptable range of variation for the indicator based on our understanding of the subspecies' biology and the need for human intervention to maintain the attribute (Conservation Measures Partnership 2013, entire) (see table 4, below). Categorical rankings were defined as follows:

Poor—Restoration of the population need is increasingly difficult (may result in loss of the local population);

Fair—Outside acceptable range of variation, requiring human intervention (this level would be associated with a decreasing population);

Good—Indicator within acceptable range of variation, with some intervention required for maintenance (this would be associated with a stable population); and

Very Good—Ecologically desirable status, requiring little intervention for maintenance (this would be associated with a growing population).

TABLE 4—METRICS FOR BOTH CURRENT AND FUTURE CONDITION INDICATOR RATINGS FOR HABITAT ATTRIBUTES OF MOUNT RAINIER WHITE-TAILED PTARMIGAN

Population need	Indicator	Indicator ratings descriptions			
		Poor	Fair	Good	Very good
Cool ambient temperatures in summer.	Maximum summer temperature.	>38°C (100 °F)	21.1–38 °C (70.1–100 °F).	13.4–21 °C (56–70 °F) ...	7.3–13.3 °C (45–56 °F)

TABLE 4—METRICS FOR BOTH CURRENT AND FUTURE CONDITION INDICATOR RATINGS FOR HABITAT ATTRIBUTES OF MOUNT RAINIER WHITE-TAILED PTARMIGAN—Continued

Population need	Indicator	Indicator ratings descriptions			
		Poor	Fair	Good	Very good
Cool ambient temperatures in summer.	Number of days above 30 °C.	>3	1 to 3	0–1	0
Hydrologic regime	Glacier melt (discharge normalized to 1960–2010 mean).	<0.5	0.5 to 0.75	>0.75 to 1	>1
Hydrologic regime	Snow water equivalent (April 1).	>2 standard deviations from historical mean.	1–2 standard deviations from historical mean.	<1 standard deviation from historical mean.	Pre-1970 levels
Abundance of food resources.	Distance to water during breeding season.	>200 m	61–200 m	11–60 m	<10 m
Abundance of food resources.	Soil moisture	>2 standard deviations from historical mean.	1–2 standard deviations from historical mean.	<1 standard deviation from historical mean.	Pre-1970 levels
Total area of modeled summer habitat.	Area of alpine vegetation modeled from MC2.	<7 sq km (1,730 ac)	1,731–4,000 ac	4,000–12,000 ac	>12,000 ac
Total area of modeled summer habitat.	Area of alpine vegetation modeled from biome climatic niche models.	<7 sq km (1,730 ac)	1,731–4,000 ac	4,000–12,000 ac	>12,000 ac

Eight additional indicators had data available for current condition, but we did not have models that allowed us to project them into the future, so we did not use them to assess future condition. These additional indicators include connectivity within population units between breeding, post-breeding, and winter habitat, which is important for less-mobile broods; area of willow, alder, or birch (winter forage); distance to water during breeding season; unvegetated area of glacial forefront (not colonized by forage plants yet, less is better); cover or distribution of large boulders (breeding and post-breeding seasons); a qualitative assessment of vegetation quality; mapped area of alpine vegetation from Landfire and NPS vegetation maps; and mapped area

of subalpine vegetation from Landfire and NPS vegetation maps.

Current resiliency ratings are captured below in table 5. Redundancy is limited to six known extant population units in “good” or “fair” condition across the range of the subspecies. With respect to ecological variation, three extant populations occur in the South representation area and three extant populations occur in the North representation area. Although Mount Adams has poor landscape context due to large gaps in habitat limiting connectivity throughout the unit, and the condition is poor due to low quality of vegetation, the availability of microrefugia and summer habitat are very good, so the overall condition score of the population unit was scored as fair. The historical population at Mount St. Helens was extirpated as a result of

the volcanic eruption in 1980. Historical populations that may have existed in Oregon Cascades (Judd 1905, p. 47) have been extirpated for many years, as we know of no observations in the past several decades. The William O. Douglas Wilderness contains potential habitat, but we have no records of white-tailed ptarmigan in the area and consider occupancy unknown. Habitat for populations in the South representation area is more limited and isolated than habitat for populations in the North representation area. Observations on record and expert opinion indicate there are only a small number of birds in the Goat Rocks population unit in the South representation area and the Alpine Lakes population unit in the North representation area.

TABLE 5—CURRENT CONDITION FOR EACH MOUNT RAINIER WHITE-TAILED PTARMIGAN POPULATION

Representation area	Population unit	Condition metrics			Resiliency rating
		Landscape context*	Condition	(Habitat) size	
North	North Cascades—East	Good	Good	Fair	Good.
North	North Cascades—West	Good	Fair	Very Good	Good.
North	Alpine Lakes	Good	Fair	Fair	Fair.
South	Mount Rainier	Good	Fair	Very Good	Good.
South	Goat Rocks	Good	Fair	Fair	Fair.
South	Mount Adams	Poor	Poor	Good	Fair.

* Landscape context describes the combined condition of habitat connectivity within population units, ambient temperature, hydrologic regime, and winter snow.

Future Condition

To better understand the projected future condition of the Mount Rainier white-tailed ptarmigan, we developed four future scenarios based on global climate models at RCP4.5 and RCP8.5 to depict a range of plausible potential

outcomes for the subspecies’ habitat over time.

Projected changes in climate and related impacts can vary substantially across and within different regions of the world (IPCC 2007, pp. 8–12). Therefore, we use “downscaled” projections when they are available and are developed through appropriate

scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (Glick et al. 2011, pp. 58–61). We used data obtained from the Northwest Climate Toolbox, developed by members of the Applied Climate Science Lab at the University of Idaho

(Hegewisch and Abatzoglou 2019, entire). In addition to past and current data, the Northwest Climate Toolbox provides modeled future projections of climate and hydrology based on the effects of potential degrees of greenhouse gas emissions reported by the IPCC (IPCC 2014, entire).

We estimated area of alpine vegetation from vegetation models based on the RCP4.5 or RCP8.5 scenarios (MC2 models) (Bachelet et al. 2017, entire; Sheehan et al. 2015, entire). We also estimated area of alpine vegetation from biome climatic niche models based on three earlier global climate projections (CGCM3 1 A2 2090, Hadley A2 2090, and Consensus A2 2090). These models were used to project alpine area (and other vegetation type areas) for the Transboundary Connectivity Project (Krosby et al. 2016, entire, based on the projections supplied by Rehfeldt et al. 2012, entire). Alpine area from the NPS and Landfire vegetation maps provides the most reliable and important measure of current population resiliency. We reported subalpine area for each analysis unit but did not use it as an indicator of future resilience because this measure does not differentiate between subalpine forests (which are not suitable for the Mount Rainier

white-tailed ptarmigan) and subalpine openings (suitable winter habitat for the subspecies). We also included a management variable in our scenarios to assess if specific management of recreation impacts and habitat enhancement and restoration would make a difference to the projected status of the Mount Rainier white-tailed ptarmigan in the future. These management variable factors ultimately made minimal difference in the outcome of our scenarios in comparison to the impact of climate projections.

The future scenarios we developed based on the climate-based vegetation models include:

(1) Projected climate change effects under RCP4.5 with no management for Mount Rainier white-tailed ptarmigan populations or habitat;

(2) Projected climate change effects under RCP8.5 with no management for Mount Rainier white-tailed ptarmigan populations or habitat;

(3) Projected climate change effects under RCP4.5 with management to maintain Mount Rainier white-tailed ptarmigan populations and habitat; and

(4) Projected climate change effects under RCP8.5 with management to maintain Mount Rainier white-tailed ptarmigan populations and habitat.

The scenarios demonstrated that the projected effects of climate change could result in the loss of up to 95 percent of the Mount Rainier white-tailed ptarmigan's currently available alpine tundra habitat (USFWS 2023, appendix A) and could lead to a related decrease in the availability of thermal microrefugia for the subspecies. Although vegetation models yield different acreage projections, trajectories of both vegetation models and all scenarios are similar in indicating only one or two populations are likely to have any breeding season habitat remaining by 2069. Mount Rainier is consistently projected to be one of the remaining populations in all four future scenarios. This is due to its high elevation, which results in a much larger amount of current and future suitable habitat compared to other populations in the subspecies' range. The management actions (which include both reduced recreational impacts and habitat enhancement and restoration) are not projected to affect the status of any population unit in the Global Climate models (GCM). Table 6 summarizes the future condition for all known currently extant population units; possible ratings include poor, fair, good, or very good.

TABLE 6—FUTURE CONDITION RATING FOR EACH MOUNT RAINIER WHITE-TAILED PTARMIGAN POPULATION

Representation area	Population unit	Current condition	Future condition			
			Scenario 1	Scenario 2	Scenario 3	Scenario 4
North	North Cascades—East	Good	Poor	Poor	Poor	Poor.
North	North Cascades—West	Good	Poor	Poor	Poor	Poor.
North	Alpine Lakes	Fair	Poor	Poor	Poor	Poor.
South	Mount Rainier	Good	Good	Good	Good	Good.
South	Goat Rocks	Fair	Poor	Poor	Poor	Poor.
South	Mount Adams	Fair	Fair	Fair	Fair	Fair.

Currently, population units of the Mount Rainier white-tailed ptarmigan maintain fair to good resiliency across the subspecies' range; no population unit has very good resiliency. The continuing effects of climate change threaten Mount Rainier white-tailed ptarmigan in the following ways: increased physiological stress due to elevated temperatures; reduced availability of moist alpine vegetation and associated insects; loss of snow cover and reduction of snow quality for climate microrefugia and camouflage; and, most importantly, loss of breeding and post-breeding habitat as a result of changes in precipitation, wind, and temperature.

There is evidence of local adaptive divergence among subspecies of the

white-tailed ptarmigan based on variables that are likely to be negatively impacted by climate change (Zimmerman et al. 2021, pp. 126–127). This suggests the adaptive capacity (*i.e.*, representation) of each subspecies, including Mount Rainier white-tailed ptarmigan, may be negatively impacted. Results from additional studies which are discussed under *Climate change*, above, support that suggestion, as they project a range decline of 86 percent for white-tailed ptarmigan throughout British Columbia, Canada, by the 2080s; we would expect to see a similar change in Washington State (Scridel et al. 2021, entire).

After developing four future scenarios based on downscaled climate and vegetation models, we found that the

South representation area maintains much better future resiliency and redundancy than the North representation area. Mount Rainier is the only population unit in the range of the subspecies projected to have good resiliency across all four future scenarios. Mount Adams is also projected to remain extant, though with fair resiliency. Goat Rocks, however, along with all three population units in the North representation area, has poor resiliency in all four future scenarios. Overall, the number of sufficiently resilient population units will decrease in the future, reducing redundancy across the range. If population units in the North representation area decrease in resiliency to the point of extirpation,

the ecological diversity present in the North representation area will be lost.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the subspecies, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the subspecies. To assess the current and future condition of the subspecies, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the subspecies, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire subspecies, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Mount Rainier White-Tailed Ptarmigan's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an "endangered species" as a species in danger of extinction throughout all or a significant portion of its range and a "threatened species" as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of "endangered species" or "threatened species" because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

We evaluated the environmental and anthropogenic factors influencing Mount Rainier white-tailed ptarmigan and assessed the cumulative effect of those influences under the Act's section 4(a)(1) factors. The habitat-based stressors of climate change, mining, grazing, browsing, the invasive willow borer beetle, development, and

recreation demonstrated varying degrees of localized effects to individual birds, but none of these stressors demonstrated effects to habitat at a level that is currently impacting the viability of the subspecies (Factor A). The best available information does not suggest that hunting (Factor B) or predation or disease (Factor C) are threats to the Mount Rainier white-tailed ptarmigan. Habitat for the Mount Rainier white-tailed ptarmigan is currently supporting populations of the subspecies, and approximately 70 percent of the entire range is protected from habitat loss as a result of development due to its wilderness designation (Factor D). We also evaluated disturbance associated with recreation effects, but the best available information does not indicate any current effect to populations or the viability of the subspecies (Factor E). We further examined the current information available on demographics and distribution of the subspecies, as well as availability and quality of suitable habitat in the subspecies' range. The best available information does not demonstrate any discernible trend for the condition (e.g., increasing, declining, or stable) of the known populations of the Mount Rainier white-tailed ptarmigan. Although evidence of climate change related impacts to habitat already exists and these impacts are likely to continue in the foreseeable future, the subspecies currently exhibits adequate resiliency, redundancy, and representation. Thus, after assessing the best available information, we determined that the Mount Rainier white-tailed ptarmigan is not currently in danger of extinction throughout all of its range.

After assessing all the same stressors for future condition, we determined that mining, grazing, browsing, the invasive willow borer beetle, hunting, and disease will not affect the viability of the Mount Rainier white-tailed ptarmigan within the foreseeable future. Additionally, although the level of predation, development, and recreation may increase in the future, the best available information at this time does not indicate that they are reasonably likely to increase to a degree that will impact the viability of the subspecies within the foreseeable future.

In contrast, habitat loss and degradation resulting from climate change will affect the Mount Rainier white-tailed ptarmigan's viability within the foreseeable future. The best available scientific information indicates that changing habitat conditions associated with future climate change, such as loss of alpine vegetation and reduced snow quality

and quantity (Factor A), are expected to cause populations of Mount Rainier white-tailed ptarmigan to decline. Furthermore, rising temperatures associated with climate change are expected to have direct impacts on individual birds (Factor E), which experience physiological stress at temperatures above 21°C (70 °F).

Two independent vegetation models (Bachelet et al. 2017, Rehfeldt et al. 2012) project that within the foreseeable future all alpine tundra vegetation will be lost to forest expansion in all but two of the population units (USFWS 2023, Appendix A). In the North Cascades, glaciers are projected to retreat between 92 percent and 96 percent within the next 50 to 80 years. Glacier melt in many of the watersheds of the eastern Cascade Range and low-moderate elevation watersheds of the western Cascades has already peaked or will peak in the current decade. Total discharge in August and September from snowmelt, rain, and glacial melt in Cascades watersheds has notably declined and is expected to continue to drop through 2080. Spring snowpack in Washington has already declined overall by 30 percent from 1955 to 2016 and is expected to further decline from 38 to 46 percent by midcentury. The projected decreases in snowpack and glaciers and their associated meltwater, as well as changes in snow quality, decreasing wind, and advancing treeline and infill, could result in the loss of greater than 99 percent of the Mount Rainier white-tailed ptarmigan's currently available alpine tundra habitat and a related loss in the availability of thermal microrefugia for the subspecies (USFWS 2023, Appendix A).

Within 50 years, the climate within available suitable Mount Rainier white-tailed ptarmigan breeding and post-breeding habitat is expected to change significantly, such that the subspecies may remain in only one or two of the six current known extant population units. We can make reasonably reliable predictions about this threat and the subspecies' response; notable glacial retreat and tree expansion into alpine and subalpine meadows have already occurred in the range due to warming temperatures, and the best available information does not indicate that the rate of climate change will slow within the foreseeable future. The maximum two populations projected to remain in 50 years are insufficient to support the viability of the Mount Rainier white-tailed ptarmigan. Furthermore, it is unlikely that the Mount Rainier white-tailed ptarmigan will adapt to the changing climate by moving northward because alpine areas north of the

subspecies' current elevational range are expected to undergo similar impacts due to climate change (Scridel et al. 2021, entire).

Thus, after assessing the best available information, we determined that the Mount Rainier white-tailed ptarmigan is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the aspect of the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (Final Policy; 79 FR 37578, July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the "significance" question or the "status" question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson*, we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.*, endangered). In undertaking this analysis for the Mount Rainier white-tailed ptarmigan, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the subspecies and the threats that the subspecies faces to identify portions of the range where the subspecies may be endangered.

We evaluated the range of the Mount Rainier white-tailed ptarmigan to determine if the subspecies is in danger of extinction now in any portion of its range. The range can theoretically be

divided into portions in an infinite number of ways. We focused our analysis on portions of the subspecies' range that may meet the definition of an endangered species. For the Mount Rainier white-tailed ptarmigan, we considered whether the threats or their effects on the subspecies are greater in any biologically meaningful portion of the subspecies' range than in other portions such that the subspecies is in danger of extinction now in that portion.

We assessed the best available science on factors influencing the status of the subspecies, analyzing the scope, magnitude, and intensity of all potential stressors, including predation, disease, browsing, hunting, grazing, development, recreation, timber harvest, the invasive willow borer beetle, and effects of climate change. Although several of these factors may have localized effects on individual ptarmigan, we determined that no stressor is currently impacting the viability of the subspecies. However, changing habitat conditions associated with ongoing climate change, including reduced snow quality and quantity, reduced glacial melt and associated loss of alpine vegetation, and decreasing wind, are expected to cause populations of the Mount Rainier white-tailed ptarmigan to decline within the foreseeable future, adversely impacting the future condition and overall viability of the subspecies.

The statutory difference between an endangered species and a threatened species is the time horizon in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so within the foreseeable future. Thus, we considered the time horizon for the effects of climate change, which are the threats that are driving the Mount Rainier white-tailed ptarmigan to warrant listing as a threatened species throughout all of its range. We then considered whether these threats are occurring in any portion of the subspecies' range such that the subspecies is in danger of extinction now in that portion of its range.

The best scientific and commercial data available indicate that the time horizon within which the Mount Rainier white-tailed ptarmigan will experience the effects of and respond to climate change is within the foreseeable future. Though some effects of climate change are already evident in parts of the range, the best scientific and commercial data available do not indicate that the resiliency of any

Mount Rainier white-tailed ptarmigan populations is currently low. Therefore, we determine that the Mount Rainier white-tailed ptarmigan is not in danger of extinction now in any portion of its range, but that the subspecies is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors v. U.S. Department of the Interior*, 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of "significant," that those court decisions held to be invalid.

Determination of Status

Our review of the best scientific and commercial data available indicates that the Mount Rainier white-tailed ptarmigan meets the Act's definition of a threatened species. Therefore, we are listing the Mount Rainier white-tailed ptarmigan as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened ("downlisting") or removal from protected status ("delisting"), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (<https://www.fws.gov/program/endangered-species>), or from our Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Once this subspecies is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Washington will be eligible for Federal funds to implement management actions that promote the

protection or recovery of the Mount Rainier white-tailed ptarmigan. Information on our grant programs that are available to aid species recovery can be found at: <https://www.fws.gov/service/financial-assistance>.

Please let us know if you are interested in participating in recovery efforts for the Mount Rainier white-tailed ptarmigan. Additionally, we invite you to submit any new information on this subspecies whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled Interagency Cooperation and mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402. Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the federal action is likely to result in jeopardy or adverse modification.

Examples of discretionary actions for the Mount Rainier white-tailed ptarmigan that may be subject to consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands administered by the U.S. Forest Service and National Park Service as well as actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal

Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on Section 7 consultation and conference requirements.

It is the policy of the Services, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. To the extent possible, activities that will be considered likely to result in violation will also be identified in as specific a manner as possible. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the species. Although most of the prohibitions in section 9 of the Act apply to endangered species, sections 9(a)(1)(G) and 9(a)(2)(E) of the Act prohibit the violation of any regulation under section 4(d) pertaining to any threatened species of fish or wildlife, or threatened species of plant, respectively. Section 4(d) of the Act directs the Secretary to promulgate protective regulations that are necessary and advisable for the conservation of threatened species. As a result, we interpret our policy to mean that, when we list a species as a threatened species, to the extent possible, we identify activities that will or will not be considered likely to result in violation of the protective regulations under section 4(d) for that species.

At this time, we are unable to identify specific activities that will or will not be considered likely to result in violation of section 9 of the Act beyond what is already clear from the descriptions of prohibitions and exceptions established by protective regulation under section 4(d) of the Act.

Questions regarding whether specific activities would constitute violation of section 9 of the Act should be directed to the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Final Protective Regulations Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such

regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened species. Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. With these two sentences in section 4(d), Congress delegated broad authority to the Secretary to determine what protections would be necessary and advisable to provide for the conservation of threatened species, and even broader authority to put in place any of the section 9 prohibitions, for a given species.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance v. Lautenbacher*, 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, "once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The 4(d) rule was developed considering our understanding of the Mount Rainier white-tailed ptarmigan's physical and biological needs, which in large part relies upon information from other white-tailed ptarmigan subspecies. Although there is some information on the subspecies' habitat, the majority of habitat and demographic information comes from other subspecies (particularly the southern white-tailed ptarmigan in Colorado, where there is

considerable habitat connectivity and a very different climate). Given the unique aspects of the landscape and climate in the Cascades, significant uncertainty remains regarding the Mount Rainier white-tailed ptarmigan's specific needs and how and to what degree stressors are operating in the subspecies' habitat. For example, we do not fully understand the Mount Rainier white-tailed ptarmigan's winter habitat requirements, its winter food resources, or its reliance on snow roosting. We do not understand why some areas of apparently suitable habitat lack observational records of the subspecies. We also lack the demographic information necessary to understand to the degree to which the subspecies is at risk in the future from various forms of disturbance.

Considering these uncertainties and our requirement to develop a recovery plan for the Mount Rainier white-tailed ptarmigan, our 4(d) rule is designed to promote the subspecies' conservation by facilitating the viability of current populations, scientific study of the subspecies, and conservation and restoration of its habitat. As we learn more about the Mount Rainier white-tailed ptarmigan and its habitat, we will refine our conservation recommendations for the subspecies. The provisions of this 4(d) rule are some of many tools that we will use to promote the conservation of the Mount Rainier white-tailed ptarmigan.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. These requirements are the same for a threatened species with a species-specific 4(d) rule. Section 7 consultation is required for Federal actions that "may affect" a listed species regardless of whether take caused by the activity is prohibited or excepted by a 4(d) rule. A 4(d) rule does not change the process and criteria for informal or formal consultations and does not alter the analytical process used for biological opinions or concurrence letters. For example, as with an endangered species, if a Federal agency determines that an action is "not likely to adversely affect" a threatened species, the action will require the Service's written concurrence (50 CFR 402.13(c)). Similarly, if a Federal agency determines that an action is "likely to adversely affect" a threatened species, the action will require formal

consultation and the formulation of a biological opinion (50 CFR 402.14(a)). Two Federal agencies, the NPS and USFS, manage approximately 95 percent of the U.S. portion of the Mount Rainier white-tailed ptarmigan's range (Table 1). Because consultation obligations and processes are unaffected by 4(d) rules, we may consider developing tools to streamline future intra-Service and inter-Agency consultations for actions that result in forms of take that are not prohibited by the 4(d) rule (but that still require consultation). These tools may include consultation guidance, Information for Planning and Consultation effects determination keys, template language for biological opinions, or programmatic consultations.

Provisions of the 4(d) Rule

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a rule that is designed to address the Mount Rainier white-tailed ptarmigan's conservation needs. As discussed previously in Summary of Biological Status and Threats, we have concluded that the Mount Rainier white-tailed ptarmigan is likely to become in danger of extinction within the foreseeable future primarily due to the projected effects of climate change, especially increasing temperatures and a loss of the conditions that support suitable alpine habitat (above treeline). Section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(1) of the Act prescribes for endangered species. We are not required to make a "necessary and advisable" determination when we apply or do not apply specific section 9 prohibitions to a threatened species (*In re: Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation*, 818 F. Supp. 2d 214, 228 (D.D.C. 2011) (citing *Sweet Home Chapter of Cmty. for a Great Or. v. Babbitt*, 1 F.3d 1, 8 (D.C. Cir. 1993), *rev'd on other grounds*, 515 U.S. 687 (1995))). Nevertheless, even though we are not required to make such a determination, we have chosen to be as transparent as possible and explain below why we find that the protections, prohibitions, and exceptions in this rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Mount Rainier white-tailed ptarmigan.

The protective regulations for the Mount Rainier white-tailed ptarmigan incorporate prohibitions from section 9(a)(1) to address the threats to the species. Section 9(a)(1) prohibits the following activities for endangered wildlife: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. This protective regulation includes all of these prohibitions because the Mount Rainier white-tailed ptarmigan is at risk of extinction in the foreseeable future and putting these prohibitions in place will help to preserve the subspecies' remaining populations, slow their rate of decline, and decrease cumulative or synergistic, negative effects from other threats.

Under the Act, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take will support the conservation of existing populations of the subspecies by facilitating their viability in the face of these projected environmental changes. Therefore, we are prohibiting take of the Mount Rainier white-tailed ptarmigan, except for take resulting from those actions and activities specifically excepted by the 4(d) rule. Exceptions to the prohibition on take include the general exceptions to take of endangered wildlife as set forth in 50 CFR 17.21 and additional exceptions, as described below.

Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise prohibited activities, including those described above. The regulations that govern permits for threatened wildlife state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. These include permits issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32). The statute also contains certain exceptions from the prohibitions, which are found in sections 9 and 10 of the Act.

In addition, to further the conservation of the species, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, a State conservation agency, or a federally recognized Tribe, who is designated by their agency or Tribe for such purposes, may, when acting in the course of their official duties, take threatened wildlife without a permit if such action is necessary to: (i) Aid a sick, injured, or orphaned specimen; or (ii) Dispose of a dead specimen; or (iii) Salvage a dead specimen that may be useful for scientific study; or (iv) Remove specimens that constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by livecapturing and releasing the specimen unharmed, in an appropriate area.

We recognize the special and unique relationship that we have with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve the Mount Rainier white-tailed ptarmigan that may result in otherwise prohibited take without additional authorization.

The 4(d) rule will also provide for the conservation of the species by allowing exceptions that incentivize conservation actions or that, while they may have some minimal level of take of Mount Rainier white-tailed ptarmigan, are not expected to rise to the level that would have a negative impact (*i.e.*, would have only de minimis impacts) on the species' conservation. The following exceptions to these prohibitions are expected to have negligible impacts to

the Mount Rainier white-tailed ptarmigan and its habitat:

- Take that is incidental to facilitating human safety (such as rescue, fire, and other emergency responses) and the protection of natural resources. During emergency events, the primary objective of the responding agency must be to protect human life and property and this objective takes precedence over considerations for minimizing adverse effects to the Mount Rainier white-tailed ptarmigan.

- Take that is incidental to a person's lawfully conducted outdoor recreational activities such as hiking (including associated authorized pack animals and domestic dogs handled in compliance with existing regulations), camping, backcountry skiing, mountain biking, snowmobiling, climbing, and hunting where these activities are allowed. We consider outdoor recreation lawful if it is carried out in accordance with the recreation rules and limits established by the State, Federal, or Tribal agency managing the land. This exception does not apply to recreation planning activities by Federal or State agencies. Based on available information, these types of activities have the potential to disturb individual ptarmigan in localized areas representing a very small portion of the available habitat in the subspecies' range. Also, there are aspects of recreation that can be beneficial to the Mount Rainier white-tailed ptarmigan and other alpine species. USFS and NPS, through their recreational planning activities, can help educate the public and build advocacy for conservation of alpine habitats and species that are facing habitat loss due to climate change, including the Mount Rainier white-tailed ptarmigan. These and other partners can train alpine recreationists to become citizen scientists, helping us to better understand specific aspects of the biology of this subspecies that we are lacking. In the future, should recreation become a threat to the species, the Service may reconsider this exception.

- Take that is incidental to authorized habitat restoration actions consistent with the conservation needs of the Mount Rainier white-tailed ptarmigan. Activities associated with habitat restoration (*e.g.*, weeding, planting native forage plants, establishing watering areas) are likely to cause only short-term, temporary adverse effects, especially in the form of harassment or disturbance of individual ptarmigan. In the long term, the risk of these effects to both individuals and populations is expected to be mitigated as these types of activities will likely benefit the

subspecies by helping to preserve and enhance the habitat of existing populations over time. We consider habitat restoration and enhancement activities authorized if they are consistent with Mount Rainier white-tailed ptarmigan conservation prescriptions or objectives that are specifically included in established Federal, State, or Tribal conservation plans.

- Take that is incidental to conducting lawful, authorized control of predators of Mount Rainier white-tailed ptarmigan, provided reasonable care is practiced to minimize effects to Mount Rainier white-tailed ptarmigan. For example, the common raven is currently managed within the range of greater sage-grouse in Washington and common ravens have large home ranges. A professional biologist documented travel of a raven collared at the Terrace Heights landfill in Yakima to Mount Rainier National Park (White 2021, in litt.). Ptarmigan are threatened in the foreseeable future by climate change and the persistence of the subspecies will rely on the conservation of existing populations, so predator control may be authorized by the Service for the purposes of conservation of the Mount Rainier white-tailed ptarmigan. Therefore, take of Mount Rainier white-tailed-ptarmigan associated with authorized predator control coordinated in advance with the Service will not be prohibited, as the benefit to the subspecies from this activity outweighs the risk to individual ptarmigan. Predator control activities may include the use of fencing, trapping, shooting, and toxicants to control predators, and related activities such as performing efficacy surveys, trap checks, and maintenance duties. Reasonable care for predator control may include, but would not be limited to, procuring and implementing technical assistance from a qualified biologist on habitat management activities, and best efforts to minimize Mount Rainier white-tailed ptarmigan exposure to hazards (*e.g.*, predation, habituation to feeding, entanglement, etc.). Any predator control conducted for the purposes of conservation of Mount Rainier white-tailed ptarmigan is considered authorized if it is carried out in accordance with the rules and limits established by the State, Federal, or Tribal agency managing the land and coordinated in advance with the Service.

- Take that is incidental to lawfully conducted timber harvest or forest management activities, separate from those actions covered under the habitat restoration actions exception described

above. During the summer, when timber harvest or forest management activities are likely to occur, white-tailed ptarmigan are rarely found in the vicinity of forested areas, but they may occur in alpine areas adjacent to treeline and thus would be within sight and sound of such activities. In the winter, ptarmigan may be found in openings in forested areas adjacent to their alpine habitat. Forest management activities in proximity to ptarmigan habitat may cause short-term, temporary adverse effects, especially in the form of harassment or disturbance of individual ptarmigan using habitats adjacent to forested areas; however, in the long term, these activities may benefit the subspecies by reducing the risk of wildfire near ptarmigan habitat, or by opportunistically creating alpine area openings that ptarmigan may use in winter. Legal and authorized forest management activities include, but are not limited to, timber harvest and fire and vegetation management. We consider forest management activities legal and authorized if they are carried out in accordance with the forest practices rules and limits established by the State, Federal, or Tribal agency managing the land.

- Take that is incidental to the authorized maintenance of any public or private infrastructure (*e.g.*, buildings, roads, parking lots, viewpoints, trails, designated camp sites, developed ski areas, and helicopter landing pads) and supporting infrastructure (*e.g.*, benches, signs, safety features) within or adjacent to Mount Rainier white-tailed ptarmigan habitat. Within the subspecies' range, most development and infrastructure, the largest of which is associated with Mount Rainier National Park, has been in place for decades or longer. The amount of land developed for roads, buildings, trail head facilities and parking lots, trails, benches, signs, safety features, designated camping sites, developed ski areas, and helicopter landing pads is a very small percentage of the subspecies' range, and available suitable habitat is abundant and remote. The maintenance of trails and infrastructure within the subspecies' range has the potential to temporarily disturb individual ptarmigan in localized areas. The best available information does not indicate that these types of routine maintenance are a threat to the species. We consider maintenance activities authorized if they are carried out in accordance with the rules established by the State, Federal, or Tribal agency managing the land. This exception would not extend

to take associated with the development of new infrastructure.

As discussed above under Summary of Biological Status and Threats, increasing temperatures (Factor E) and a loss of the conditions that support suitable alpine habitat (Factor A) are driving the current and future status of the Mount Rainier white-tailed ptarmigan. A range of current and future activities could directly and indirectly impact the Mount Rainier white-tailed ptarmigan via direct take or loss of habitat. These activities may cause disturbance, harm, or mortality to individual ptarmigan, trampling of habitat, introduction of invasive species in habitat, and loss of habitat. These activities include: human safety and emergency response; the work of law enforcement and on-the-job wildlife professionals; lawful outdoor recreation in alpine areas in summer, or subalpine areas in winter; habitat restoration and predator control actions for purposes of Mount Rainier white-tailed ptarmigan conservation; forest management actions; and routine maintenance of infrastructure (*e.g.*, roads, trails, buildings, parking lots, etc.). The best available information indicates that these activities, when conducted in accordance with the law, will not put the viability of the Mount Rainier white-tailed ptarmigan at risk. Allowing the continuation of these activities while also prohibiting all other forms of take will facilitate Federal agencies in managing their land according to their priorities without unnecessary regulation while still supporting the conservation of the subspecies.

Nothing in this 4(d) rule will change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Mount Rainier white-tailed ptarmigan. However, interagency cooperation may be further streamlined through planned programmatic consultations for the subspecies between Federal agencies and the Service.

III. Critical Habitat

Background

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate a species' critical habitat concurrently with listing the species. Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are

found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. At the time of our June 15, 2021, proposed rule, we determined that a designation of critical habitat would not be prudent. Our regulations (50 CFR 424.12(a)(1)) in place at that time stated that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

However, on April 5, 2024, jointly with the National Marine Fisheries Service, we published a final rule revising the regulations in 50 CFR 424.12 regarding circumstances when designation of critical habitat may not be prudent (89 FR 24300). In light of these regulation revisions, we will reevaluate our 2021 determination that the designation of critical habitat for the ptarmigan is not prudent under these revised regulations and publish a separate determination in the future in the **Federal Register**. In that

determination, we will also respond to any comments related to critical habitat we received during the public comment period on the June 15, 2021, proposed rule (86 FR 31668).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (*e.g.*, *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. All potentially affected Tribes were sent a letter highlighting our assessment of this subspecies and requesting information about the subspecies or other feedback. These Tribes included the three adjacent to the range of Mount Rainier white-tailed ptarmigan, the Sauk-Suiattle Indian Tribe, Snoqualmie Indian Tribe, and Yakama Nation, as

well as others (the Confederated Tribes of the Chehalis Reservation; Cowlitz Indian Tribe; Lummi Nation; Muckleshoot Indian Tribe; Nisqually Indian Tribe; Nooksack Indian Tribe; Port Gamble S'Klallam Tribe; Puyallup Tribe of Indians; Samish Indian Nation; Squaxin Island Tribe; Stillaguamish Tribe of Indians; Suquamish Tribe; Swinomish Indian Tribal Community; Tulalip Tribes; and Upper Skagit Tribe). We did not receive any replies. We also sent notification of the impending publication of our proposed listing rule with an invitation to comment to all Tribes in the State of Washington on June 14, 2021; we received no comments from Tribes during the proposed rule's comment period.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Washington Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by adding an entry for “Ptarmigan, Mount Rainier white-tailed” in alphabetical order under Birds to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* BIRDS	*	*	*	*
* Ptarmigan, Mount Rainier white- tailed.	* <i>Lagopus leucura rainierensis</i>	* Wherever found	* T	* 89 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS], 7/3/2024; 50 CFR 17.41(i). ^{4d}
*	*	*	*	*

■ 3. Amend § 17.41 by adding paragraph (i) to read as follows:

§ 17.41 Species-specific rules—birds.

* * * * *

(i) Mount Rainier white-tailed ptarmigan (*Lagopus leucura rainierensis*).

(1) *Prohibitions.* The following prohibition that applies to endangered wildlife also applies to the Mount Rainier white-tailed ptarmigan. Except as provided under paragraph (i)(2) of this section and § 17.4, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of a commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.*

With regard to this subspecies, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(v) Take in accordance with these provisions:

(A) *Human safety and emergency response.* A person may incidentally take Mount Rainier white-tailed ptarmigan in the course of carrying out official emergency response activities related to human safety and the protection of natural resources.

(B) *Lawful outdoor recreation.* A person may incidentally take Mount Rainier white-tailed ptarmigan in the course of lawfully conducting outdoor

recreational activities, such as hiking (including associated authorized pack animals and domestic dogs handled in compliance with existing regulations), camping, backcountry skiing, mountain biking, snowmobiling, climbing, and hunting where these activities are allowed. We consider outdoor recreation lawful if it is carried out in accordance with the recreation rules and limits established by the State, Federal, or Tribal agency managing the land.

(C) *Habitat restoration actions.* A person may incidentally take Mount Rainier white-tailed ptarmigan in the course of carrying out authorized habitat restoration consistent with the conservation needs of Mount Rainier white-tailed ptarmigan. We consider habitat restoration and enhancement activities authorized if they are consistent with Mount Rainier white-tailed ptarmigan conservation prescriptions or objectives that are specifically included in established Federal, State, or Tribal conservation plans and documents.

(D) *Predator control.* A person may incidentally take Mount Rainier white-tailed ptarmigan in the course of carrying out lawful, authorized predator control for the purpose of Mount Rainier white-tailed ptarmigan conservation if reasonable care is practiced to minimize effects to Mount Rainier white-tailed ptarmigan. Predator control activities may include the use of fencing, trapping, shooting, and toxicants to control predators, and related activities such as performing efficacy surveys, trap checks, and maintenance duties. Any predator control conducted for the purposes of conservation of Mount Rainier white-tailed ptarmigan is considered authorized if it is carried out in accordance with the rules and limits established by the State, Federal, or Tribal agency managing the land and coordinated in advance with the Service.

(E) *Forest management.* A person may incidentally take Mount Rainier white-tailed ptarmigan in the course of carrying out legal and authorized forest

management activities, including, but not limited to, timber harvest, and fire and vegetation management. We consider forest management activities legal and authorized if they are carried out in accordance with the forest practices rules and limits established by the State, Federal, or Tribal agency managing the land.

(F) *Routine maintenance to infrastructure.* A person may incidentally take Mount Rainier white-tailed ptarmigan in the course of carrying out authorized routine maintenance of public or private infrastructure (e.g., buildings, roads, parking lots, viewpoints, trails, designated camp sites, developed ski areas, and helicopter landing pads) and supporting infrastructure (e.g., benches, signs, safety features) within or adjacent to Mount Rainier white-tailed ptarmigan habitat. We consider maintenance activities authorized if they are carried out in accordance with the rules established by the State, Federal, or Tribal agency managing the land. This exception does not extend to take associated with the development of new infrastructure.

(G) *Reporting and disposal requirements.* Any take (injury or mortality) of Mount Rainier white-tailed ptarmigan associated with the actions excepted under paragraphs (i)(2)(v)(A) through (G) of this section must be reported to the Service and authorized State wildlife officials within 72 hours, and specimens may be disposed of only in accordance with directions from the Service. Reports should be made to the Service's Office of Law Enforcement; contact information for that office is located at 50 CFR 10.22.

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–14315 Filed 7–2–24; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register

Vol. 89, No. 128

Wednesday, July 3, 2024

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 AGRICULTURE

2 CFR Chapter IV

[Docket No. USDA–2024–0002]

RIN 0505–AA18

USDA Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Correction

In Proposed Rule document, 2024–13845, appearing on pages 54372 through 54393 in the issue of Monday, July 1, 2024, make the following corrections:

On page 54372, in the **DATES** section, on the second line, “July 1, 2024” is corrected to read, “July 31, 2024”.

[FR Doc. C1–2024–13845 Filed 7–2–24; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket ID OCC–2024–0008]

RIN 1557–AF27

OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its enforceable recovery planning guidelines (Guidelines) to expand the Guidelines to apply to insured national banks, Federal savings associations, and Federal branches (banks) with average total consolidated assets of \$100 billion or more; incorporate a testing standard; and clarify the role of non-financial

(including operational and strategic) risk in recovery planning.

DATES: Comments must be received by August 2, 2024.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title “OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—Regulations.gov:*

Go to <https://regulations.gov/>. Enter “Docket ID OCC–2024–0008” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments, please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 8 a.m.–7 p.m. ET, or email regulationshelpdesk@gsa.gov.

• *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC–2024–0008” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following methods:

• *Viewing Comments Electronically—Regulations.gov:*

Go to <https://regulations.gov/>. Enter “Docket ID OCC–2024–0008” in the Search Box and click “Search.” Click on the “Dockets” tab and then the document’s title. After clicking the document’s title, click the “Browse All Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Comments Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Browse Documents” tab. Click on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen checking the “Supporting & Related Material” checkbox. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 8 a.m.–7 p.m. ET, or email regulationshelpdesk@gsa.gov.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT:

Kimberly Jameson, Lead Expert, Market Risk, (202) 322–8527; Andra Shuster, Senior Counsel, Karen McSweeney, Special Counsel, or Priscilla Benner, Counsel, Chief Counsel’s Office, (202) 649–5490; 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background

Large-scale financial crises, including the 2008 crisis, have demonstrated the destabilizing effect that severe stress can have on financial entities, capital markets, the Federal banking system, and the U.S. and global economies. This is particularly true when a crisis places severe stress on large, complex financial institutions due to the systemic and contagion risks that they pose. During the 2008 crisis, the OCC observed that many financial institutions were not prepared to respond effectively to the financial effects of the severe stress. The lack of or inadequate planning threatened the viability of some financial institutions, and many were

forced to take significant actions without the benefit of a well-developed plan for recovery.

For the OCC, this experience further highlighted the importance of strong risk governance frameworks at large, complex banks, including plans for how to respond quickly and effectively to, and recover from, the financial effects of severe stress. The agency recognized that recovery planning would reduce a bank's risk of failure and increase the likelihood that the bank would return to a position of financial strength and viability following severe stress. It envisioned recovery planning—developing and maintaining a comprehensive recovery plan—as a dynamic and ongoing process that complemented a bank's other risk governance and planning functions and supported its safe and sound operation. The OCC expected recovery planning to enhance the focus of a bank's management and its board of directors (board) on risk governance, with a view toward lessening the negative effects of and recovering from future severe stress.

On September 19, 2016, the OCC issued Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches of Foreign Banks (Guidelines).¹ Under the Guidelines, a bank subject to the standards (a covered bank) should have a recovery plan that includes (1) quantitative or qualitative indicators of the risk or existence of severe stress that reflect its particular vulnerabilities; (2) a wide range of credible options that it could undertake in response to the stress to restore its financial strength and viability; and (3) an assessment and description of how these options would affect it. The Guidelines provided that a recovery plan should also address (1) the covered bank's overall organizational and legal entity structure; (2) procedures for escalating decision-making to senior management or the board; (3) management reports; (4) communication procedures; and (5) any other information the OCC communicates in writing. The Guidelines also set forth the responsibilities of management and the board with respect to the covered bank's recovery plan.

The 2016 Guidelines applied to banks with total consolidated assets of \$50 billion or more. In 2018, the OCC

amended the Guidelines to raise the threshold to \$250 billion based on its view, at that time, that these larger, more complex, and potentially more interconnected banks presented greater systemic risk to the financial system and would benefit most from recovery planning.²

In March 2023, several insured depository institutions (IDIs) with total consolidated assets of \$100 billion or more experienced significant withdrawals of uninsured deposits in response to underlying weaknesses in their financial position and failed. These institutions were not subject to recovery planning, which would likely have bolstered their resilience. For the OCC, these events highlighted the complexity and interconnectedness of some banks not covered by the Guidelines: banks with average total consolidated assets between \$100 billion and \$250 billion. The events, coupled with the OCC's supervisory experience, made clear the importance of ensuring that banks in this size range are adequately prepared and have developed a plan to respond to the financial effects of severe stress, particularly in light of the contagion effects and systemic risks they may pose. To address this issue, the OCC is proposing to expand the Guidelines to apply to banks with average total consolidated assets of \$100 billion or more.

In addition, during the OCC's almost 10 years of supervisory experience with the Guidelines, the agency has examined covered banks' recovery planning processes and reviewed numerous recovery plans. Based on this experience, the OCC has identified areas where the Guidelines should be strengthened and, as such, proposes to amend them by establishing a testing standard and increasing the focus on non-financial (including operational and strategic) risk.

II. Proposed Changes

A. Covered bank threshold. The current Guidelines generally apply to banks with average total consolidated assets of \$250 billion or more. Based on the OCC's observations during the 2023 financial institution failures, the agency proposes to expand the Guidelines to apply to banks with average total consolidated assets of \$100 billion or more.³ To make this change, the OCC

proposes to revise the definition of "covered bank" in paragraph I.E.3. of the Guidelines.

The OCC is also proposing a clarifying change to the definition of "average total consolidated assets" in paragraph I.E.1. Currently, the Guidelines define "average total consolidated assets" as "the average total consolidated assets of the bank or the covered bank," as reported on the bank's or the covered bank's Consolidated Reports of Condition and Income (Call Report) for the four most recent consecutive quarters. The agency proposes to change the definition to refer to the average "of" total consolidated assets of the bank or covered bank. This change is intended to clarify that calculating "average total consolidated assets" for purposes of the Guidelines is based on the "total assets" line of the Call Report, not the "average total consolidated assets" line of the Call Report.⁴ The clarifying change may affect the quarter in which a bank becomes a covered bank and is consistent with the OCC's Heightened Standards Guidelines.⁵

Paragraph I.C.1. of the current Guidelines, "Reservation of Authority," provides that the OCC has the discretion to apply the Guidelines, in whole or in part, to a bank with average total consolidated assets of less than \$250 billion if the agency determines that the bank is highly complex or otherwise presents a heightened risk that warrants the application of the Guidelines.⁶ Consistent with the proposed threshold change, the OCC proposes a conforming change to the Reservation of Authority paragraph, which would allow the agency to apply the Guidelines to a bank with average total consolidated assets of less than \$100 billion if the agency determines the bank is highly complex or otherwise presents a heightened risk that warrants application of the Guidelines.⁷

Question: The OCC invites comments on the proposed \$100 billion threshold. Alternatively, should the OCC expand the Guidelines further (e.g., to all banks or to banks with \$50 billion or more in average total consolidated assets), adopt a different threshold between \$100 billion and \$250 billion, or retain the \$250 billion threshold? Why?

assets to submit full resolution plans. 88 FR 64579 (Sept. 19, 2023).

⁴ Compare Schedule RC, item 12 and Schedule RC-R, item 27 of the Call Report.

⁵ 12 CFR part 30, appendix D.

⁶ Paragraph I.C.1.a.

⁷ The OCC does not propose changes to its reservation of authority to determine that compliance should *not* be required for a covered bank in paragraph I.C.1.b. of the Guidelines because this section does not specifically reference a bank's asset size.

¹ 81 FR 66791 (Sep. 29, 2016). The Guidelines are codified at 12 CFR part 30, appendix E. They were issued pursuant to section 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1831p–1, which authorizes the OCC to prescribe enforceable safety and soundness standards.

² 83 FR 66604 (Dec. 27, 2018).

³ The proposed threshold would also be consistent with the Federal Deposit Insurance Corporation's (FDIC) proposed amendments to its resolution planning rule, which would require covered IDIs with \$100 billion or more in total

B. Testing. As stated above, the OCC has almost 10 years of experience in administering the Guidelines, including reviewing covered banks' recovery plans. During this period, the agency has observed that recovery plans would benefit from testing, which would aid covered banks in proactively identifying and addressing any weaknesses or deficiencies in their recovery plans before they experience severe stress. Testing would help ensure that a covered bank's recovery plan will be an effective tool that can realistically help restore the bank to financial strength and viability in response to severe stress. Not surprisingly, testing is already a key component of other regulatory frameworks addressing the stress continuum (e.g., contingency funding planning⁸ and stress testing⁹). In addition, the FDIC has proposed amendments to its resolution planning rule to incorporate a testing requirement.¹⁰

For these reasons, the OCC proposes to revise the Guidelines to include a testing provision as a new paragraph II.D. Under the proposed testing provision, a covered bank should test its overall recovery plan, and each element of the plan, to ensure that it will be an effective tool during periods of severe stress.¹¹ To meet this standard, a covered bank may simulate severe financial and non-financial stress scenarios, such as the scenarios used to develop the plan, to confirm that the plan is likely to work as intended when the covered bank is experiencing severe stress. This testing should include, for example, ensuring that the plan's triggers appropriately reflect the covered bank's particular vulnerabilities and will, in practice, provide the covered bank with timely notice of a continuum of increasingly severe stress, ranging from warnings of the likely occurrence of severe stress to the actual existence of severe stress. Testing should also enable management and the board to verify that the bank has identified credible options and is adequately prepared to carry out these options, as needed, during a period of severe stress. Testing should be sufficient to provide management and the board with similar assurances regarding the other elements

of the plan and, ultimately, the plan as a whole. Although the proposal does not include a specific testing format or methodology, testing should be risk-based and reflect the covered bank's size, risk profile, activities, and complexity.

Question: The OCC invites comment on the proposed testing standard, including the following questions:

- Should the OCC be more specific about how to test a recovery plan to validate whether the plan would effectively facilitate a covered bank's recovery from severe financial or non-financial stress? For example, should the OCC provide that a covered bank test the plan using a specific number of stress scenarios? If so, how many scenarios would be appropriate? Should the OCC provide that covered banks utilize different scenarios each year? Should the OCC provide that a covered bank include a quantitative and qualitative analysis as part of the testing provision?

- How would a covered bank implement testing for recovery options? Are there certain options which would be difficult or impossible to test?

- How would a covered bank implement testing for impact assessments? For example, would it be possible to test the effect on material entities, critical operations, and core business lines? Should impact assessments be scoped out of the testing provision? If so, why?

- Is the proposed scope of testing appropriate? Are there other aspects of a covered bank's recovery plan or recovery planning process that the covered bank should test, and if so, what are those? Should the OCC narrow the testing standard? How and why?

- How would a covered bank implement testing in its recovery planning process? For example, would a covered bank first develop (or update) its recovery plan and then separately test the completed plan, or would a covered bank integrate testing into its development (or updating) process? Please explain.

With respect to the frequency of testing, the OCC proposes that a covered bank test its recovery plan periodically but not less than annually, which aligns with management and board responsibilities to review a covered bank's recovery plan at least annually, under paragraphs III.A and III.B. of the Guidelines, respectively. As such, the proposed testing frequency would ensure that management and the board can consider the results of testing during their review. While the OCC expects that a covered bank would test each element of its recovery plan on an

annual cycle, the agency does not expect that, for example, a covered bank would test all triggers or all options during each annual cycle. Rather, as noted above, annual testing should be risk-based. In addition, to provide covered banks with flexibility to engage in continuous or regular testing, the proposal also permits a covered bank to engage in periodic testing during an annual cycle. Finally, in the event that testing reveals weaknesses or deficiencies in a recovery plan, the proposal provides that a covered bank should revise its recovery plan as appropriate following testing.

Question: The OCC invites comment on the proposed frequency of testing, including whether annual testing is appropriate, as well as whether and how this testing frequency will aid management and the board in fulfilling their recovery planning responsibilities. Alternatively, should the Guidelines provide for periodic testing without a specific frequency? Should the Guidelines also provide for testing in response to a material change to the recovery plan?

Question: The OCC invites comment on whether the OCC should provide additional clarity regarding how covered banks should address weaknesses and deficiencies identified during testing.

C. Non-financial risk. In the OCC's experience with covered banks' implementation of the Guidelines, banks have generally been successful in considering and addressing financial risks in their recovery plans. For example, many covered banks' recovery plans include triggers which cover changes to the bank's financial position, such as triggers for profitability, funding sources, liquidity ratios, and capital ratios.

The OCC has observed, however, that covered banks have been less consistent in their consideration of non-financial risk, such as operational and strategic risks. As some covered banks have indicated, this inconsistent approach to non-financial risk may be because the goal of recovery planning is to return a covered bank to a position of financial strength and viability in the event of severe stress. Financial risk is, of course, critical to recovery planning. However, focusing a recovery plan exclusively on financial risks while neglecting non-financial risks overlooks the very real threats that non-financial risks can pose to a bank's financial strength and viability. For example, banks face elevated levels of risk from an increasingly complex operational and strategic environment. They are undergoing rapid and significant

⁸ See 75 FR 13656 (March 22, 2010); Addendum to the Interagency Policy Statement on Funding and Liquidity Risk Management: Importance of Contingency Funding Plan (July 28, 2023).

⁹ See 12 CFR part 46.

¹⁰ 88 FR 64579 (Sept. 19, 2023).

¹¹ As set forth in paragraph II.B. of the Guidelines, the elements of a recovery plan are Overview of covered bank; Triggers; Options for recovery; Impact assessments; Escalation procedures; Management reports; Communication procedures; and Other information.

changes in an effort to innovate, digitize, and meet rising consumer demands; to optimize risk management practices; and to respond to externalities such as economic and environmental uncertainties and financial pressures. These risks can lead to severe non-financial stress that affects a bank's financial strength and viability.¹²

To ensure that covered banks' appropriately address non-financial risks in their recovery plans, including by identifying non-financial stress and triggers, the OCC proposes certain changes to the Guidelines. The first proposed change is to paragraph II.A., which currently states that each covered bank should develop and maintain a recovery plan that is specific to and appropriate for its individual size, risk profile, activities, and complexity, including the complexity of its organizational and legal entity structure. The OCC proposes to add language to this paragraph stating that a covered bank's recovery plan should appropriately consider both financial risk and non-financial risk (including operational and strategic risk). The added reference to financial risk is not because covered banks have not been considering this type of risk but to highlight that both types of risk should be addressed. The OCC also proposes conforming changes to the definitions of "recovery" and "trigger" in paragraphs I.E.4. and I.E.6., respectively, and to the recovery plan elements of "trigger" and "impact assessment" in paragraphs II.B.2. and II.B.4., respectively. These conforming changes are also intended to highlight the importance of both financial and non-financial risks throughout the recovery planning process.

The OCC is not proposing any changes to the "options for recovery" element in paragraph II.B.3. of the Guidelines, which provides that recovery plan "should explain how the covered bank would carry out each option and describe the timing required for carrying out each option." The OCC believes, however, it is important to emphasize that this process should include an understanding of, and plan for mitigating, the non-financial challenges and risks, including operational challenges and risks, associated with executing each recovery option during severe stress. Without this, a covered bank's management and board cannot accurately assess whether the options identified in the recovery

plan are, in fact, credible options that the covered bank could undertake to restore financial strength and viability.

Finally, paragraph II.C. of the Guidelines, "Relationship to other processes; coordination with other plans," provides that a covered bank's recovery plan should be integrated into its other risk governance functions and aligned with its other plans. This provision is intended to make clear that recovery planning should complement, and not replace, these risk governance and planning functions at covered banks, including those that address non-financial risks. The paragraph lists examples of such other plans; to provide an additional example of an operational risk plan, the OCC proposes to add a reference to "resilience programs" in paragraph II.C.

Question: The OCC invites comment on its proposal to incorporate non-financial risks into the Guidelines, including the following:

- Are "financial" and "non-financial" risks sufficiently clear? Should the Guidelines define these terms or otherwise include more specificity? For example, should the OCC identify or define specific types of financial and non-financial risk, such as by incorporating the risk types and corresponding definitions used in the Comptroller's Handbook or another source? Please explain.

- Should the OCC revise any other provisions of the Guidelines, including the definition of "recovery plan" or any of the other elements of a recovery plan, to incorporate non-financial risk? If so, how?
- Is the proposal sufficiently clear about the relationship between non-financial risk and recovery planning? Is it sufficiently clear that inclusion of non-financial risk in a recovery plan should not replace a covered bank's other non-financial risk governance practices, such as its business continuity and operational resilience planning?

D. Compliance. The OCC understands that it would take time for covered banks to implement the changes discussed above, particularly for banks that are not currently covered by the Guidelines but would become covered banks based on the proposed threshold change. To this end, the agency proposes to amend paragraph I.B. of the Guidelines, entitled "Compliance date," to provide the banks with sufficient time. Specifically, a bank that is a covered bank under the current Guidelines would have 12 months from the effective date of the amendments to comply with the changes. These banks would continue to be obligated to

comply with the current Guidelines during this 12-month period.

Question: The OCC invites comment on whether a 12-month compliance date would be sufficient for a bank that is already a covered bank. Should the OCC adopt shorter a compliance date, such as 3 or 6 months, or a longer one, such as 18 or 24 months, for these banks? Should the OCC establish different compliance dates for updating a recovery plan to address non-financial risks and for testing the plan? If so, what compliance dates would be appropriate? Please explain.

For a bank that has \$100 billion or more but less than \$250 billion in average total consolidated assets on the effective date of the amendments to the Guidelines, the proposal provides that the bank should comply with the Guidelines within 12 months of the effective date, except for the testing requirements with which the bank should comply within 18 months. A financial institution that is not a covered bank on the effective date of the amended Guidelines but that subsequently becomes a covered bank would continue to have 12 months from the date on which it becomes a covered bank to comply with the Guidelines, except that it would have 18 months to comply with the testing requirements.¹³

Question: The OCC invites comments on these proposed compliance dates. Would a 12-month compliance date provide a bank or other financial institution that is newly covered by the Guidelines with adequate time to develop a plan? Should the OCC adopt a shorter compliance date, such as 3 or 6 months, or a longer one, such as 18 or 24 months? How would this change if the OCC were to adopt a different threshold? Is 6 additional months an appropriate timeframe for testing, or would a shorter or longer timeframe be appropriate? Alternatively, should the OCC establish one compliance date for both developing and testing a recovery plan? Please explain.

Question: Should the OCC include an additional reservation of authority that would permit it to apply the Guidelines to a bank or covered bank on a timeframe different than the otherwise-applicable compliance dates (e.g., following a merger or acquisition)? If so, what factors should the OCC consider

¹² The Guidelines already recognize this fact, insofar as the definition of "recovery" refers to "financial or operational stress." However, as noted above, the OCC believes that this issue warrants additional clarity.

¹³ A financial institution could become a covered bank after the effective date of the amended Guidelines, for example, if its average total consolidated assets grow to or above the threshold, if it is a State bank with average total consolidated assets of \$100 billion or more that converts to an OCC charter, or through the OCC's exercise of its reservation of authority under section I.C.

when deciding whether to exercise this reservation of authority?

III. Comment Invitation

In addition to the specific questions asked above, the OCC invites comment on all aspects of the proposed revisions to the Guidelines.

IV. Regulatory Analysis

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA),¹⁴ the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This notice of proposed rulemaking includes changes to an approved collection of information pursuant to the provisions of the PRA. The OCC submitted the information collections contained in this notice of proposed rulemaking to OMB for review and approval, under section 3507(d) of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320).

The Guidelines contain information collections previously approved by OMB, which are found in 12 CFR part 30, appendix E, sections II.B., II.C., and III. Section II.B. specifies the elements of the recovery plan, including an overview of the covered bank; triggers; options for recovery; impact assessments; escalation procedures; management reports; communication procedures; and any other information the OCC communicates in writing. Section II.C. addresses the relationship of the plan to other covered bank processes and coordination with other plans, including the processes and plans of its bank holding company. Section III outlines management's and the board's responsibilities.

The proposed rulemaking contains additional information collections. Under the proposal, the threshold for applying the Guidelines to a bank would be reduced from \$250 billion to \$100 billion in average total consolidated assets. The proposal would also establish a testing standard, which would provide that a bank should test its overall recovery plan and each element of the plan. Additionally, the proposal would clarify the role of non-financial (including operational and strategic) risk in recovery planning.

The following revised information collection was submitted to OMB for review.

Title: OCC Guidelines Establishing Standards for Recovery Planning by

Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.

OMB Control No.: 1557–0333.

Affected Public: Businesses or other for-profit organizations.

Estimated Burden:

Frequency of Response: On occasion.

Total Number of Respondents: 21.

Total Burden per Respondent: 32,017 hours.

Total Burden for Collection: 672,360 hours.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility; (b) The accuracy of the OCC's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA)¹⁵ requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the U.S. Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of \$850 million or less and trust companies with total assets of \$47 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its proposed rule.

The OCC currently supervises approximately 947 IDIs¹⁶ of which 636 are small entities.¹⁷ The proposed rule

would not impact any small entities because it would only apply to IDIs with average total consolidated assets of \$100 billion or more. Accordingly, the OCC certifies that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA).¹⁸ Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation, currently \$183 million). The OCC has determined that expenditures to comply with proposed rule's mandates would be approximately \$86.7 million. Therefore, the OCC concludes that the proposed rule would not result in an expenditure of \$183 million or more annually by State, local, and Tribal governments, or by the private sector. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994,¹⁹ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC will consider, consistent with the principles of safety and soundness and the public interest: (1) any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions and (2) the benefits of the proposed rule. The OCC requests comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and their customers, and the benefits of the proposed rule that the OCC should consider in determining the effective date and administrative compliance requirements for a final rule.

¹⁵ 5 U.S.C. 601 *et seq.*

¹⁶ Based on data accessed using FINDRS on May 23, 2024.

¹⁷ Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an institution as a small entity. The OCC used December 31, 2023, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's *Table of Standards*.

¹⁸ 2 U.S.C. 1532.

¹⁹ 12 U.S.C. 4802(a).

¹⁴ 44 U.S.C. 3501–3521.

Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023²⁰ requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website www.regulations.gov.

The Office of the Comptroller of the Currency is proposing to amend its enforceable recovery planning guidelines to expand them to apply to insured national banks, Federal savings associations, and Federal branches with average total consolidated assets of \$100 billion or more; incorporate a testing standard; and clarify the role of non-financial (including operational and strategic) risk in recovery planning.

List of Subjects in 12 CFR Part 30

Banks, Banking, Consumer protection, National banks, Privacy, Safety and soundness, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 30—SAFETY AND SOUNDESS STANDARDS

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1, 93a, 371, 1462a, 1463, 1464, 1467a, 1818, 1828, 1831p–1, 1881–1884, 3102(b) and 5412(b)(2)(B); 15 U.S.C. 1681s, 1681w, 6801, and 6805(b)(1).

■ 2. Amend appendix E by:

■ a. Revising and republishing paragraph I.B.

■ b. In paragraph I.C.1.a, removing the text “\$250 billion” and adding the text “\$100 billion” in its place; and

■ c. Revising and republishing paragraphs I.E. and II.

The revisions read as follows:

Appendix E to Part 30—OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

* * * * *

I. Introduction

* * * * *

B. Compliance date.

1. A covered bank with average total consolidated assets, calculated according to

paragraph I.E.1. of this appendix, equal to or greater than \$250 billion as of [EFFECTIVE DATE OF FINAL RULE] should be in compliance with this appendix on [EFFECTIVE DATE OF FINAL RULE] except for paragraph II.D. of this appendix and the amended provisions on non-financial risk, with which the bank should be in compliance by 12 months from [EFFECTIVE DATE OF FINAL RULE].

2. A covered bank with average total consolidated assets, calculated according to paragraph I.E.1. of this appendix, equal to or greater than \$100 billion but less than \$250 billion as of [EFFECTIVE DATE OF FINAL RULE] should be in compliance with this appendix on 12 months from [EFFECTIVE DATE OF FINAL RULE], except for paragraph II.D. of this appendix with which the covered bank should be in compliance by 18 months from [EFFECTIVE DATE OF FINAL RULE].

3. A financial institution that is not a covered bank as of [EFFECTIVE DATE OF FINAL RULE] but which subsequently becomes a covered bank should comply with this appendix within 12 months of becoming a covered bank, except for paragraph II.D. of this appendix with which the covered bank should be in compliance by 18 months of becoming a covered bank.

* * * * *

E. Definitions.

1. *Average total consolidated assets* means the average of total consolidated assets of the bank or the covered bank, as reported on the bank's or the covered bank's Consolidated Reports of Condition and Income for the four most recent consecutive quarters.

2. *Bank* means any insured national bank, insured Federal savings association, or insured Federal branch of a foreign bank.

3. *Covered bank* means any bank:

a. With average total consolidated assets equal to or greater than \$100 billion;

b. With average total consolidated assets of less than \$100 billion if the bank was previously a covered bank, unless the OCC determines otherwise; or

c. With average total consolidated assets less than \$100 billion, if the OCC determines that such bank is highly complex or otherwise presents a heightened risk as to warrant the application of this appendix pursuant to paragraph I.C.1.a. of this appendix.

4. *Recovery* means timely and appropriate action that a covered bank takes to remain a going concern when it is experiencing or is likely to experience considerable financial and non-financial stress. A covered bank in recovery has not yet deteriorated to the point where liquidation or resolution is imminent.

5. *Recovery plan* means a plan that identifies triggers and options for responding to a wide range of severe internal and external stress scenarios to restore a covered bank that is in recovery to financial strength and viability in a timely manner. The options should maintain the confidence of market participants, and neither the plan nor the options may assume or rely on any extraordinary government support.

6. *Trigger* means a quantitative or qualitative indicator of the risk or existence of severe financial and non-financial stress,

the breach of which should always be escalated to senior management or the board of directors (or appropriate committee of the board of directors), as appropriate, for purposes of initiating a response. The breach of any trigger should result in timely notice accompanied by sufficient information to enable management of the covered bank to take corrective action.

II. Recovery Plan

A. *Recovery plan.* Each covered bank should develop and maintain a recovery plan that is specific to that covered bank and appropriate for its individual size, risk profile, activities, and complexity, including the complexity of its organizational and legal entity structure. When developing and maintaining its recovery plan, each covered bank should appropriately consider both financial risk and non-financial risk (including operational and strategic risk).

B. *Elements of recovery plan.* A recovery plan under paragraph II.A. of this appendix should include the following elements:

1. *Overview of covered bank.* A recovery plan should describe the covered bank's overall organizational and legal entity structure, including its material entities, critical operations, core business lines, and core management information systems. The plan should describe interconnections and interdependencies:

(i) Across business lines within the covered bank;

(ii) With affiliates in a bank holding company structure;

(iii) Between a covered bank and its foreign subsidiaries; and

(iv) With critical third parties.

2. *Triggers.* A recovery plan should identify financial and non-financial triggers that appropriately reflect the covered bank's particular vulnerabilities.

3. *Options for recovery.* A recovery plan should identify a wide range of credible options that a covered bank could undertake to restore financial strength and viability, thereby allowing the bank to continue to operate as a going concern and to avoid liquidation or resolution. A recovery plan should explain how the covered bank would carry out each option and describe the timing required for carrying out each option. The recovery plan should specifically identify the recovery options that require regulatory or legal approval.

4. *Impact assessments.* For each recovery option, a covered bank should assess and describe how the option would affect the covered bank. This impact assessment and description should specify the procedures the covered bank would use to maintain the financial strength and viability of its material entities, critical operations, and core business lines for each recovery option. For each option, the recovery plan's impact assessment should address the following:

a. The effect on the covered bank's capital, liquidity, funding, and profitability;

b. The effect on the covered bank's material entities, critical operations, and core business lines, including reputational impact;

c. The effect on the covered bank's risk profile as a result of changes to its financial and non-financial risk; and

²⁰ 12 U.S.C. 553(b)(4).

d. Any legal or market impediment or regulatory requirement that must be addressed or satisfied in order to implement the option.

5. *Escalation procedures.* A recovery plan should clearly outline the process for escalating decision-making to senior management or the board of directors (or an appropriate committee of the board of directors), as appropriate, in response to the breach of any trigger. The recovery plan should also identify the departments and persons responsible for executing the decisions of senior management or the board of directors (or an appropriate committee of the board of directors).

6. *Management reports.* A recovery plan should require reports that provide senior management or the board of directors (or an appropriate committee of the board of directors) with sufficient data and information to make timely decisions regarding the appropriate actions necessary to respond to the breach of a trigger.

7. *Communication procedures.* A recovery plan should provide that the covered bank notify the OCC of any significant breach of a trigger and any action taken or to be taken in response to such breach and should explain the process for deciding when a breach of a trigger is significant. A recovery plan also should address when and how the covered bank will notify persons within the organization and other external parties of its action under the recovery plan. The recovery plan should specifically identify how the covered bank will obtain required regulatory or legal approvals.

8. *Other information.* A recovery plan should include any other information that the OCC communicates in writing directly to the covered bank regarding the covered bank's recovery plan.

C. *Relationship to other processes; coordination with other plans.* The covered bank should integrate its recovery plan into its risk governance functions. The covered bank also should align its recovery plan with its other plans, such as its strategic; operational (including business continuity and resilience program); contingency; capital (including stress testing); liquidity; and resolution planning. The covered bank's recovery plan should be specific to that covered bank. The covered bank also should coordinate its recovery plan with any recovery and resolution planning efforts by the covered bank's holding company, so that the plans are consistent with and do not contradict each other.

D. *Testing.* Each covered bank should test its recovery plan periodically but not less than annually. The test should validate the effectiveness of the recovery plan, including each element set forth in paragraph II.B. of this appendix. Each covered bank should revise its recovery plan as appropriate following completion of the test.

* * * * *

Michael J. Hsu,

Acting Comptroller of the Currency.

[FR Doc. 2024-13960 Filed 7-2-24; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-1881; Project Identifier MCAI-2024-00160-T]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A350-941 and -1041 airplanes. This proposed AD was prompted by reports that engine nacelle anti-icing (NAI) forward bulkheads have been found with elongated locating holes. This proposed AD would require a one-time detailed inspection of the engine NAI forward bulkhead locating holes for elongation and loose fasteners and applicable corrective actions, and would also prohibit the installation of affected parts under certain conditions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 19, 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-2024-1881; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website ad.easa.europa.eu. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-1881.

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

FOR FURTHER INFORMATION CONTACT: Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7317; email dat.v.le@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2024-1881; Project Identifier MCAI-2024-00160-T" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](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 NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such

marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7317; email dat.v.le@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2024-0060R1, dated April 16, 2024 (EASA AD 2024-0060R1) (also referred to as the MCAI), to correct an unsafe condition on all Airbus SAS Model A350-941 and -1041 airplanes. The MCAI states that certain engine NAI forward bulkheads may have elongated locating holes. These holes are used in the manufacturing process and closed with fasteners before delivery. It has been determined that these fasteners, if loose, may vibrate and cause further elongation of the locating holes, which, eventually, can reduce the NAI performance. This condition, if not detected and corrected, could lead to the undetected loss of NAI protection on both engines, possibly resulting in loss of control of the airplane.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-1881.

Related Material Under 1 CFR Part 51

EASA AD 2024-0060R1 specifies procedures for a one-time detailed inspection of the engine NAI forward bulkhead location holes for discrepancies, including elongation and

loose fasteners. Depending on the inspection results, EASA AD 2024-0060R1 also specifies corrective action, including obtaining and following instructions if any discrepancy is identified. EASA AD 2024-0060R1 also requires reporting of the inspection results to Collins Aerospace. EASA AD 2024-0060R1 also prohibits the installation of an affected part on any airplane unless it is a serviceable part and is inspected before installation. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2024-0060R1 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under "Differences Between this NPRM and the MCAI."

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA)

ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2024-0060R1 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2024-0060R1 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2024-0060R1 does not mean that operators need comply only with that section. For example, where the AD requirement refers to "all required actions and compliance times," compliance with this AD requirement is not limited to the section titled "Required Action(s) and Compliance Time(s)" in EASA AD 2024-0060R1. Material required by EASA AD 2024-0060R1 for compliance will be available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-1881 after the FAA final rule is published.

Differences Between This NPRM and the MCAI

EASA AD 2024-0060R1 requires to report inspection results (including no findings) to Collins Aerospace, and this proposed AD would not require reporting the inspection results because the root cause is known, and additional data obtained from operators would not provide information to suggest different or additional rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 31 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
7.5 work-hours × \$85 per hour = \$638	\$10	\$648	\$20,088

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed 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

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

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2024–1881; Project Identifier MCAI–2024–00160–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 19, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Unsafe Condition

This AD was prompted by reports that engine nacelle anti-icing (NAI) forward bulkheads may have elongated locating holes. The FAA is issuing this AD to address elongated locating holes. The unsafe condition, if not addressed, could result in the fasteners, if loose, to vibrate and cause further elongation of the locating holes, which, eventually, can reduce the NAI performance. This condition, if not detected and corrected, could lead to the undetected loss of NAI protection on both engines, possibly resulting in loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2024–0060R1, dated April 16, 2024 (EASA AD 2024–0060R1).

(h) Exceptions to EASA AD 2024–0060R1

(1) Where EASA AD 2024–0060R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2024–0060R1 specifies if “any discrepancy is detected, before next flight, contact Collins Aerospace for approved corrective action instructions and, within the compliance time identified therein accomplish those instructions accordingly,” this AD requires replacing that text with if “any discrepancy is detected, the discrepancy must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.”

(3) This AD does not adopt the “Remarks” section of EASA AD 2024–0060R1.

(i) No Reporting Required

Although EASA AD 2024–0060R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional 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 of the International Validation Branch, mail it to the address identified in paragraph (k) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. 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 EASA; or Airbus SAS’s EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (h)(2) of this AD, if any material contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email dat.v.le@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2024–0060R1, dated April 16, 2024.

(ii) [Reserved]

(3) For EASA AD 2024–0060R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, 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 June 27, 2024.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–14566 Filed 7–2–24; 8:45 am]

BILLING CODE 4910–13–P

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

[Docket No. FAA–2024–1702; Project Identifier MCAI–2024–00067–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–25–14, which applies to all Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2021–25–14 requires repetitive inspections for cracking at the wing manhole access panel attachment holes at certain wing skin panels, and corrective action if necessary. Since the FAA issued AD 2021–25–14, new investigation results identified that the applicability of these inspections must be expanded to all airplanes in an affected configuration, and the associated compliance time must be adapted to these respective configurations. In addition, further investigation results found that the post-repair inspection program tasks in accordance with the Structural Repair Manual for the affected area were inadequate. This proposed AD would continue to require the actions in AD 2021–25–14 and would require expanding the applicability to include New Engine Option (NEO) airplanes and accomplishment of the required actions within updated compliance times, as applicable to airplane configuration, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 19, 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*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–1702; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the EASA ADs identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2024–1702.

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

FOR FURTHER INFORMATION CONTACT:

Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 817–222–5102; email: *Timothy.P.Dowling@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2024–1702; Project Identifier MCAI–2024–00067–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal

information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 817–222–5102; email: *Timothy.P.Dowling@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–25–14, Amendment 39–21858 (86 FR 72171, December 21, 2021) (AD 2021–25–14), for all Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2021–25–14 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0256, dated November 16, 2021, to correct an unsafe condition.

AD 2021–25–14 requires repetitive inspections at the wing manhole access panel attachment holes at certain wing skin panels on airplanes with Sharklets or its structural reinforcements installed for cracking of the area, and corrective action if necessary. The FAA issued AD 2021–25–14 to address this condition, which could lead to crack propagation, possibly resulting in the reduced structural integrity of the wings.

Actions Since AD 2021–25–14 Was Issued

Since the FAA issued AD 2021–25–14, EASA superseded EASA AD 2021–

0256 and issued EASA AD 2024–0027, dated January 25, 2024 (EASA AD 2024–0027) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. Additionally, Airbus SAS Model A321–100 series airplanes were inadvertently included in EASA AD 2021–0256, and also in corresponding AD 2021–25–14, despite the Sharklet device not being installed on these airplanes. This AD affects airplanes that have the Sharklet device installed. Therefore, Model A321–100 series airplanes should not have been included in EASA AD 2021–0256 and was corrected with the issuance of EASA AD 2024–0027, and therefore not included in the applicability of this proposed AD. The MCAI states new investigation results highlighted that these inspections must be applied to all models of A319, A320 and A321 airplanes in an affected configuration, and the associated compliance time must be adapted to these configurations. It has been determined that fatigue cracking may occur in affected areas on airplanes having Sharklets installed during production or in service. This condition, if not detected and corrected, could lead to crack initiation and propagation, possibly resulting in reduced structural integrity of the wings.

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:

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1702.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2021–25–14, this proposed AD would retain all of the requirements of AD 2021–25–14. Those requirements are referenced in EASA AD 2024–0027, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2024–0027 specifies procedures for repetitive detailed visual inspections of the affected areas, and applicable corrective actions. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA’s Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would retain all requirements of AD 2021–25–14. This proposed AD would require accomplishing the actions specified in

EASA AD 2024–0027 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2024–0027 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2024–0027 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2024–0027 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2024–0027. Service information required by EASA AD 2024–0027 for compliance will be available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1702 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,650 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
14 work-hours × \$85 per hour = \$1,190	\$0	\$1,190	\$1,963,500 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this proposed AD.

Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and

procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism

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

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive (AD) 2021–25–14, Amendment 39–21858 (86 FR 72171, December 21, 2021); and
 - b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2024–1702; Project Identifier MCAI–2024–00067–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 19, 2024.

(b) Affected ADs

This AD replaces AD 2021–25–14, Amendment 39–21858 (86 FR 72171, December 21, 2021) (AD 2021–25–14).

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (3) of this AD and certificated in any category.

(1) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(2) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, –273N airplanes.

(3) Model A321–211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by new investigation results that identified that these inspections must be applied to all models of A319, A320 and A321 airplanes in an affected configuration, and the associated compliance time must be adapted to these configurations. The FAA is issuing this AD to address fatigue cracking that may occur in affected areas on airplanes having Sharklets installed during production or in service. The unsafe condition, if not addressed, could result in crack initiation and propagation, possibly resulting in reduced structural integrity of the wings.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2024–0027, dated January 25, 2024 (EASA AD 2024–0027).

(h) Exceptions to EASA AD 2024–0027

(1) Where EASA AD 2024–0027 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2024–0027 specifies “if, during any inspection as required by paragraph (1) of this AD, any discrepancy is detected as defined in the [Airbus Alert Operators Transmission] AOT, before next flight, contact Airbus for approved repair instructions and, within the compliance time specified therein, accomplish those instructions accordingly,” this AD requires replacing that text with “if any cracking is detected, the cracking must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.”

(3) This AD does not adopt paragraph (4) of EASA AD 2024–0027.

(4) This AD does not adopt the “Remarks” section of EASA AD 2024–0027.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2024–0027 specifies to submit certain information [and send removed parts] to the manufacturer, this AD does not include that requirement.

(j) Additional 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 of the International Validation Branch, mail it to the address identified in paragraph (k) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office. (ii) AMOCs approved previously for AD 2021–25–14 are approved as AMOCs for the corresponding provisions of EASA AD 2024–0027 that are required by paragraph (g) of this AD.

(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 EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraphs (i) and (j)(2) of this AD, if any service information referenced in EASA AD 2024–0027 that contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified 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 instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 817–222–5102; email: Timothy.P.Dowling@faa.gov.

(l) 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) European Union Aviation Safety Agency (EASA) AD 2024–0027, dated January 25, 2024.

(ii) [Reserved]

(3) For EASA AD 2024–0027, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find these EASA ADs on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational

Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material 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 June 25, 2024.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–14438 Filed 7–2–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1703; Project Identifier MCAI–2023–01054–T]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Airbus Canada Limited Partnership Model BD–500–1A11 *airplanes*. This proposed AD was prompted by a design review of aircraft structural and stress reports that resulted in a revision of operational loads for some aircraft flight phases. This proposed AD would require using a certain version of the aircraft structural repair manual (ASRP) and a review and disposition of repairs based on previous versions, as specified in a Transport Canada AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 19, 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. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

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

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

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2024–1703; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca. You may find this material on the Transport Canada website at tc.canada.ca/en/aviation. It is also available at regulations.gov under Docket No. FAA–2024–1703.

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

FOR FURTHER INFORMATION CONTACT: Deep Gaurav, 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:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2024–1703; Project Identifier MCAI–2023–01054–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other

information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to regulations.gov, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

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

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–70, dated October 5, 2023 (Transport Canada AD CF–2023–70) (also referred to as the MCAI), to correct an unsafe condition for all Airbus Canada Limited Partnership Model BD–500–1A11 airplanes. The MCAI states that a design review of aircraft structural and stress reports for model BD–500–1A10 and BD–500–1A11 airplanes has resulted in a revision of operational loads for some aircraft flight phases, affecting certain aircraft sections. As a result, repairs and damage assessments accomplished on aircraft to date may have exceeded the available structural margins and require review to ensure they comply with the revised stress data for the affected sections. The MCAI also states that Transport Canada AD CF–2023–37, dated May 30, 2023, mandates that ASRP 136.01 or later approved versions, or Airbus Canada source data approved at the time of the disposition, is to be used for any new structural assessments, repairs and dispositions

for all model BD-500-1A10 and model BD-500-1A11 airplanes. The MCAI mandates the review and disposition of all repairs and damage assessments for affected structure and prohibits the use of previously authorized repairs as source data to generate new repairs for affected structure for model BD-500-1A11 airplanes.

The FAA is proposing this AD to address in-service repairs in some structural areas that require verification, and possibly further repair, because, if not addressed, they can cause negative margins for the load envelopes.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA-2024-1703.

Related Service Information Under 1 CFR Part 51

Transport Canada AD CF-2023-70 specifies procedures for additional corrective action for model BD-500-1A11 airplanes to review and disposition all repairs and damage assessments and prohibits the use of certain previously authorized repairs as source data to generate new repairs for affected structure. This material is reasonably available because the interested parties have access to it

through their normal course of business or by the means identified in

ADDRESSES.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in Transport Canada AD CF-2023-70 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD

process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate Transport Canada AD CF-2023-70 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with Transport Canada AD CF-2023-70 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by Transport Canada AD CF-2023-70 for compliance will be available at *regulations.gov* under Docket No. FAA-2024-1703 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 71 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × \$85 per hour = \$170	\$0	\$170	\$12,070

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this proposed AD.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed 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

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative,

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP);

Bombardier, Inc.): Docket No. FAA–2024–1703; Project Identifier MCAI–2023–01054–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 19, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A11 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 51, Standard practices/structures.

(e) Unsafe Condition

This AD was prompted by a design review of aircraft structural and stress reports that resulted in a revision of operational loads for some aircraft flight phases, affecting certain aircraft sections. The FAA is issuing this AD to address in-service repairs in some structural areas that require verification, and possibly further repair. The unsafe condition, if not addressed, could result in negative margins for the load envelopes.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2023–70, dated October 5, 2023 (Transport Canada AD CF–2023–70).

(h) Exception to Transport Canada AD CF–2023–70

(1) Where Transport Canada AD CF–2023–70 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph B. of Part I of Transport Canada AD CF–2023–70 specifies operators may use Airbus Canada source data, for this AD, any repair using Airbus Canada source data must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada; or Airbus Canada Limited Partnership's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(3) Where the definition of "Affected Structure" in Transport Canada AD CF–2023–70 specifies "as identified in Service Bulletin (SB) BD500–530012, Issue 001, dated 13 September 2023 or later revisions approved by the Chief, Continuing Airworthiness, Transport Canada," this AD requires replacing that text with "as identified in Airbus Canada Service Bulletin (SB) BD500–530012, Issue 001, dated September 13, 2023."

(i) Additional 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 of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD. Information may be emailed to: 9-AVS-NYACO-COS@faa.gov. 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 Airbus Canada Limited Partnership's Transport Canada DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

For more information about this AD, contact Deep Gaurav, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@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 this AD specifies otherwise.

(i) Transport Canada AD CF–2023–70, dated October 5, 2023.

(ii) [Reserved]

(3) For Transport Canada AD CF–2023–70, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca. You may find this Transport Canada AD on the Transport Canada website at tc.canada.ca/en/aviation.

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

(5) You may view this material 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 June 26, 2024.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–14522 Filed 7–2–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1882; Project Identifier AD–2024–00227–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SP, and 747SR series airplanes. This proposed AD was prompted by a report indicating cracks at eight fastener hole locations in the fuselage skin lap splice between certain stations (STAs) at certain stringers. This proposed AD would require repetitive inspections of the upper fastener row of the fuselage skin lap splice in a certain area for any crack, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 19, 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. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

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

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

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2024–1882; or in person at

Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the material, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd, MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; website myboeingfleet.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov under Docket No. FAA-2024-1882.

FOR FURTHER INFORMATION CONTACT:

Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3964; email: Stefanie.N.Roesli@faa.gov

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2024-1882; Project Identifier AD-2024-00227-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to regulations.gov, including any personal

information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3964; email: Stefanie.N.Roesli@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report that cracking was found at eight fastener hole locations in the fuselage skin lap splice between STAs 1450 and 1470 at stringers S-23L and S-23R on a Boeing Model 747-400 series airplane that had completed 128,792 flight hours and 25,581 flight cycles when the cracks were discovered. The maximum crack length discovered was 0.946 inch. After this report was received, the Boeing Company did a high frequency eddy current inspection on the Boeing Model 747-100 fatigue test airplane and found cracks on the countersink area of the fastener holes on the lap splice between STAs 1416 and 1480 at stringers S-23L and S-23R. The maximum crack length

discovered was 0.10 inch. The Boeing Model 747-100 fatigue test airplane had completed the equivalent of 45,000 flight cycles. Cracking in the fuselage skin lap splice, if not addressed, could result in an in-flight rapid decompression and a loss of structural integrity of the fuselage.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Material Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747-53A2912 RB, dated April 5, 2024. This material specifies procedures for repetitive external surface high frequency eddy current inspections of the upper fastener row of the fuselage skin lap splice between STAs 1350 and 1480 at stringers S-23L and S-23R for any crack, and applicable on-condition actions. On-condition actions include obtaining and following repair instructions.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this material at regulations.gov under Docket No. FAA-2024-1882.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 170 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	8 work-hours × \$85 per hour = \$680 per inspection cycle.	\$0	\$680 per inspection cycle	\$115,600 per inspection cycle

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2024–1882; Project Identifier AD–2024–00227–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 19, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SP, and 747SR series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report indicating cracks at eight fastener hole locations in the fuselage skin lap splice between stations (STAs) 1450 and 1470 at stringers S–23L and S–23R. The FAA is issuing this AD to detect and correct cracking of the upper fastener row of the fuselage skin lap splice between STAs 1350 and 1480 at stringers S–23L and S–23R. The unsafe condition, if not addressed, could result in an in-flight rapid decompression and a loss of structural integrity of the fuselage.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–53A2912, dated April 5, 2024, which is referred to in Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024.

(h) Exceptions to Service Information Specifications

(1) Where the Condition and Boeing Recommended Compliance Time columns of the tables in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024, refer to “the Original Issue date of the Requirements Bulletin 747–53A2912 RB,” this AD requires using the effective date of this AD.

(2) Where Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the

authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards 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 Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, 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.

(j) Related Information

(1) For more information about this AD, contact Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: Stefanie.N.Roesli@faa.gov.

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (k)(3) this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024.

(ii) [Reserved]

(3) For Boeing material, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd. MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

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

(5) You may view this material 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 June 27, 2024.

Suzanne Masterson,
Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–14608 Filed 7–2–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 100**

[Docket Number USCG–2024–0359]

RIN 1625–AA08

Special Local Regulation; San Jacinto River, Houston, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish special local regulations to provide for the safety of life on certain waters of the San Jacinto River, in Houston, TX. These regulations would be enforced during a high-speed boat race every third weekend in July. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Houston-Galveston or Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 18, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0359 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Rudy Ortega, Sector Houston-Galveston Waterways Management Division, U.S. Coast Guard; telephone 713–398–5823, email houstonwvm@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Table of Abbreviations**

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

II. Background, Purpose, and Legal Basis

On April 18, 2024, an organization notified the Coast Guard that it will be conducting their first high speed boat race from 10 a.m. to 6 p.m. on July 20 and July 21, 2024. The boat race is to be

held in the navigable waters of San Jacinto River, Houston, TX. The Captain of the Port Houston-Galveston (COTP) has determined that potential hazards associated with the power boat race will be a safety concern for anyone within the Pre-Stage Zone, Approach Zone, Course Run Zone, and Shut-Down Zone before, during, and after the scheduled event. This proposed rule would add a recurring marine event requiring a special local regulation to TABLE 3 of 33 CFR 100.801—Sector Houston-Galveston Annual and Recurring Marine Events.

The purpose of this rulemaking is to protect personnel, vessels, and the marine environment in the navigable waters within the Pre-Stage Zone, Approach Zone, Course Run Zone, and Shut-Down Zone before, during, and after the power boat race in San Jacinto River, Houston, TX. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a special local regulation from 10 a.m. to 6 p.m., daily, on July 20 and July 21, 2024. The special local regulation will encompass five different zones to include the Pre-Stage Zone, Approach Zone, Course Run Zone, Shut-Down Zone, and the Spectator Zone as described below:

Pre-Stage Zone: This is the pre-staging area for participating vessels to line up. It will include all waters within 150 ft of 29°53′29.0148″ N, 095°06′39.4416″ W.

Approach Zone: 200 ft distance required for participating vessels to obtain the minimum 40 mph requirement for course entry. This will be a straight line to begin at approximately 29°53′27.3″ N, 95°06′42.6″ W and end at approximately 29°53′27.6″ N, 95°06′40.0″ W.

Course Run Zone: 600 ft distance where participating vessels will conduct their high-speed run. This will be a straight line to begin at approximately 29°53′27.6″ N, 95°06′40.0″ W and end at approximately 29°53′30.0″ N, 95°06′34.7″ W.

Shut-Down Zone: 900 ft distance where participating vessels will be allowed to slow their speeds back to an idle. This will be a straight line to begin at approximately 29°53′30.0″ N, 95°06′34.7″ W and end at approximately 29°53′34.3″ N, 95°06′24.1″ W.

Spectator Zone: All vessels that will be viewing the event will be required to stay within a designated area. The sponsor is responsible for monitoring the spectator zone and ensuring that all vessels within the area are anchored and remain in the area during all ongoing

high-speed runs. The following coordinates are the approximate location of the Spectator Zone: 29°53′29.4″ N, 95°06′39.8″ W, thence to 29°53′28.5″ N, 95°06′39.6″ W, thence to 29°53′29.7″ N, 95°06′36.9″ W, thence to 29°53′30.4″ N, 95°06′37.2″ W.

No vessel or person would be permitted to enter the established zones without obtaining permission from the on-water Safety-Officer or designated representative.

The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Houston-Galveston in the enforcement of the regulated areas.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time of day of this special local regulation. Vessel traffic will be able to safely transit around this safety zone, which would impact a small, designated area of the San Jacinto River, for a short duration, when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners about the zone via VHF–FM marine channel 16, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not

have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a marine event and special local regulation lasting only 9 hours that would prohibit entry within 150 feet of the boat course. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment

applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2024–0359 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a “Subscribe” option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. In § 100.801, amend Table 3, by adding item 8 to read as follows:

§ 100.801 Annual Marine Events in the Eighth Coast Guard District.

* * * * *

TABLE 3 OF § 100.801—SECTOR HOUSTON-GALVESTON ANNUAL AND RECURRING MARINE EVENTS

* 8. 3rd Saturday and Sunday of July.	* Shootout on the San Jac Boat Race.	* San Jacinto River, Houston, TX.	* All waters within 150 feet of the following area: 29°53'29.0148" N, 095°06'39.4416" W; the Approach Zone comprised of a straight line to begin at approximately 29°53'27.3" N, 95°06'42.6" W and end at approximately 29°53'27.6" N, 95°06'40.0" W; the Course Run Zone comprised of a straight line to begin at approximately 29°53'27.6" N, 95°06'40.0" W and end at approximately 29°53'30.0" N, 95°06'34.7" W; the Shut-Down Zone comprised of a straight line to begin at approximately 29°53'30.0" N, 95°06'34.7" W and end at approximately 29°53'34.3" N, 95°06'24.1" W; and the Spectator Zone located within the following coordinates; 29°53'29.4" N, 95°06'39.8" W, thence to 29°53'28.5" N, 95°06'39.6" W, thence to 29°53'29.7" N, 95°06'36.9" W, thence to 29°53'30.4" N, 95°06'37.2" W.

Keith M. Donohue,
Captain, U.S. Coast Guard, Captain of the
Port Sector Houston-Galveston.

[FR Doc. 2024–14334 Filed 7–2–24; 8:45 am]

BILLING CODE 9110–04–P

**DEPARTMENT OF HOMELAND
SECURITY****Coast Guard****33 CFR Part 100**

[Docket Number USCG–2024–0244]

RIN 1625–AA08

**Special Local Regulations; Recurring
Marine Events, Sector St. Petersburg**

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise existing regulations by updating the dates of existing events in the Seventh Coast Guard District Captain of the Port (COTP) St. Petersburg. This action is necessary to provide for the safety of life on these navigable waters in Sarasota and St. Petersburg, FL. Through this notice the current list of recurring special local regulations is updated with the revisions to two existing events. When these special local regulations are enforced, certain restrictions are placed on marine traffic in specified areas. The Coast Guard invites your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 2, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0244 using the Federal Decision-Making Portal at [https://](https://www.regulations.gov)

www.regulations.gov. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician First Class Mara J. Brown, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email Mara.J.Brown@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Table of Abbreviations**

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

II. Background, Purpose, and Legal Basis

The Coast Guard proposes to amend the Recurring Marine Events in the geographic boundaries of the Seventh Coast Guard District Captain of the Port (COTP) St. Petersburg Zone that are listed in 33 CFR 100.703, Table 1 to § 100.703. The proposed rule would ensure that the public is informed of the most up to date recurring special local regulations. The current list under § 100.703, Table 1 to § 100.703 requires amendments to two existing special local regulations. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters, during, and after the scheduled events. The Coast Guard is proposing this

rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

This rule proposes to make the following changes in 33 CFR 100.703, Table 1 to § 100.703:

1. Revise Line No. 4, to reflect a date and time change to “One weekend (Friday, Saturday, and Sunday) in September Time (Approximate): 8:00 a.m. to 6:00 p.m.”

2. Revise Line No. 5, to reflect a date and time change to “One weekend (Friday, Saturday, and Sunday) in October Time (Approximate): 8:00 a.m. to 6:00 p.m. Marine events listed in Table 1 to § 100.703 are listed as recurring over a particular time, during each month and each year. Exact dates are intentionally omitted since calendar dates for specific events change from year to year. Once dates for a marine event are known, the Coast Guard notifies the public it intends to enforce the special local regulation through various means including a notice of enforcement published in the **Federal Register**, Local Notice to Mariners, and Broadcast Notice to Mariners.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits.

This NPRM has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the special local regulations. These areas are limited in size and duration, and usually do not affect high vessel traffic areas. Moreover, the Coast Guard would provide advance notice of the regulated areas to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners via VHF-FM marine channel 16, and the rule would allow vessels to seek permission to enter the regulated area.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about

this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination

that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves revising an existing recurring event to reflect a date and time change for the event. Normally such actions are categorically excluded from further review under paragraphs L61 in Table 3–1 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1, because it involves a revised special local regulation related to a marine event permit for marine parades, regattas, and other marine events. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2024–0244 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by

following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a “Subscribe” option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

- 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

- 2. In § 100.703, revise Table 1 to read as follows:

* * * * *

TABLE 1 TO § 100.703—SPECIAL LOCAL REGULATIONS; RECURRING MARINE EVENTS, SECTOR ST. PETERSBURG

Date/time	Event/sponsor	Location	Regulated area
1. One Saturday in January; Time (Approximate): 11:30 a.m. to 2 p.m.	Gasparilla Invasion and Parade/ Ye Mystic Krewe of Gasparilla.	Tapa, Florida	Location: A regulated area is established consisting of the following waters of Hillsborough Bay and its tributaries north of 27°51'18" N and south of the John F. Kennedy Bridge: Hillsborough Cut “D” Channel, Seddon Channel, Sparkman Channel and the Hillsborough River south of the John F. Kennedy Bridge. Additional Regulation: (1) Entrance into the regulated area is prohibited to all commercial marine traffic from 9 a.m. to 6 p.m. EST on the day of the event. (2) The regulated area will include a 100 yard Safety Zone around the vessel JOSE GASPARI while docked at the Tampa Yacht Club until 6 p.m. EST on the day of the event. (3) The regulated area is a “no wake” zone. (4) All vessels within the regulated area shall stay 50 feet away from and give way to all officially entered vessels in parade formation in the Gasparilla Marine Parade. (5) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage. (6) Jet skis and vessels without mechanical propulsion are prohibited from the parade route. (7) Vessels less than 10 feet in length are prohibited from the parade route unless capable of safely participating. (8) Vessels found to be unsafe to participate at the discretion of a present Law Enforcement Officer are prohibited from the parade route. (9) Northbound vessels in excess of 65 feet in length without mooring arrangement made prior to the date of the event are prohibited from entering Seddon Channel unless the vessel is officially entered in the Gasparilla Marine Parade. (10) Vessels not officially entered in the Gasparilla Marine Parade may not enter the parade staging area box within the following coordinates: 27°53'53" N, 082°27'47" W; 27°53'22" N, 082°27'10" W; 27°52'36" N, 082°27'55" W; 27°53'02" N, 082°28'31" W.
2. One Saturday in February; Time (Approximate): 9:00 a.m. to 9:00 p.m.	Bradenton Area River Regatta/ City of Bradenton.	Bradenton, FL	Location(s) Enforcement Area #1. All waters of the Manatee River between the Green Bridge and the CSX Train Trestle contained within the following points: 27°30'43" N, 082°34'20" W, thence to position 27°30'44" N, 082°34'09" W, thence to position 27°30'00" N, 082°34'04" W, thence to position 27°29'58" N, 082°34'15" W, thence back to the original position, 27°30'43" N, 082°34'20" W. Enforcement Area #2. All waters of the Manatee River contained within the following points: 27°30'35" N, 082°34'37" W, thence to position 27°30'35" N, 082°34'26" W, thence to position 27°30'26" N, 082°34'26" W, thence to position 27°30'26" N, 082°34'37" W, thence back to the original position, 27°30'35" N, 082°34'37" W.
3. One weekend (Friday, Saturday, and Sunday) in March; Time (Approximate): 8:00 a.m. to 5:00 p.m.	Gulfport Grand Prix/Gulfport Grand Prix LLC.	Gulfport, FL	Location(s): (1) Race Area. All waters of Boca de Ciego contained within the following points: 27°44'10" N, 082°42'29" W, thence to position 27°44'07" N, 082°42'40" W, thence to position 27°44'06" N, 082°42'40" W, thence to position 27°44'04" N, 082°42'29" W, thence to position 27°44'07" N, 082°42'19" W, thence to position 27°44'08" N, 082°42'19" W, thence back to the original position, 27°44'10" N, 082°42'29" W. (2) Buffer Zone. All waters of Boca de Ciego encompassed within the following points: 27°44'10" N, 082°42'47" W, thence to position 27°44'01" N, 082°42'44" W, thence to position 27°44'01" N, 082°42'14" W, thence to position 27°44'15" N, 082°42'14" W.
4. One weekend (Friday, Saturday and Sunday) in September; Time (Approximate): 8:00 a.m. to 6:00 p.m.	Sarasota Powerboat Grand Prix/ Powerboat P–1 USA, LLC.	Sarasota, FL	Location: All waters of the Gulf of Mexico contained within the following points: 27°18'44" N, 082°36'14" W, thence to position 27°19'09" N, 082°35'13" W, thence to position 27°17'42" N, 082°34'00" W, thence to position 27°16'43" N, 082°34'49" W, thence back to the original position, 27°18'44" N, 082°36'14" W.

TABLE 1 TO § 100.703—SPECIAL LOCAL REGULATIONS; RECURRING MARINE EVENTS, SECTOR ST. PETERSBURG—Continued

Date/time	Event/sponsor	Location	Regulated area
5. One weekend (Friday, Saturday and Sunday) in October; Time (Approximate): 8:00 a.m. to 6:00 p.m.	St.Petersburg Powerboat Grand Prix.	St. Petersburg, FL ..	<i>Location:</i> All waters of the Tampa Bay encompassed within the following points: 27°46'56.22" N, 082°36'55.50" W, thence to position 27°47'08.82" N, 082°34'33.24" W, thence to position 27°46'06.96" N, 082°34'29.04" W, thence to position 27°45'59.22" N, 082°37'02.88" W, thence back to the original position 27°46'24.24" N, 082°37'30.24" W.
6. One weekend (Saturday and Sunday) in September; Time (Approximate): 8:00 a.m. to 4:00 p.m.	Clearwater Offshore Nationals/ Race World Offshore.	Clearwater, FL	<i>Locations:</i> (1) <i>Race Area.</i> All waters of the Gulf of Mexico contained within the following points: 27°58'34" N, 82°50'09" W, thence to position 27°58'32" N, 82°50'02" W, thence to position 28°00'12" N, 82°50'10" W, thence to position 28°00'13" N, 82°50'10" W, thence back to the original position, 27°58'34" N, 82°50'09" W. (2) <i>Spectator Area.</i> All waters of Gulf of Mexico seaward no less than 150 yards from the race area and as agreed upon by the Coast Guard and race officials. (3) <i>Enforcement Area.</i> All waters of the Gulf of Mexico encompassed within the following points: 28°58'40" N, 82°50'37" W, thence to position 28°00'57" N, 82°49'45" W, thence to position 27°58'32" N, 82°50'32" W, thence to position 27°58'23" N, 82°49'53" W, thence back to position 28°58'40" N, 82°50'37" W.
7. One Thursday, Friday, and Saturday in October; Time (Approximate): 10:00 a.m. to 5:00 p.m.	Roar Offshore/OPA Racing LLC ..	Fort Myers Beach, FL.	<i>Locations:</i> All waters of the Gulf of Mexico west of Fort Myers Beach contained within the following points: 26°26'27" N, 081°55'55" W, thence to position 26°25'33" N, longitude 081°56'34" W, thence to position 26°26'38" N, 081°58'40" W, thence to position 26°27'25" N, 081°58'8" W, thence back to the original position 26°26'27" N, 081°55'55" W.
8. One weekend (Friday, Saturday, and Sunday) in November; Time (Approximate): 8:00 a.m. to 6:00 p.m.	OPA World Championships/Englewood Beach Waterfest.	Englewood Beach, FL.	<i>Locations:</i> (1) <i>Race Area.</i> All waters of the Gulf of Mexico contained within the following points: 26°56'00" N, 082°22'11" W, thence to position 26°55'59" N, 082°22'16" W, thence to position 26°54'22" N, 082°21'20" W, thence to position 26°54'24" N, 082°21'16" W, thence to position 26°54'25" N, 082°21'17" W, thence back to the original position, 26°56'00" N, 082°21'11" W. (2) <i>Spectator Area.</i> All waters of the Gulf of Mexico contained with the following points: 26°55'33" N, 082°22'21" W, thence to position 26°54'14" N, 082°21'35" W, thence to position 26°54'11" N, 082°21'40" W, thence to position 26°55'31" N, 082°22'26" W, thence back to position 26°55'33" N, 082°22'21" W. (3) <i>Enforcement Area.</i> All waters of the Gulf of Mexico encompassed within the following points: 26°56'09" N, 082°22'12" W, thence to position 26°54'13" N, 082°21'03" W, thence to position 26°53'58" N, 082°21'43" W, thence to position 26°55'56" N, 082°22'48" W, thence back to position 26°56'09" N, 082°22'12" W.
*	*	*	*

Dated: June 11, 2024.

Michael P. Kahle,

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

[FR Doc. 2024-14245 Filed 7-2-24; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2023-0648; FRL-11992-01-R6]

Air Plan Approval; New Mexico; Periodic Emission Inventory SIP for the Sunland Park Nonattainment Area for the 2015 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the

Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions related to the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) for the Sunland Park New Mexico marginal nonattainment area.

DATES: Written comments must be received on or before August 2, 2024.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2023-0648, at <https://www.regulations.gov> or via email to salem.nevine@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Nevine Salem, 214-665-7222, salem.nevine@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Nevine Salem, EPA Region 6 Office,

Infrastructure and Ozone Section, 214–665–7222, salem.nevine@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

Ozone is a gas that is formed by the reaction of Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NOX) in the atmosphere in the presence of sunlight. Therefore, an emission inventory for ozone focuses on the emissions of VOC and NOX referred to as ozone precursors. These precursors (VOC and NOX) are emitted by many types of pollution sources, including point sources such as power plants and industrial emissions sources; on-road and off-road mobile sources (motor vehicles and engines); and smaller residential and commercial sources, such as dry cleaners, auto body shops, and household paints, collectively referred to as nonpoint sources (also called area sources).

1. The 2015 Ozone NAAQS

On October 1, 2015, the EPA revised both the primary and secondary NAAQS¹ for ozone from concentration level of 0.075 part per million (ppm) to 0.070 ppm to provide increased protection of public health and the environment (80 FR 65296, October 26, 2015). The 2015 8-hour ozone NAAQS retains the same general form and averaging time as the 0.075 ppm NAAQS set in 2008 NAAQS but is set at a more protective level. Specifically, the 2015 8-hour ozone NAAQS is attained when the 3-year average of the

annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.07 ppm.²

On March 9, 2018 (83 FR 10376), the EPA published the Classifications Rule that establishes how the statutory classifications will apply for the 2015 8-hr ozone NAAQS, including the air quality thresholds for each classification category and attainment deadline associated with each classification.

On June 4, 2018, the EPA classified the Sunland Park area in southern Doña Ana County, New Mexico as a marginal nonattainment area for 2015 ozone NAAQS with an attainment deadline of August 3, 2021. (See 83 FR 25776). Any state in which a marginal nonattainment area is located is required to submit certain SIP elements to the EPA in accordance with section 182(a) of the CAA.

2. Statutory and Regulatory Emission Inventory Requirements

An emission inventory of ozone is an estimation of actual emissions of air pollutants that contribute to the formation of ozone in an area. The emissions inventory provides emissions data for a variety of air quality planning tasks, including establishing baseline emission levels for calculating emission reduction targets needed to attain the NAAQS, determining emission inputs for ozone air quality modeling analyses, and tracking emissions over time to determine progress toward meeting Reasonable Further Progress (RFP) requirements.

CAA sections 182(a)(1) and 182(a)(3)(A) require submission of base year and periodic emissions inventories respectively for each ozone nonattainment area.³ States are required to submit a periodic inventory of emissions sources in the nonattainment areas to meet the requirements of CAA

182 (a)(3)(A), as specified in the Air Emissions Reporting Requirement (AERR) at 40 CFR part 51, subpart A. Each periodic inventory shall be submitted no later than the end of each 3-year period after the required submission of the base year inventory for the nonattainment area and this requirement shall apply until the area is redesignated to attainment. The emissions value included in the inventories shall be actual ozone season day emissions as defined by § 51.1300(q).⁴ These requirements allow the EPA, based on the states' progress in reducing emissions, to periodically reassess its policies and air quality standards and revise them as necessary. Most important, these inventories will be used to develop and assess new control strategies that states may use in attainment demonstration SIPs for the new NAAQS for ozone or other pollutants. The inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas, where the inventory plays an important role in modeling demonstrations for areas classified as nonattainment and outside transport regions.

II. State's Submittal

CAA Sections 182(a)(3) and 172(c)(3) require the periodic submission of emissions inventories for the SIP planning process to address SIP requirements applicable to ozone nonattainment areas in each classification category. The area of Sunland Park in southern Doña Ana County was classified as marginal nonattainment for the 2015 ozone NAAQS; initiating a two-year deadline to submit a baseline emissions inventory, followed by a periodic emission inventory every 3-years until the nonattainment area attains the standard (83 FR 25776). New Mexico Environmental Department (NMED's) baseline emissions inventory revisions SIP for the 2015 ozone NAA submittal was approved by EPA on April 6, 2022 (87 FR 12592).

⁴ See Implementation of 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements Rule (SRR) 83 FR 62998.

¹ The primary ozone standards provide protection for children, older adults, and people with asthma or other lung diseases, and other at-risk populations against an array of adverse health effects that include reduced lung function, increased respiratory symptoms and pulmonary inflammation; effects that contribute to emergency department visits or hospital admissions; and mortality. The secondary ozone standards protect against adverse effects to the public welfare, including those related to impacts on sensitive vegetation and forested ecosystems.

² For a detailed explanation of the calculation of the 3-year 8-hour average, see 80 FR 65292 and 40 CFR part 50, Appendix U.

³ For each nonattainment area, the state shall submit a base year inventory as defined by § 51.1300(p) to meet the emissions inventory requirement of CAA section 182(a)(1). This inventory shall be submitted no later than 24 months after the effective date of designation. The inventory year shall be selected consistent with the baseline year for the RFP plan as required by § 51.1310(b).

On December 20, 2023, NMED submitted SIP revisions that included the periodic emissions inventory for the Sunland Park Nonattainment area. The inventory was submitted to meet the CAA section 182(a)(3)(A) obligation to develop a periodic emission inventory every 3-years after their base year inventory until the nonattainment area is designated as attainment for the NAAQS. The State conducted a public comment period with a public hearing and the State did not receive any comment during the comment period or the hearing.

The inventory includes annual and ozone season daily emissions⁵ for the

2020 base year precursors NO_x and VOC emissions from different source categories. The source sector types include industrial and small point sources (*e.g.*, utilities), area nonpoint sources (*e.g.*, residential heating commercial cooking, surface coating, gasoline dispensing facilities, etc.), on-road mobile sources (*i.e.*, tailpipe exhaust), nonroad mobile sources (*e.g.*, lawn and garden equipment, construction, agricultural equipment, etc.), and fires (*e.g.*, wildfires, prescribed burnings).

The state submitted annual NO_x and VOC emissions in tons per year by sector for Sunland Park nonattainment

area as well as Doña Ana County emissions. The submittal also includes the NO_x and VOC emissions in tons per ozone season day by sector during a typical summer day.⁷ (reflective of the summer period, when the highest ozone concentrations are expected in the ozone nonattainment areas). Table 1 below shows annual NO_x emissions countywide (Doña Ana County), annual NO_x emissions Sunland Park Nonattainment Area (NAA), and Sunland Park Ozone season daily emissions. Table 2 shows the 2020 VOC annual emission by category for the Sunland Park ozone nonattainment areas.

TABLE 1—NO_x EMISSIONS SUNLAND PARK, DOÑA ANA COUNTY, NEW MEXICO

Source category	Doña Ana County emissions (tpy)	Sunland Park, NM nonattainment emissions (tpy)	Sunland Park, NM nonattainment area ozone season daily emissions (lb/day)
Point	1,155.22	740.6	4,046.99
Nonpoint Area	1,588.62	42.01	229.56
Onroad	3,590.66	111.04	606.78
Nonroad	430.87	10.49	57.32
Total	6,765.37	904.14	4,940.66

TABLE 2—VOC EMISSIONS SUNLAND PARK, DOÑA ANA COUNTY NEW MEXICO

Source category	Doña Ana County emissions (tpy)	Sunland Park, NM nonattainment area emissions (tpy)	Sunland Park, NM nonattainment area ozone season daily emissions (lb/day)
Point	114.84	41.78	228.31
Nonpoint Area	10,933.55	134.11	732.84
Onroad	1,206.00	25.41	138.85
Nonroad	311.27	7.92	43.28
Total	12,565.66	209.23	1,143.28

⁵ Ozone season day emissions means an average day's emissions for a typical ozone season work weekday. The state shall select, subject to EPA approval, the particular month(s) in the ozone season and the day(s) in the work week to be represented, considering the conditions assumed in the development of RFP plans and/or emissions budgets for transportation conformity.

⁶ Although the Ozone Season is defined for New Mexico as the entire year (January 1–December 31), as listed at Table D–3 to Appendix D of Part 58. Ozone Monitoring Season by state ([https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-58/appendix-Appendix D](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-58/appendix-Appendix%20D) to Part 58), for this inventory, NMED is focusing on the peak ozone

season emissions for the 3-month period from June 1 through August 31.

⁷ See Ozone season day emission as defined in 40 CFR 51.1300(q), <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-51/subpart-CC/section-51.1300>.

III. EPA's Evaluation

EPA has reviewed the New Mexico SIP revision for consistency with the CAA and regulatory periodic emissions inventory requirements. EPA also reviewed the techniques used by the state of New Mexico to derive and quality assure the emission estimates used in preparing the periodic emission inventory. New Mexico documented the procedures used to estimate the emissions for each of the four major inventory source types using 2020 National Emissions Inventory (NEI). The documentation of the emission estimation procedures was adequate for us to determine that New Mexico followed acceptable procedures to estimate the emissions. Quality Assurance (QA) checks were performed relative to data collection and analysis, and double counting of emissions from point, area, and mobile sources. QA/Quality Control checks were conducted to ensure accuracy of units, unit conversions, transposition of figures, and calculations.

New Mexico notified the public in both English and Spanish and offered the opportunity for comment and public hearing. A full record of public notices is included in the state's submittal. New Mexico did not receive any comments during the 30-day public comment period or request for public hearing. A copy of the New Mexico SIP revision submittal is available online at www.regulations.gov, Docket number EPA-R06–

VI. Proposed Action

Based on the EPA's review, the periodic year emissions inventory submitted by the state of New Mexico for Sunland Park ozone nonattainment area, and entire Doña Ana County include essential data elements, source categories, sample calculations, and report documentation in accordance with CAA sections 182(a)(3)(A) requirements, and has been developed in accordance with EPA guidance.⁸ Therefore, the EPA is proposing to approve the periodic emission inventory for Sunland Park 2015 ozone nonattainment area.

V. Environmental Justice Considerations

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within the

approximate 13.86 square miles contained in the portion of the ozone nonattainment area within Sunland Park, New Mexico. The complete report is available in the public docket for this action. The Environmental Justice Index for eight of the twelve EJScreen indicators exceed the 80th percentile in the United States; seven of the twelve EJScreen indicators exceed the 80th percentile in the State of New Mexico. Five of the twelve indicators exceed the 90th percentile in both the State of New Mexico and the United States, including indices for particulate matter 2.5, ozone, air toxics cancer risk, air toxics respiratory, and wastewater discharge. This analysis showed an approximate population of 17,408 residents based on the 2017–2021 Census. Within this area, EJScreen identified that approximately 95% of the population are people of color with 58% identified as low income. Additionally, approximately 34% of the population is linguistically isolated and 30% of the population has less than a high school education.

This proposed action is to approve the periodic emission inventory for Sunland Park 2015 ozone nonattainment area, in which updated air emissions data in the National Emissions Inventory (NEI) is available on EPA public web page.⁹ This proposed action is not anticipated to have a disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

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

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

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not 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.
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”
- The New Mexico Environmental Department did not evaluate environmental justice considerations as part of its SIP revision submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this

⁸ See: Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations (epa.gov) May 2017, https://www.epa.gov/sites/default/files/2017-07/documents/ei_guidance_may_2017_final_rev.pdf.

⁹ National Emissions Inventory (NEI) | US EPA, <https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei>.

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. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: June 25, 2024.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2024–14434 Filed 7–2–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2024–0286; FRL–12046–01–R7]

Air Plan Partial Approval and Partial Disapproval; Missouri; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a revision to Missouri's State Implementation Plan (SIP) submitted on August 26, 2022, to satisfy applicable requirements under the Clean Air Act (CAA) and the EPA's Regional Haze Rule (RHR) for the program's second planning period. As required by section 169A of the Clean Air Act, the Federal Regional Haze Rule calls for state and Federal agencies to work together to improve visibility, including Regional Haze, in 156 national parks and

wilderness areas. The rule requires the states, in coordination with the EPA, the National Parks Service (NPS), the U.S. Fish and Wildlife Service (FWS), the U.S. Forest Service (FS), and other interested parties, to develop and implement air quality protection plans in which states revise their long-term strategies (LTS) for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility in these mandatory Class I Federal areas. Disapproval does not start a mandatory sanctions clock.

DATES: Comments must be received on or before August 2, 2024.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2024–0286 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Written Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT:

Ashley Keas, Environmental Protection Agency, Region 7 Office, Air and Radiation Division, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7629; email address: keas.ashley@epa.gov.

SUPPLEMENTARY INFORMATION:

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

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2024–0286, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/submitting-epa-dockets>.

II. What is being addressed in this document?

On August 26, 2022, the Missouri Department of Natural Resources (MoDNR) submitted a plan to the EPA to satisfy the regional haze program requirements pursuant to CAA sections 169A and 40 CFR 51.308. The EPA is proposing to partially approve and partially disapprove Missouri's Regional Haze plan for the second planning period. Consistent with section 110(k)(3) of the CAA, the EPA may partially approve portions of a submittal

if those elements meet all applicable requirements and may disapprove the remainder so long as the elements are fully separable.¹ As required by section 169A of the CAA, the Federal RHR calls for state and Federal agencies to work together to improve visibility in 156 national parks and wilderness areas. The rule requires the states, in coordination with the EPA, NPS, FWS, FS, and other interested parties, to develop and implement air quality protection plans to reduce the pollution that causes visibility impairment. Visibility impairing pollutants include fine and coarse particulate matter (PM) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., sulfur dioxide (SO₂), nitrogen oxides (NO_x), and, in some cases, volatile organic compounds (VOC) and ammonia (NH₃)). As discussed in further detail below, the EPA is proposing to find that Missouri has submitted a Regional Haze plan that does not meet all the Regional Haze requirements for the second planning period. For the reasons described in this document, the EPA is proposing to approve the elements of Missouri's plan related to requirements contained in 40 CFR 51.308(f)(1), (f)(5), (f)(6), and (g)(1) through (g)(5). The EPA is proposing to disapprove the elements of Missouri's plan related to requirements contained in 40 CFR 51.308(f)(2), (f)(3), and (i). The State's submission can be found in the docket for this action.

III. Background and Requirements for Regional Haze Plans

A. Regional Haze Background

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.² CAA section 169A. The CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution." CAA section 169A(a)(1). The CAA further directs the EPA to promulgate regulations to assure

reasonable progress toward meeting this national goal. CAA section 169A(a)(4). On December 2, 1980, the EPA promulgated regulations to address visibility impairment in mandatory Class I Federal Areas (hereinafter referred to as "Class I Areas") that is "reasonably attributable" to a single source or small group of sources. (45 FR 80084, December 2, 1980). These regulations, codified at 40 CFR 51.300 through 51.307, represented the first phase of the EPA's efforts to address visibility impairment. In 1990, Congress added section 169B to the CAA to further address visibility impairment, specifically, impairment from Regional Haze. CAA section 169B. The EPA promulgated the RHR, codified at 40 CFR 51.308,³ on July 1, 1999. (64 FR 35714, July 1, 1999). These Regional Haze regulations are a central component of the EPA's comprehensive visibility protection program for Class I Areas.

Regional Haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities which are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse PM (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., SO₂, NO_x, and, in some cases, VOC and NH₃). Fine particle precursors react in the atmosphere to form fine particulate matter (PM_{2.5}), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.⁴

³ In addition to the generally applicable regional haze provisions at 40 CFR 51.308, the EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are applicable only for specific jurisdictions' regional haze plans submitted no later than December 17, 2007, and thus are not relevant here.

⁴ There are several ways to measure the amount of visibility impairment, i.e., haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (b_{ext}) is a metric used to for expressing visibility and is measured in inverse megameters (Mm⁻¹). The EPA's Guidance on Regional Haze State Implementation Plans for the Second Implementation Period ("2019 Guidance") offers the flexibility for the use of light extinction in certain cases. Light extinction can be simpler to use in calculations than deciviews, since it is not a logarithmic function. See, e.g., 2019 Guidance at 16, 19, <https://www.epa.gov/visibility/guidance->

To address Regional Haze visibility impairment, the 1999 RHR established an iterative planning process that requires both states in which Class I areas are located and states "the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility" in a Class I Area to periodically submit SIP revisions to address such impairment. CAA section 169A(b)(2);⁵ see also 40 CFR 51.308(b), (f) (establishing submission dates for iterative Regional Haze SIP revisions); (64 FR 35714 at 35768, July 1, 1999). Under the CAA, each SIP submission must contain "a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal," CAA section 169A(b)(2)(B); the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility impairing pollutants install and operate the best available retrofit technology (BART). CAA section 169A(b)(2)(A); 40 CFR 51.308(d), (e). States' first Regional Haze SIPs were due by December 17, 2007, 40 CFR 51.308(b), with subsequent SIP submissions containing updated long-term strategies originally due July 31, 2018, and every ten years thereafter. (64 FR 35714 at 35768, July 1, 1999). The EPA established in the 1999 RHR that all states either have Class I Areas within their borders or "contain sources whose emissions are reasonably anticipated to contribute to Regional Haze in a Class I Area"; therefore, all states must submit Regional Haze SIPs.⁶ Id. at 35721.

Much of the focus in the first implementation period of the Regional Haze program, which ran from 2007 through 2018, was on satisfying states' BART obligations. First implementation period SIPs were additionally required to contain long-term strategies for making reasonable progress toward the national visibility goal, of which BART is one component. The core required elements for the first implementation

regional-haze-state-implementation-plans-second-implementation-period. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019). The formula for the deciview is $10 \ln(b_{ext})/10 \text{ Mm}^{-1}$. 40 CFR 51.301.

⁵ The RHR expresses the statutory requirement for states to submit plans addressing out-of-state class I areas by providing that states must address visibility impairment "in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State." 40 CFR 51.308(d), (f).

⁶ In addition to each of the fifty states, the EPA also concluded that the Virgin Islands and District of Columbia must also submit regional haze SIPs because they either contain a Class I area or contain sources whose emissions are reasonably anticipated to contribute regional haze in a Class I area. See 40 CFR 51.300(b), (d)(3).

¹ See CAA section 110(k)(3) and July 1992 EPA memorandum titled "Processing of State Implementation Plan (SIP) Submittals" from John Calcagni, at <https://www.epa.gov/sites/default/files/2015-07/documents/procsip.pdf>.

² Areas statutorily designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA section 162(a). There are 156 mandatory Class I areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

period SIPs (other than BART) are laid out in 40 CFR 51.308(d). Those provisions required that states containing Class I Areas establish reasonable progress goals (RPGs) that are measured in deciviews and reflect the anticipated visibility conditions at the end of the implementation period including from implementation of states' long-term strategies. The first planning period RPGs were required to provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. In establishing the RPGs for any Class I Area in a state, the state was required to consider four statutory factors: the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. CAA section 169A(g)(1); 40 CFR 51.308(d)(1).

States were also required to calculate baseline (using the five year period of 2000–2004) and natural visibility conditions (*i.e.*, visibility conditions without anthropogenic visibility impairment) for each Class I Area, and to calculate the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is known as the uniform rate of progress (URP) and is used as a tracking metric to help states assess the amount of progress they are making towards the national visibility goal over time in each Class I Area.⁷ 40 CFR 51.308(d)(1)(i)(B), (d)(2). The 1999 RHR also provided that States' long-term strategies must include the "enforceable emissions limitations, compliance, schedules, and other measures as necessary to achieve the reasonable progress goals." 40 CFR

51.308(d)(3). In establishing their long-term strategies, states are required to consult with other states that also contribute to visibility impairment in a given Class I Area and include all measures necessary to obtain their shares of the emission reductions needed to meet the RPGs. 40 CFR 51.308(d)(3)(i) and (ii). Section 51.308(d) also contains seven additional factors states must consider in formulating their long-term strategies, 40 CFR 51.308(d)(3)(v), as well as provisions governing monitoring and other implementation plan requirements. 40 CFR 51.308(d)(4). Finally, the 1999 RHR required states to submit periodic progress reports—SIP revisions due every five years that contain information on states' implementation of their Regional Haze plans and an assessment of whether anything additional is needed to make reasonable progress, see 40 CFR 51.308(g), (h)—and to consult with the Federal Land Manager(s)⁸ (FLMs) responsible for each Class I area according to the requirements in CAA section 169A(d) and 40 CFR 51.308(i).

On January 10, 2017, the EPA promulgated revisions to the RHR, (82 FR 3078, January 10, 2017), that apply for the second and subsequent implementation periods. The 2017 rulemaking made several changes to the requirements for Regional Haze SIPs to clarify States' obligations and streamline certain Regional Haze requirements. The revisions to the Regional Haze program for the second and subsequent implementation periods focused on the requirement that States' SIPs contain long-term strategies for making reasonable progress towards the national visibility goal. The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f). Among other changes, the 2017 RHR Revisions adjusted the deadline for States to submit their second implementation period SIPs from July 31, 2018, to July 31, 2021, clarified the order of analysis and the relationship between RPGs and the long-term strategy, and focused on making visibility improvements on the days with the most *anthropogenic* visibility impairment, as opposed to the days with the most visibility impairment overall. The EPA also revised requirements of the visibility

protection program related to periodic progress reports and FLM consultation. The specific requirements applicable to second implementation period Regional Haze SIP submissions are addressed in detail below.

The EPA provided guidance to the states for their second implementation period SIP submissions in the preamble to the 2017 RHR Revisions as well as in subsequent, stand-alone guidance documents. In August 2019, the EPA issued "Guidance on Regional Haze State Implementation Plans for the Second Implementation Period" ("2019 Guidance").⁹ On July 8, 2021, the EPA issued a memorandum containing "Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period" ("2021 Clarifications Memo").¹⁰ Additionally, the EPA further clarified the recommended procedures for processing ambient visibility data and optionally adjusting the URP to account for international anthropogenic and prescribed fire impacts in two technical guidance documents: the December 2018 "Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program" ("2018 Visibility Tracking Guidance"),¹¹ and the June 2020 "Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program" and associated Technical Addendum ("2020 Data Completeness Memo").¹²

⁹ Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. <https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period> The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

¹⁰ Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. <https://www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf>. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

¹¹ Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. <https://www.epa.gov/visibility/technical-guidance-tracking-visibility-progress-second-implementation-period-regional> The EPA Office of Air Quality Planning and Standards, Research Triangle Park. (December 20, 2018).

¹² Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. <https://www.epa.gov/visibility/memo-and-technical-addendum-ambient-data-usage-and-completeness-regional-haze-program> The EPA Office of Air Quality Planning and Standards, Research Triangle Park (June 3, 2020).

⁷ The EPA established the URP framework in the 1999 RHR to provide "an equitable analytical approach" to assessing the rate of visibility improvement at Class I areas across the country. The start point for the URP analysis is 2004 and the endpoint was calculated based on the amount of visibility improvement that was anticipated to result from implementation of existing CAA programs over the period from the mid-1990s to approximately 2005. Assuming this rate of progress would continue into the future, the EPA determined that natural visibility conditions would be reached in 60 years, or 2064 (60 years from the baseline starting point of 2004). However, the EPA did not establish 2064 as the year by which the national goal *must* be reached. 64 FR at 35731–32. That is, the URP and the 2064 date are not enforceable targets, but are rather tools that "allow for analytical comparisons between the rate of progress that would be achieved by the state's chosen set of control measures and the URP." (82 FR 3078, 3084, January 10, 2017).

⁸ The EPA's regulations define "Federal Land Manager" as "the Secretary of the department with authority over the Federal Class I area (or the Secretary's designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission." 40 CFR 51.301.

As previously explained in the 2021 Clarifications Memo, the EPA intends the second implementation period of the Regional Haze program to secure meaningful reductions in visibility impairing pollutants that build on the significant progress states have achieved to date. The Agency also recognizes that analyses regarding reasonable progress are state-specific and that, based on states' and sources' individual circumstances, what constitutes reasonable reductions in visibility impairing pollutants will vary from state-to-state. While there exist many opportunities for states to leverage both ongoing and upcoming emission reductions under other CAA programs, the Agency expects states to undertake rigorous reasonable progress analyses that identify further opportunities to advance the national visibility goal consistent with the statutory and regulatory requirements. See generally 2021 Clarifications Memo. This is consistent with Congress's determination that a visibility protection program is needed in addition to the CAA's National Ambient Air Quality Standards (NAAQS) and Prevention of Significant Deterioration (PSD) programs, as further emission reductions may be necessary to adequately protect visibility in Class I areas throughout the country.¹³

B. Roles of Agencies in Addressing Regional Haze

Because the air pollutants and pollution affecting visibility in Class I Areas can be transported over long distances, successful implementation of the Regional Haze program requires long-term, regional coordination among multiple jurisdictions and agencies that have responsibility for Class I Areas and the emissions that impact visibility in those Areas. In order to address Regional Haze, states need to develop strategies in coordination with one another, considering the effect of emissions from one jurisdiction on the air quality in another. Five regional planning organizations (RPOs),¹⁴ which include representation from state and tribal governments, the EPA, and FLMs, were developed in the lead-up to the

first implementation period to address Regional Haze. RPOs evaluate technical information to better understand how emissions from State and Tribal land impact Class I Areas across the country, pursue the development of regional strategies to reduce emissions of PM and other pollutants leading to Regional Haze, and help states meet the consultation requirements of the RHR.

The Central Regional Air Planning association (CenRAP), one of the five RPOs mentioned above, that Missouri was a member of during the first planning period, was a collaborative effort of state governments, tribal governments, and Federal agencies established to initiate and coordinate activities associated with the management of Regional Haze, visibility, and other air quality issues in parts of the Great Plains, Midwest, Southwest, and South Regions of the United States.

After the first planning period SIPs were submitted, the CenRAP was disbanded, and the relevant regulatory entities reorganized as the Central States Air Resources Agencies (CenSARA). CenSARA is a collaborative effort of state governments established to initiate and coordinate activities associated with the management of Regional Haze and other air quality issues in parts of the Great Plains, Midwest, Southwest, and South Regions of the United States. Member states include: Arkansas, Iowa, Missouri, Louisiana, Kansas, Mississippi, Nebraska, Oklahoma, and Texas. Unlike CenRAP, CenSARA's voting members are only comprised of state agency representatives. However, CenSARA continues to include interested Tribal and Federal partners on communications and regular meetings. The Federal partners of CenSARA are the EPA, NPS, FWS, and FS.

IV. Requirements for Regional Haze Plans for the Second Implementation Period

Under the CAA and the EPA's regulations, all 50 states, the District of Columbia, and the U.S. Virgin Islands are required to submit Regional Haze SIPs satisfying the applicable requirements for the second implementation period of the Regional Haze program by July 31, 2021. Each state's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. CAA section 169A(b)(2)(B). To this end, § 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, with the order of

the requirements in § 51.308(f)(1) through (f)(3) generally mirroring the order of the steps in the reasonable progress analysis¹⁵ and paragraphs (f)(4) through (f)(6) containing additional, related requirements. Broadly speaking, a state first must identify the Class I areas within the state and determine the Class I areas outside the state in which visibility may be affected by emissions from the state. These are the Class I areas that must be addressed in the state's long-term strategy. See 40 CFR 51.308(f) and (f)(2). For each Class I area within its borders, a state must then calculate the baseline, current, and natural visibility conditions for that area, as well as the visibility improvement made to date and the URP. See 40 CFR 51.308(f)(1). Each state having a Class I area and/or emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility-impairing pollutants that the state has selected to assess for controls for the second implementation period. Additionally, as further explained below, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five "additional factors"¹⁶ that states must consider in developing their long-term strategies. See 40 CFR 51.308(f)(2). A state evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress using the four statutory factors. Those measures are then incorporated into the state's long-term strategy. After a state has developed its long-term strategy, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.*, in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the state in which the Class I area is located, but also for sources in other states that contribute to

¹³ See, *e.g.*, H.R. Rep. No. 95–294 at 205 ("In determining how to best remedy the growing visibility problem in these areas of great scenic importance, the committee realizes that as a matter of equity, the national ambient air quality standards cannot be revised to adequately protect visibility in all areas of the country."), ("the mandatory class I increments of [the PSD program] do not adequately protect visibility in class I areas").

¹⁴ RPOs are sometimes also referred to as "multi-jurisdictional organizations," or MJOs. For the purposes of this document, the terms RPO and MJO are synonymous.

¹⁵ The EPA explained in the 2017 RHR Revisions that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in 40 CFR 51.308(d), "tracked the actual planning sequence." (82 FR 3078 at 3091, January 10, 2017).

¹⁶ The five "additional factors" for consideration in section 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas. 40 CFR 51.308(f)(2)–(3).

In addition to satisfying the requirements at 40 CFR 51.308(f) related to reasonable progress, the Regional Haze SIP revisions for the second implementation period must address the requirements in § 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that apply to all visibility protection SIPs and SIP revisions. 40 CFR 51.308(i).

A state must submit its Regional Haze SIP and subsequent SIP revisions to the EPA according to the requirements applicable to all SIP revisions under the CAA and the EPA's regulations. See CAA section 169(b)(2); CAA section 110(a). Upon EPA approval, a SIP is enforceable by the Agency and the public under the CAA. If the EPA finds that a state fails to make a required SIP revision, or if the EPA finds that a state's SIP is incomplete or if disapproves the SIP, the Agency must promulgate a Federal Implementation Plan (FIP) that satisfies the applicable requirements. CAA section 110(c)(1).

A. Identification of Class I Areas

The first step in developing a Regional Haze SIP is for a state to determine which Class I areas, in addition to those within its borders, “may be affected” by emissions from within the state. In the 1999 RHR, the EPA determined that all states contribute to visibility impairment in at least one Class I area, 64 FR 35714 at 35720 through 35722, and explained that the statute and regulations lay out an “extremely low triggering threshold” for determining “whether States should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State.” *Id.* at 35721.

A state must determine which Class I areas must be addressed by its SIP by evaluating the total emissions of visibility impairing pollutants from all sources within the state. While the RHR does not require this evaluation to be conducted in any particular manner, the EPA's 2019 Guidance provides recommendations for how such an assessment might be accomplished, including by, where appropriate, using the determinations previously made for the first implementation period. 2019

Guidance at 8–9. In addition, the determination of which Class I areas may be affected by a state's emissions is subject to the requirement in 40 CFR 51.308(f)(2)(iii) to “document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal area it affects.”

B. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

As part of assessing whether a SIP submission for the second implementation period is providing for reasonable progress towards the national visibility goal, the RHR contains requirements in § 51.308(f)(1) related to tracking visibility improvement over time. The requirements of this subsection apply only to states having Class I areas within their borders; the required calculations must be made for each such Class I area. The EPA's 2018 Visibility Tracking Guidance¹⁷ provides recommendations to assist states in satisfying their obligations under § 51.308(f)(1); specifically, in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP to account for the impacts of international anthropogenic emissions and prescribed fires. See 82 FR 3078 at 3103 through 3105, January 10, 2017.

The RHR requires tracking of visibility conditions on two sets of days: the clearest and the most impaired days. Visibility conditions for both sets of days are expressed as the average deciview index for the relevant five-year period (the period representing baseline or current visibility conditions). The RHR provides that the relevant sets of days for visibility tracking purposes are the 20% clearest (the 20% of monitored days in a calendar year with the lowest values of the deciview index) and 20% most impaired days (the 20% of monitored days in a calendar year with the highest amounts of anthropogenic visibility impairment).¹⁸ 40 CFR 51.301. A state must calculate visibility

conditions for both the 20% clearest and 20% most impaired days for the baseline period of 2000–2004 and the most recent five-year period for which visibility monitoring data are available (representing current visibility conditions). 40 CFR 51.308(f)(1)(i) and (iii). States must also calculate natural visibility conditions for the clearest and most impaired days,¹⁹ by estimating the conditions that would exist on those two sets of days absent anthropogenic visibility impairment. 40 CFR 51.308(f)(1)(ii). Using all these data, states must then calculate, for each Class I area, the amount of progress made since the baseline period (2000–2004) and how much improvement is left to achieve in order to reach natural visibility conditions.

Using the data for the set of most impaired days only, states must plot a line between visibility conditions in the baseline period and natural visibility conditions for each Class I area to determine the URP—the amount of visibility improvement, measured in deciviews, that would need to be achieved during each implementation period in order to achieve natural visibility conditions by the end of 2064. The URP is used in later steps of the reasonable progress analysis for informational purposes and to provide a non-enforceable benchmark against which to assess a Class I area's rate of visibility improvement.²⁰ Additionally, in the 2017 RHR Revisions, the EPA provided states the option of proposing to adjust the endpoint of the URP to account for impacts of anthropogenic sources outside the United States and/or impacts of certain types of wildland prescribed fires. These adjustments, which must be approved by the EPA, are intended to avoid any perception that states should compensate for impacts from international anthropogenic sources and to give states the flexibility to determine that limiting the use of wildland-prescribed fire is

¹⁹ The RHR at 40 CFR 51.308(f)(1)(ii) contains an error related to the requirement for calculating two sets of natural conditions values. The rule says “most impaired days or the clearest days” where it should say “most impaired days and clearest days.” This is an error that was intended to be corrected in the 2017 RHR Revisions but did not get corrected in the final rule language. This is supported by the preamble text at 82 FR 3078 at 3098, January 10, 2017: “In the final version of 40 CFR 51.308(f)(1)(ii), an occurrence of “or” has been corrected to “and” to indicate that natural visibility conditions for both the most impaired days and the clearest days must be based on available monitoring information.”

²⁰ Being on or below the URP is not a “safe harbor”; i.e., achieving the URP does not mean that a Class I area is making “reasonable progress” and does not relieve a state from using the four statutory factors to determine what level of control is needed to achieve such progress. See, e.g., 82 FR 3078 at 3093, January 10, 2017.

¹⁷ The 2018 Visibility Tracking Guidance references and relies on parts of the 2003 Tracking Guidance: “Guidance for Tracking Progress Under the RHR,” which can be found at <https://www3.epa.gov/ttnamti1/files/ambient/visible/tracking.pdf>.

¹⁸ This publication also refers to the 20% clearest and 20% most anthropogenically impaired days as the “clearest” and “most impaired” or “most anthropogenically impaired” days, respectively.

not necessary for reasonable progress. 82 FR 3078 at 3107 footnote 116, January 10, 2017.

The EPA's 2018 Visibility Tracking Guidance can be used to help satisfy the 40 CFR 51.308(f)(1) requirements, including in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP. In addition, the 2020 Data Completeness Memo provides recommendations on the data completeness language referenced in § 51.308(f)(1)(i) and provides updated natural conditions estimates for each Class I area.

C. Long-Term Strategy for Regional Haze

The core component of a Regional Haze SIP submission is a long-term strategy that addresses Regional Haze in each Class I area within a state's borders and each Class I area that may be affected by emissions from the state. The long-term strategy "must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to paragraphs (f)(2)(i) through (iv)." 40 CFR 51.308(f)(2). The amount of progress that is "reasonable progress" is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a "four-factor" analysis. The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement in order to make reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(2)(i). Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing emission reduction measures that a source is already implementing. See 2019 Guidance at 43; 2021 Clarifications Memo at 8–10. Such measures must be represented by "enforceable emissions limitations, compliance schedules, and other measures" (*i.e.*, any additional compliance tools) in a state's long-term strategy in its SIP. 40 CFR 51.308(f)(2).

Section 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures; to this end, the RHR requires states to consider "major and minor stationary sources or groups of sources, mobile sources, and area sources" of visibility impairing pollutants for potential four-factor control analysis. 40

CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed. As the EPA previously explained, consistent with the first implementation period, the EPA generally expects that each state will analyze at least SO₂ and NO_x in selecting sources and determining control measures. See 2019 Guidance at 12, 2021 Clarifications Memo at 4. A state that chooses not to consider at least these two pollutants should demonstrate why such consideration would be unreasonable. 2021 Clarifications Memo at 4.

While states have the option to analyze *all* sources, the 2019 Guidance explains that "an analysis of control measures is not required for every source in each implementation period," and that "[s]electing a set of sources for analysis of control measures in each implementation period is . . . consistent with the RHR, which sets up an iterative planning process and anticipates that a state may not need to analyze control measures for all its sources in a given SIP revision." 2019 Guidance at 9. However, given that source selection is the basis of all subsequent control determinations, a reasonable source selection process "should be designed and conducted to ensure that source selection results in a set of pollutants and sources the evaluation of which has the potential to meaningfully reduce their contributions to visibility impairment." 2021 Clarifications Memo at 3.

The EPA explained in the 2021 Clarifications Memo that each state has an obligation to submit a long-term strategy that addresses the Regional Haze visibility impairment that results from emissions from within that state. Thus, source selection should focus on the in-state contribution to visibility impairment and be designed to capture a meaningful portion of the state's total contribution to visibility impairment in Class I areas. A state should not decline to select its largest in-state sources on the basis that there are even larger out-of-state contributors. 2021 Clarifications Memo at 4.²¹

Thus, while states have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40

²¹ Similarly, in responding to comments on the 2017 RHR Revisions, the EPA explained that "[a] state should not fail to address its many relatively low-impact sources merely because it only has such sources and another state has even more low-impact sources and/or some high impact sources." Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule. Docket Document ID: EPA-HQ-OAR-2015-0531-0635 at pages 87–88.

CFR 51.308(f)(2)(i) requires that a state's SIP submission include "a description of the criteria it used to determine which sources or groups of sources it evaluated." The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

Once a state has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.²² This is accomplished by considering the Four Factors—"the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements." CAA section 169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.*, control options) for sources; "use of the terms 'compliance' and 'subject to such requirements' in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply in order to satisfy the CAA's reasonable progress mandate." 82 FR 3078 at 3091, January 10, 2017. Thus, for each source it has selected for four-factor analysis,²³ a state

²² The CAA provides that, "[i]n determining reasonable progress there shall be taken into consideration" the four statutory factors. CAA section 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a state may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.*, from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second planning period.

²³ "Each source" or "particular source" is used here as shorthand. While a source-specific analysis is one way of applying the Four Factors, neither the statute nor the RHR requires states to evaluate individual sources. Rather, states have "the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state." 82 FR 3078 at 3088, January 10, 2017. However, not all approaches to grouping sources for four-factor analysis are necessarily reasonable; the reasonableness of grouping sources in any particular instance will depend on the circumstances and the manner in which grouping is conducted. If it is feasible to establish and enforce different requirements for sources or subgroups of sources, and if relevant factors can be quantified for those sources or subgroups, then states should make a separate reasonable progress

must consider a “meaningful set” of technically feasible control options for reducing emissions of visibility impairing pollutants. *Id.* at 3088. The 2019 Guidance provides that “[a] state must reasonably pick and justify the measures that it will consider, recognizing that there is no statutory or regulatory requirement to consider all technically feasible measures or any particular measures. A range of technically feasible measures available to reduce emissions would be one way to justify a reasonable set.” 2019 Guidance at 29.

The EPA’s 2021 Clarifications Memo provides further guidance on what constitutes a reasonable set of control options for consideration: “A reasonable four-factor analysis will consider the full range of potentially reasonable options for reducing emissions.” 2021 Clarifications Memo at 7. In addition to add-on controls and other retrofits (*i.e.*, new emission reduction measures for sources), the EPA explained that states should generally analyze efficiency improvements for sources’ existing measures as control options in their four-factor analyses, as in many cases such improvements are reasonable given that they typically involve only additional operation and maintenance costs. Additionally, the 2021 Clarifications Memo provides that states that have assumed a higher emission rate than a source has achieved or could potentially achieve using its existing measures should also consider lower emission rates as potential control options. That is, a state should consider a source’s recent actual and projected emission rates to determine if it could reasonably attain lower emission rates with its existing measures. If so, the state should analyze the lower emission rate as a control option for reducing emissions. 2021 Clarifications Memo at 7. The EPA’s recommendations to analyze potential efficiency improvements and achievable lower emission rates apply to both sources that have been selected for four-factor analysis and those that have forgone a four-factor analysis on the basis of existing “effective controls.” See 2021 Clarifications Memo at 5, 10.

After identifying a reasonable set of potential control options for the sources it has selected, a state then collects information on the Four Factors with regard to each option identified. The EPA has also explained that, in addition to the four statutory factors, states have flexibility under the CAA and RHR to reasonably consider visibility benefits as

an additional factor alongside the four statutory factors.²⁴ The 2019 Guidance provides recommendations for the types of information that can be used to characterize the Four Factors (with or without visibility), as well as ways in which states might reasonably consider and balance that information to determine which of the potential control options is necessary to make reasonable progress. See 2019 Guidance at 30–36. The 2021 Clarifications Memo contains further guidance on how states can reasonably consider modeled visibility impacts or benefits in the context of a four-factor analysis. 2021 Clarifications Memo at 12–13, 14–15. Specifically, the EPA explained that while visibility can reasonably be used when comparing and choosing between multiple reasonable control options, it should not be used to summarily reject controls that are reasonable given the four statutory factors. 2021 Clarifications Memo at 13. Ultimately, while states have discretion to reasonably weigh the factors and to determine what level of control is needed, § 51.308(f)(2)(i) provides that a state “must include in its implementation plan a description of . . . how the Four Factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.”

As explained above, § 51.308(f)(2)(i) requires states to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the Four Factors. Pursuant to § 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a state’s long-term strategy and in its SIP.²⁵ If the outcome of a four-factor analysis is a new, additional emission reduction measure for a source, that new measure is necessary to make reasonable progress towards remedying existing anthropogenic visibility impairment and must be included in the

SIP. If the outcome of a four-factor analysis is that no new measures are reasonable for a source, continued implementation of the source’s existing measures is generally necessary to prevent future emission increases and thus to make reasonable progress towards the second part of the national visibility goal: preventing future anthropogenic visibility impairment. See CAA section 169A(a)(1). That is, when the result of a four-factor analysis is that no new measures are necessary to make reasonable progress, the source’s existing measures are generally necessary to make reasonable progress and must be included in the SIP. However, there may be circumstances in which a state can demonstrate that a source’s existing measures are *not* necessary to make reasonable progress. Specifically, if a state can demonstrate that a source will continue to implement its existing measures and will not increase its emission rate, it may not be necessary to have those measures in the long-term strategy in order to prevent future emission increases and future visibility impairment. The EPA’s 2021 Clarifications Memo provides further explanation and guidance on how states may demonstrate that a source’s existing measures are not necessary to make reasonable progress. See 2021 Clarifications Memo at 8–10. If the state can make such a demonstration, it need not include a source’s existing measures in the long-term strategy or its SIP.

As with source selection, the characterization of information on each of the factors is also subject to the documentation requirement in § 51.308(f)(2)(iii). The reasonable progress analysis, including source selection, information gathering, characterization of the four statutory factors (and potentially visibility), balancing of the Four Factors, and selection of the emission reduction measures that represent reasonable progress, is a technically complex exercise, but also a flexible one that provides states with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, § 51.308(f)(2)(iii) plays an important function in requiring a state to document the technical basis for its decision making so that the public and the EPA can comprehend and evaluate the information and analysis the state relied upon to determine what emission reduction measures were in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering,

²⁴ See, *e.g.*, Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016), Docket Number EPA–HQ–OAR–2015–0531, U.S. Environmental Protection Agency at 186; 2019 Guidance at 36–37.

²⁵ States may choose to, but are not required to, include measures in their long-term strategies beyond just the emission reduction measures that are necessary for reasonable progress. See 2021 Clarifications Memo at 16. For example, states with smoke management programs may choose to submit their smoke management plans to the EPA for inclusion in their SIPs but are not required to do so. See, *e.g.*, 82 FR 3078 at 3108 and 3109, January 10, 2017 (requirement to consider smoke management practices and smoke management programs under 40 CFR 51.308(f)(2)(iv) does not require states to adopt such practices or programs into their SIPs, although they may elect to do so).

determination for each source or subgroup. 2021 Clarifications Memo at 7–8.

and emissions information on which the state relied to determine the measures necessary to make reasonable progress. This documentation requirement can be met through the provision of and reliance on technical analyses developed through a regional planning process, so long as that process and its output has been approved by all state participants. In addition to the explicit regulatory requirement to document the technical basis of their reasonable progress determinations, states are also subject to the general principle that those determinations must be reasonably moored to the statute.²⁶ That is, a state's decisions about the emission reduction measures that are necessary to make reasonable progress must be consistent with the statutory goal of remedying existing and preventing future visibility impairment.

The four statutory factors (and potentially visibility) are used to determine what emission reduction measures for selected sources must be included in a state's long-term strategy for making reasonable progress. Additionally, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five "additional factors"²⁷ that states must consider in developing their long-term strategies: (1) emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. The 2019 Guidance provides that a state may satisfy this requirement by considering these additional factors in the process of selecting sources for four-factor analysis, when performing that analysis, or both, and that not every one of the additional factors needs to be

considered at the same stage of the process. See 2019 Guidance at 21. The EPA provided further guidance on the five additional factors in the 2021 Clarifications Memo, explaining that a state should generally not reject cost-effective and otherwise reasonable controls merely because there have been emission reductions since the first planning period owing to other ongoing air pollution control programs or merely because visibility is otherwise projected to improve at Class I areas. Additionally, states generally should not rely on these additional factors to summarily assert that the state has already made sufficient progress and, therefore, no sources need to be selected or no new controls are needed regardless of the outcome of four-factor analyses. 2021 Clarifications Memo at 13.

Because the air pollution that causes Regional Haze crosses state boundaries, § 51.308(f)(2)(ii) requires a state to consult with other states that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area. Consultation allows for each state that impacts visibility in an area to share whatever technical information, analyses, and control determinations may be necessary to develop coordinated emission management strategies. This coordination may be managed through inter- and intra-RPO consultation and the development of regional emissions strategies; additional consultations between states outside of RPO processes may also occur. If a state, pursuant to consultation, agrees that certain measures (e.g., a certain emission limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that states that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing states have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a state has been asked to consider or adopt certain emission reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, that state must document in its SIP the actions taken to resolve the disagreement. 40 CFR 51.308(f)(2)(ii)(C). The EPA will consider the technical information and explanations presented by the submitting state and the state with which it disagrees when considering whether to approve the state's SIP. See

id.; 2019 Guidance at 53. Under all circumstances, a state must document in its SIP submission all substantive consultations with other contributing states. 40 CFR 51.308(f)(2)(ii)(C).

D. Reasonable Progress Goals

Reasonable progress goals "measure the progress that is projected to be achieved by the control measures states have determined are necessary to make reasonable progress based on a four-factor analysis." 82 FR 3078 at 3091, January 10, 2017. Their primary purpose is to assist the public and the EPA in assessing the reasonableness of states' long-term strategies for making reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(3)(iii) and (iv). States in which Class I areas are located must establish two RPGs, both in deciviews—one representing visibility conditions on the clearest days and one representing visibility on the most anthropogenically impaired days—for each area within their borders. 40 CFR 51.308(f)(3)(i). The two RPGs are intended to reflect the projected impacts, on the two sets of days, of the emission reduction measures the state with the Class I area, as well as all other contributing states, have included in their long-term strategies for the second implementation period.²⁸ The RPGs also account for the projected impacts of implementing other CAA requirements, including non-SIP based requirements. Because RPGs are the modeled result of the measures in states' long-term strategies (as well as other measures required under the CAA), they cannot be determined before states have conducted their four-factor analyses and determined the control measures that are necessary to make reasonable progress. See 2021 Clarifications Memo at 6.

For the second implementation period, the RPGs are set for 2028. Reasonable progress goals are not enforceable targets, 40 CFR 51.308(f)(3)(iii); rather, they "provide a way for the states to check the projected outcome of the [long-term strategy] against the goals for visibility improvement." 2019 Guidance at 46.

²⁸ RPGs are intended to reflect the projected impacts of the measures all contributing states include in their long-term strategies. However, due to the timing of analyses and of control determinations by other states, other on-going emissions changes, a particular state's RPGs may not reflect all control measures and emissions reductions that are expected to occur by the end of the implementation period. The 2019 Guidance provides recommendations for addressing the timing of RPG calculations when states are developing their long-term strategies on disparate schedules, as well as for adjusting RPGs using a post-modeling approach. 2019 Guidance at 47–48.

²⁶ See *Arizona ex rel. Darwin v. U.S. EPA*, 815 F.3d 519, 531 (9th Cir. 2016); *Nebraska v. U.S. EPA*, 812 F.3d 662, 668 (8th Cir. 2016); *North Dakota v. EPA*, 730 F.3d 750, 761 (8th Cir. 2013); *Oklahoma v. EPA*, 723 F.3d 1201, 1206, 1208–10 (10th Cir. 2013); cf. also *Nat'l Parks Conservation Ass'n v. EPA*, 803 F.3d 151, 165 (3d Cir. 2015); *Alaska Dep't of Envtl. Conservation v. EPA*, 540 U.S. 461, 485, 490 (2004).

²⁷ The five "additional factors" for consideration in section 51.308(f)(2)(iv) are distinct from the Four Factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

While states are not legally obligated to achieve the visibility conditions described in their RPGs, § 51.308(f)(3)(i) requires that “[t]he long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.” Thus, states are required to have emission reduction measures in their long-term strategies that are projected to achieve visibility conditions on the most impaired days that are better than the baseline period and shows no degradation on the clearest days compared to the clearest days from the baseline period. The baseline period for the purpose of this comparison is the baseline visibility condition—the annual average visibility condition for the period 2000 through 2004. See 40 CFR 51.308(f)(1)(i), 82 FR 3078 at 3097 and 3098, January 10, 2017.

So that RPGs may also serve as a metric for assessing the amount of progress a state is making towards the national visibility goal, the RHR requires states with Class I areas to compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (*i.e.*, if visibility conditions are improving more slowly than the rate described by the URP), each state that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emission reduction measures would be reasonable to include in its long-term strategy. 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each state contributing to visibility impairment in a Class I area that is projected to improve more slowly than the URP provide “a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the Four Factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.” The 2019 Guidance provides suggestions about how such a “robust demonstration” might be conducted. See 2019 Guidance at 50–51.

The 2017 RHR, 2019 Guidance, and 2021 Clarifications Memo also explain that projecting an RPG that is on or

below the URP based on only on-the-books and/or on-the-way control measures (*i.e.*, control measures already required or anticipated before the four-factor analysis is conducted) is not a “safe harbor” from the CAA’s and RHR’s requirement that all states must conduct a four-factor analysis to determine what emission reduction measures constitute reasonable progress. The URP is a planning metric used to gauge the amount of progress made thus far and the amount left before reaching natural visibility conditions. However, the URP is not based on consideration of the four statutory factors and therefore cannot answer the question of whether the amount of progress being made in any particular implementation period is “reasonable progress.” See 82 FR 3078 at 3093, 3099 and 3100, January 10, 2017; 2019 Guidance at 22; 2021 Clarifications Memo at 15–16.

E. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires states to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this subsection apply either to states with Class I areas within their borders, states with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. A state with Class I areas within its borders must submit with its SIP revision a monitoring strategy for measuring, characterizing, and reporting Regional Haze visibility impairment that is representative of all Class I areas within the state. SIP revisions for such states must also provide for the establishment of any additional monitoring sites or equipment needed to assess visibility conditions in Class I areas, as well as reporting of all visibility monitoring data to the EPA at least annually. Compliance with the monitoring strategy requirement may be met through a state’s participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. 40 CFR 51.308(f)(6), (f)(6)(i), and (f)(6)(iv). The IMPROVE monitoring data is used to determine the 20% most anthropogenically impaired and 20% clearest sets of days every year at each Class I area and tracks visibility impairment over time.

All states’ SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions

from within the state to Regional Haze visibility impairment in affected Class I areas. 40 CFR 51.308(f)(6)(ii) and (iii). Section 51.308(f)(6)(v) further requires that all states’ SIPs provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area; the inventory must include emissions for the most recent year for which data are available and estimates of future projected emissions. States must also include commitments to update their inventories periodically. The inventories themselves do not need to be included as elements in the SIP and are not subject to EPA review as part of the Agency’s evaluation of a SIP revision.²⁹ All states’ SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for states to assess and report on visibility. 40 CFR 51.308(f)(6)(vi). Per the 2019 Guidance, a state may note in its Regional Haze SIP that its compliance with the Air Emissions Reporting Rule (AERR) in 40 CFR part 51 subpart A satisfies the requirement to provide for an emissions inventory for the most recent year for which data are available. To satisfy the requirement to provide estimates of future projected emissions, a state may explain in its SIP how projected emissions were developed for use in establishing RPGs for its own and nearby Class I areas.³⁰

Separate from the requirements related to monitoring for Regional Haze purposes under 40 CFR 51.308(f)(6), the RHR also contains a requirement at § 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I areas from a single source or a small group of sources. This is called “reasonably attributable visibility impairment.”³¹ Under this provision, if the EPA or the FLM of an affected Class I area has advised a state that additional monitoring is needed to assess reasonably attributable visibility impairment, the state must include in its SIP revision for the second implementation period an appropriate strategy for evaluating such impairment.

²⁹ See “Step 8: Additional requirements for regional haze SIPs” in 2019 Regional Haze Guidance at 55.

³⁰ *Id.*

³¹ The EPA’s visibility protection regulations define “reasonably attributable visibility impairment” as “visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources.” 40 CFR 51.301.

F. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a state's Regional Haze SIP revision to address the requirements of 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The Regional Haze progress report requirement is designed to inform the public and the EPA about a state's implementation of its existing long-term strategy and whether such implementation is in fact resulting in the expected visibility improvement. See 81 FR 26942, 26950 (May 4, 2016), (82 FR 3078 at 3119, January 10, 2017). To this end, every state's SIP revision for the second implementation period is required to describe the status of implementation of all measures included in the state's long-term strategy, including BART and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. 40 CFR 51.308(g)(1) and (2).

A core component of the progress report requirements is an assessment of changes in visibility conditions on the clearest and most impaired days. For second implementation period progress reports, § 51.308(g)(3) requires states with Class I areas within their borders to first determine current visibility conditions for each area on the most impaired and clearest days, 40 CFR 51.308(g)(3)(i)(B), and then to calculate the difference between those current conditions and baseline (2000–2004) visibility conditions in order to assess progress made to date. See 40 CFR 51.308(g)(3)(ii)(B). States must also assess the changes in visibility impairment for the most impaired and clearest days since they submitted their first implementation period progress reports. See 40 CFR 51.308 (f)(5) and (g)(3)(iii)(B). Since different states submitted their first implementation period progress reports at different times, the starting point for this assessment will vary state by state.

Similarly, states must provide analyses tracking the change in emissions of pollutants contributing to visibility impairment from all sources and activities within the state over the period since they submitted their first implementation period progress reports. See 40 CFR 51.308(f)(5) and (g)(4). Changes in emissions should be identified by the type of source or activity. Section 51.308(g)(5) also addresses changes in emissions since

the period addressed by the previous progress report and requires states' SIP revisions to include an assessment of any significant changes in anthropogenic emissions within or outside the state. This assessment must include an explanation of whether these changes in emissions were anticipated and whether they have limited or impeded progress in reducing emissions and improving visibility relative to what the state projected based on its long-term strategy for the first implementation period.

G. Requirements for State and Federal Land Manager Coordination

CAA section 169A(d) requires that before a state holds a public hearing on a proposed Regional Haze SIP revision, it must consult with the appropriate FLM or FLMs; pursuant to that consultation, the state must include a summary of the FLMs' conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that states "provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the State's decisions on the long-term strategy." 40 CFR 51.308(i)(2). Consultation that occurs 120 days prior to any public hearing or public comment opportunity will be deemed "early enough," but the RHR provides that in any event the opportunity for consultation must be provided at least 60 days before a public hearing or comment opportunity. This consultation must include the opportunity for the FLMs to discuss their assessment of visibility impairment in any Class I area and their recommendations on the development and implementation of strategies to address such impairment. 40 CFR 51.308(i)(2). In order for the EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to the EPA must also describe how the state addressed any comments provided by the FLMs. 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to

impairment of visibility in Class I areas. 40 CFR 51.308(i)(4).

V. The EPA's Evaluation of Missouri's Regional Haze Submission for the Second Implementation Period

A. Background on Missouri's First Implementation Period SIP Submission

Missouri submitted its Regional Haze SIP for the first implementation period to the EPA on August 5, 2009, and supplemented on January 30, 2012. Missouri relied on the Clean Air Interstate Rule (CAIR) to satisfy BART requirements. The EPA approved Missouri's first implementation period Regional Haze SIP submission on June 26, 2012 (77 FR 38007, June 26, 2012).³² The requirements for Regional Haze SIPs for the first implementation period are contained in 40 CFR 51.308(d) and (e). 40 CFR 51.308(b). In July 2008, the CAIR rule was vacated by the District of Columbia Circuit Court.³³ In response on August 8, 2011, the EPA replaced CAIR with the Cross-State Air Pollution Rule (CSAPR).³⁴ Afterwards, the EPA promulgated the CSAPR better than BART rule, allowing states to rely on CSAPR to satisfy BART requirements.³⁵ In that same action, the EPA issued FIPs to replace reliance on CAIR for BART with reliance on CSAPR to satisfy BART requirements. This action included Missouri. Pursuant to 40 CFR 51.308(g), Missouri was also required to submit a five-year progress report as a SIP revision for the first implementation period. On August 5, 2014, Missouri submitted the required progress report to the EPA. The EPA approved the progress report on September 29, 2015 (80 FR 58410, September 29, 2015). On July 31, 2017, Missouri submitted a SIP revision to change their reliance on CAIR for BART to relying on CSAPR for BART. The EPA approved this SIP revision.³⁶

B. Missouri's Second Implementation Period SIP Submission and the EPA's Evaluation

In accordance with CAA sections 169A and the RHR at 40 CFR 51.308(f), (g), and (i), on August 26, 2022, Missouri submitted a revision to Missouri's SIP to address its Regional

³² The EPA's action included a limited approval as the state relied on the EPA's Federal Implementation Plan (FIP) for the interstate transport program to address the required best available retrofit technology (BART) requirements for certain electric generating units (EGUs).

³³ *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), modified on rehearing, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

³⁴ 76 FR 48208 August 8, 2011.

³⁵ 77 FR 33642 June 7, 2012.

³⁶ 81 FR 50531 September 24, 2018.

Haze obligations for the second implementation period. Missouri made its second implementation period Regional Haze SIP submission available for public comment from March 28, 2022, through May 5, 2022. The state held a public hearing for the plan on April 28, 2022. Missouri received and responded to public comments and included both the comments and responses to those comments in their submission.

The following sections describe Missouri's SIP submission as well as the EPA's evaluation to determine if Missouri's submission meets all of the requirements of the CAA and RHR for the second implementation period of the Regional Haze program.

C. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires each state in which any Class I area is located or "the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility" in a Class I area to have a plan for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement at 40 CFR 51.308(f), which provides that each state's plan "must address Regional Haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State," and paragraph (f)(2), which requires each state's plan to include a long-term strategy that addresses Regional Haze in such Class I areas.

The EPA explained in the 1999 RHR preamble that the CAA section 169A(b)(2) requirement that states submit SIPs to address visibility impairment establishes "an 'extremely low triggering threshold' in determining which States should submit SIPs for regional haze." 64 FR 35714 at 35721, July 1, 1999. In concluding that each of the contiguous 48 states and the District of Columbia meet this threshold,³⁷ the EPA relied on "a large body of evidence demonstrat[ing] that long-range transport of fine PM contributes to regional haze," *id.*, including modeling studies that "preliminarily demonstrated that each State not having a Class I area had emissions

contributing to impairment in at least one downwind Class I area." *Id.* at 35722. In addition to the technical evidence supporting a conclusion that each state contributes to *existing* visibility impairment, the EPA also explained that the second half of the national visibility goal—preventing *future* visibility impairment—requires having a framework in place to address future growth in visibility-impairing emissions and makes it inappropriate to "establish criteria for excluding States or geographic areas from consideration as potential contributors to regional haze visibility impairment." *Id.* at 35721. Thus, the EPA concluded that the agency's "statutory authority and the scientific evidence are sufficient to require all States to develop regional haze SIPs to ensure the prevention of any future impairment of visibility, and to conduct further analyses to determine whether additional control measures are needed to ensure reasonable progress in remedying existing impairment in downwind Class I areas." *Id.* at 35722. The EPA's 2017 revisions to the RHR did not disturb this conclusion. *See* 82 FR 3078 at 3094, January 10, 2017.

Missouri contains two Class I Areas: Hercules-Glades Wilderness Area and Mingo National Wildlife Refuge. In Missouri's Regional Haze plan for the first planning period, submitted on August 5, 2009, and supplemented on January 30, 2012, Missouri analyzed four Class I Areas as potentially affected by Missouri emissions. In addition to the two Class I Areas in Missouri, the state identified Caney Creek Wilderness Area and Upper Buffalo Wilderness Area located in Arkansas.³⁸ In Missouri's Regional Haze plan for the second planning period, submitted August 26, 2022, Missouri identifies nine Class I Areas: Hercules-Glades Wilderness Area and Mingo National Wildlife Refuge in Missouri, Upper Buffalo Wilderness Area, Arkansas, Seney National Wildlife Refuge and Isle Royale Wilderness in Michigan, Mammoth Cave National Park, Kentucky, Linville Gorge Wilderness Area and Shining Rock Wilderness Area in North Carolina, and Sipsey Wilderness Area, Alabama; as potentially affected by Missouri emissions. To make this determination, Missouri primarily relied on the cumulative sulfate and nitrate extinction weighted residence time (EWRT) multiplied by Q/d (emissions

divided by distance) analysis performed by a CenSARA contractor to identify the sources with the highest estimated contributions to Class I Areas. As further discussed in section E of this preamble, Missouri selected sources contributing more than 1 percent to any Class I Area for further evaluation.³⁹

CenSARA performed technical analyses to help assess source and state-level contributions to visibility impairment and the need for interstate consultation. CenSARA's analyses relied on a back-trajectory model combined with air quality measurement data and emission inventories to identify the geographic areas and emission sources with a high probability of contributing to anthropogenically impaired visibility at Class I areas within CenSARA and nearby states. For the EWRT multiplied by Q/d analysis, back trajectory residence times were first calculated by summing the amount of time trajectories reside in a specific geographic area (*e.g.*, modeling grid cell). The trajectory residence times were then weighted by sulfate and nitrate extinction coefficients to account for the varying contributions of sulfates and nitrates to total light extinction. To determine the potential impact from sources of SO₂ and NO_x emissions (precursors of SO₄ and NO₃, respectively), the EWRT values for SO₄ and NO₃ were combined with emissions (Q) from sources of SO₂ and NO_x, respectively. CenSARA states chose to focus on electric generating units (EGU) and non-EGU stationary point sources since these sources comprise major fractions of the NO_x and SO₂ emissions inventory. To incorporate the effects of dispersion, deposition and chemical transformation along the path of the trajectories, emissions were inversely weighted by the distance (*d*) between the centers of the grid cell emitting the emissions and the grid cell containing the IMPROVE site.

Missouri also included Class I Areas that were identified through the consultation process as being affected by sources in Missouri, when the consulting state identified specific Missouri sources that impact the downwind Class I Area.⁴⁰ Missouri also consulted with MANE-VU on Class I Areas in Maine, New Jersey, New Hampshire and Vermont. Neither MANE-VU nor Missouri specifically list which Areas in those states are affected by Missouri sources. The EPA believes the affected Class I areas may include:

³⁷ The EPA determined that "there is more than sufficient evidence to support our conclusion that emissions from each of the 48 contiguous states and the District of Columbia may reasonably be anticipated to cause or contribute to visibility impairment in a Class I area." 64 FR 35714 at 35721, July 1, 1999. Hawaii, Alaska, and the U.S. Virgin Islands must also submit regional haze SIPs because they contain Class I areas.

³⁸ "State of Missouri Air Quality State Implementation Plan Regional Haze, Section D, Plan Revision" Page 47, submitted November 9, 2009. Available in Docket: EPA-R07-OAR-2012-0153.

³⁹ See Table 36, starting on page 103 of Missouri's August 2022 submittal.

⁴⁰ See Table 37, starting on page 104 of Missouri's submittal.

Acadia, Moosehorn, and Roosevelt Campobello in Maine; Great Gulf and Presidential Range-Dry River in New Hampshire; Brigantine Wilderness, New Jersey; and Lye Brook, Vermont. New Jersey consulted with Missouri. Neither MANE-VU nor New Jersey specify a source for which Missouri should conduct a four-factor analysis for its impact on Brigantine Wilderness. Missouri does not explicitly state why it treats the MANE-VU Areas different than the other consulted Areas, other than to point out MANE-VU and New Jersey did not specify a Missouri source to evaluate. While MANE-VU and New Jersey did not specify a source for Missouri to analyze, MANE-VU did have six “Asks” of other states. Although Missouri does not include the MANE-VU Class I Areas in the same way as the other identified Areas, Missouri did consult with MANE-VU and New Jersey on the “Asks.” Despite the apparent inconsistencies in Missouri’s treatment of Class I Areas, we find the resulting identification of Class I Areas as being impacted by Missouri sources to be reasonable. However, the EPA finds this requirement is not separable from the overarching requirement of 40 CFR 51.308(f)(2) to establish a long-term strategy and as explained in section V.E. of this preamble, the EPA is proposing to disapprove Missouri’s long-term strategy. Accordingly, the EPA proposes to disapprove this element of Missouri’s second planning period regional haze plan.

D. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

Section 51.308(f)(1) requires states to determine the following for “each mandatory Class I Federal area located within the State”: baseline visibility conditions for the most impaired and clearest days, natural visibility conditions for the most impaired and clearest days, progress to date for the most impaired and clearest days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for states to propose adjustments to the URP line for a Class I area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives. 40 CFR 51.308(f)(1)(vi)(B).

In Chapter 3 of MoDNR’s submittal, Missouri determines and presents the baseline, natural, and current visibility conditions as well as the differences between these for both the 20 percent most anthropogenically impaired days and the 20 percent clearest days for the state’s two Class I Areas consistent with the EPA’s RHR and guidance. Specifically, Missouri presents the latest available visibility monitoring data as accessed on January 14, 2020, for the most recent 5-year period (2014–2018) and the baseline period (2000–2004) as collected at IMPROVE sites and made available on the Federal Land Manager Environmental Database (FED). Using the EPA’s revised IMPROVE equation (Pitchford et al., 2007), Missouri also calculated the light extinction

contributions from individual particle components. The state provides the required calculated visibility data as summarized in Table 1 of this preamble. Missouri also presents the progress made since the baseline period (2000–2004) as well as the difference between current (2014–2018) and natural visibility conditions for both the most impaired and clearest days. Missouri presents the uniform rate of progress data for each Missouri Class I Area and additional light extinction information for specific particle components in section 3.3.6 of the state’s submittal. Missouri calculated annual URP values of 0.27 dv/year and 0.29 dv/year needed to reach natural visibility on the 20% most impaired days at at Hercules-Glades and Mingo, respectively.⁴¹ Missouri’s URP values for 2028 are shown in Table 1 of this preamble. Missouri did not choose to adjust its URP for international anthropogenic impacts or to account for the impacts of wildland prescribed fires as allowed in 40 CFR 51.308(f)(1)(vi)(B). Missouri additionally compares observed and modeled visibility conditions and extinction compositions in section 3.3.9 of the submittal. The EPA further reviews the state’s calculations and visibility data in the technical support document (TSD) as contained in the docket for this rulemaking. Based on the EPA’s review, detailed in the TSD, the EPA proposes to find that Missouri appropriately determined the baseline, current and natural visibility conditions as well as the other required calculations for the two Missouri Class I Areas and thus meets the requirements of 40 CFR 51.308(f)(1). Therefore, the EPA proposes to approve this element of Missouri’s submission.

TABLE 1—MISSOURI CLASS I AREAS VISIBILITY CONDITIONS

Missouri Class I area	Baseline 2000–2004 average visibility (dv)		Natural visibility (dv)		Current 2014–2018 average visibility (dv)		2028 Uniform rate of progress (dv)
	20% Most impaired days	20% Clearest days	20% Most impaired days	20% Clearest days	20% Most impaired days	20% Clearest days	
Hercules Glades	25.17	12.84	9.30	4.69	18.72	9.71	18.82
Mingo	26.31	14.37	9.24	5.3	20.13	11.08	19.48

E. Long-Term Strategy for Regional Haze

1. Source Selection

40 CFR 51.308(f)(2)(i) requires states to “. . . consider evaluating major and minor stationary sources or groups of sources, mobile sources, and area

sources. The State must include in its implementation plan a description of the criteria it used to determine which sources or groups of sources it evaluated and how the four factors were taken into consideration in selecting the measures for inclusion in its long-term strategy.”

As part of its reasonable progress determinations, the state must describe the criteria used to determine which sources or group of sources were evaluated (*i.e.*, subjected to four-factor analysis) for the second implementation period and how the Four Factors were

⁴¹ See “Table 9. Uniform Annual Rate of Improvements Needed to Reach 2016 Natural

Visibility for the Most Impaired Days” in the MO Regional Haze SIP—Final August 2022.

taken into consideration in selecting the emission reduction measures for inclusion in the long-term strategy. 40 CFR 51.308(f)(2)(iii).

States may rely on technical information developed by the RPOs of which they are members to select sources for four-factor analysis and to conduct that analysis, as well as to satisfy the documentation requirements under § 51.308(f). Where an RPO has performed source selection and/or four-factor analyses (or considered the five additional factors in § 51.308(f)(2)(iv)) for its member states, those states may rely on the RPO's analyses for the purpose of satisfying the requirements of § 51.308(f)(2)(i) so long as the states have a reasonable basis to do so and all state participants in the RPO process have approved the technical analyses. 40 CFR 51.308(f)(3)(iii). States may also satisfy the requirement of § 51.308(f)(2)(ii) to engage in interstate consultation with other states that have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area under the auspices of intra- and inter-RPO engagement.

Missouri explains various methods the state considered when determining which sources to bring forward for further evaluation. Ultimately, Missouri primarily relied on the cumulative sulfate and nitrate extinction weighted residence time (EWRT) multiplied by Q/d (emissions divided by distance) analysis performed by a CenSARA contractor to determine the sources with the highest estimated contributions to Class I Areas. Missouri selected sources contributing more than 1 percent to any Class I Area for further evaluation.⁴² This resulted in the selection of nine Missouri sources and eighteen out of state sources. Missouri also considered sources identified by other states, RPOs or FLMs and explained whether they would be further evaluated or not and the rationale behind that decision. Missouri removed two sources initially selected, Buzzi Unicem and Ameren Meramec, due to decreasing emissions trends. Specifically, Buzzi Unicem provided the state with updated emissions information and demonstrated that the reductions were due to an enforceable consent decree entered in 2017. After the state reevaluated Buzzi Unicem's impacts with the updated emissions information, the visibility contribution dropped below the 1 percent threshold used by the state and was therefore removed from further consideration.

Regarding Ameren Meramec, Missouri points out that the facility voluntarily switched two boilers from burning coal to natural gas in 2016 and that the facility was expected to retire by December 2022. Due to the expected shutdown date before 2028, Missouri removed Meramec from consideration of additional control measures. However, the shutdown date cited by Missouri for Ameren Meramec is not federally enforceable. The EPA independently confirmed that emissions from the Meramec facility have indeed decreased significantly consistent with reduced operations preparing for shutdown and with no reported emissions or operating hours in 2023. Given these facts, the EPA finds that removal of these two sources is consistent with the EPA's 2019 Guidance and 2021 Clarifications Memo. However, Missouri may also consider in future planning periods whether evaluation of the removed sources (assuming continued operation of the sources) would result in a more effective control technology being found reasonable.

The seven sources Missouri selected for further evaluation are: John Twitty Energy Center, Associated Electric Cooperative Incorporated (AECI) New Madrid Power Plant, AECI Thomas Hill Power Plant, Sikeston Power Station, Ameren Labadie Energy Center, Ameren Rush Island Energy Center, and Mississippi Lime Company. More information on these sources is provided here and in the TSD.

John Twitty Energy Center is located in Springfield, Missouri in Greene County. Units 1 and 2 are dry bottom wall fired boilers. Unit 1 has a capacity of 205 megawatts (MW). Unit 2 has a capacity of 309.6 MW. Both units burn Powder River Basin low sulfur coal. Unit 1 does not utilize SO₂ controls. Unit 2 has fluidized bed limestone injection for SO₂ control. Both units have selective catalytic reduction (SCR) for NO_x control. Unit 2 also has overfire air (OFA). Both units have baghouses for particulate control.

AECI New Madrid Power Plant is located near Marston, Missouri in New Madrid County. Units 1 and 2 are cyclone boilers with capacities of 640 MW each and burn Powder River Basin low sulfur coal. The units do not utilize SO₂ control. For NO_x control, both units have SCR and OFA. For particulate control, both units have electrostatic precipitators (ESP).

AECI Thomas Hill Power Plant is located in Clifton Hill, Missouri in Randolph County. Units 1 and 2 are cyclone boilers. Unit 3 is a dry bottom wall fired boiler. Unit 1 has capacity of 185 MW. Unit 2 has a capacity of 305

MW. Unit 3 has capacity of 777 MW. All units burn Powder River Basin low sulfur coal and do not utilize SO₂ control. Units 1 and 2 have OFA and SCR for NO_x control. Unit 3 has OFA, low NO_x burners, and SCR for NO_x control. For particulate control, all 3 units have ESP.

Sikeston Power Station is located near Sikeston, Missouri in Scott County. Unit 1 is a dry bottom wall fired boiler with capacity of 235 MW and burns Powder River Basin low sulfur coal. Unit 1 has a tray/Venturi wet scrubber with control device efficiency of 76% (per state's four factor analysis), but the scrubber is not operating and is not easily restarted. The facility does not currently utilize any SO₂ control. For NO_x control, Unit 1 has low NO_x burners with OFA. For particulate control, Unit 1 has an ESP.

Ameren Labadie Energy Center is located in Labadie, Missouri in Franklin County. Units 1 and 2 are tangentially fired boilers with capacities of 675 MW each and burn Powder River Basin low sulfur coal. Units 3 and 4 are tangentially fired boilers with capacities of 690 MW each and burn Powder River Basin low sulfur coal. None of the units utilize control for SO₂. For NO_x control, all of the units have low NO_x burners, separated overfire air (SOFA), and neural network optimization. For particulate control, all of the units have ESP.

Ameren Rush Island Energy Center is located in Festus, Missouri in Jefferson County. Units 1 and 2 are tangentially fired boilers with capacities of 621 MW each and burn Powder River Basin low sulfur coal. The units do not utilize SO₂ control. For NO_x control, both units have low NO_x burners, SOFA, and neural network optimization. For particulate control, both units have ESP.

Mississippi Lime Company is a lime processing plant located in Ste. Genevieve, Missouri in Ste. Genevieve County. The following emission units were determined to be the plant's primary sources of NO_x and SO₂ emissions: Peerless Rotary Kilns and Mississippi Rotary Kilns which fire coal and coke. For SO₂ control, the Mississippi Rotary Kilns are equipped with wet scrubbers. Some kilns have lime injection. The remaining Mississippi Rotary Kiln units do not have lime injection; however, the facility indicates that the exhaust stream provides inherent process scrubbing of the exhaust stream due to lime in the process. The facility indicates good combustion and optimization of processes control of NO_x on all the units, and that the Peerless kilns also utilize a preheater. The units do not have any add-on NO_x controls.

⁴² See Table 36, starting on page 103 of Missouri's submittal.

Although the EPA finds Missouri's source selection methodology and the sources selected for further analysis reasonable for the second planning period, the EPA believes the RHR requirement at 51.308(f)(2), to consider the four factors in establishing the long-term strategy, encompasses the selection of sources for further analysis, and therefore is not separable. For the reasons described in section E.2 of this preamble, the EPA is proposing to disapprove Missouri's long-term strategy, which encompasses source selection, in Missouri's second implementation period regional haze plan as not meeting the requirements of 40 CFR 51.308(f)(2).

2. Four-Factor Analysis

Each state having a Class I area within its borders or emissions that may affect visibility in a Class I area must develop a long-term strategy for making reasonable progress towards the national visibility goal. CAA section 169A(b)(2)(B). As explained in the Background section of this document, reasonable progress is achieved when all states contributing to visibility impairment in a Class I area are implementing the measures determined—through application of the four statutory factors to sources of visibility impairing pollutants—to be necessary to make reasonable progress. 40 CFR 51.308(f)(2)(i). Each state's long-term strategy must include the enforceable emission limitations, compliance schedules, and other

measures that are necessary to make reasonable progress. 40 CFR 51.308(f)(2). All new (*i.e.*, additional) measures that are the outcome of four-factor analyses are necessary to make reasonable progress and must be in the long-term strategy. If the outcome of a four-factor analysis and other measures necessary to make reasonable progress is that no new measures are reasonable for a source, that source's existing measures are necessary to make reasonable progress, unless the state can demonstrate that the source will continue to implement those measures and will not increase its emission rate. Existing measures that are necessary to make reasonable progress must also be included as permanent and federally enforceable⁴³ emissions limits in the long-term strategy. In developing its long-term strategies, a state must also consider the five additional factors in § 51.308(f)(2)(iv).

In Chapter 4 of Missouri's submittal, the state explains the four-factor analyses performed either by the state or the source for the seven Missouri sources that were brought forward for further evaluation. The state describes how each of the four factors is considered. First, Missouri explains the cost of compliance is considered by performing a cost analysis for each source and each technically feasible control measure for both SO₂ and NO_x. The state also describes the process used to establish the cost threshold that the state uses to determine whether the cost effectiveness of each control

measure is reasonable and therefore should be included in the long-term strategy. Specifically, Missouri refers to control cost values from the first implementation period, compiled by the state of Arkansas, to set a cost threshold derived from those values. Second, Missouri generally describes how the state assumed the time necessary for compliance for each control type based on prior EPA studies and literature. Third, Missouri describes how energy and non-air quality environmental impacts of compliance are considered. For example, quantifiable energy impacts for a given control type are included in the cost estimates. Fourth, Missouri explains the two methods used to estimate the remaining useful life of the sources evaluated while also considering the remaining useful life of the control types. In response to comment on this point, Missouri included cost estimates assuming the default remaining useful life values that the EPA recommends using for specific control devices.

Ameren Missouri and Mississippi Lime Company provided full four-factor analyses for their respective facilities. Missouri performed the four-factor analyses for the remaining sources. The four-factor analyses presented in Missouri's SIP cover what Missouri determined to be technically feasible control measures for both SO₂ and NO_x for each source. Specifically, the control technologies evaluated by Missouri are displayed in Table 2 of this preamble.

TABLE 2—CONTROL TECHNOLOGIES EVALUATED BY MISSOURI

SO ₂ Control Technologies	
Flue Gas Desulfurization (FGD)—Wet, Spray Dry, Dry Scrubber (50% to 99% control efficiency):	
• Wet Lime Scrubber, typical control efficiency 90%–99% • Wet Limestone Scrubber, typical control efficiency 90%–99% • Dual-Alkali Scrubber, typical control efficiency 90%–95% • Spray Dry Absorber (SDA), typical control efficiency 90%–95% • Dry Sorbent Injection (DSI), typical control efficiency 50%–80% • Circulating Dry Scrubber • Hydrated Ash Reinjection	
Limestone Injection.	
Low sulfur content coal.	
Fuel Switch.	
NO _x Control Technologies	
Selective Catalytic Reduction (SCR), typical control efficiency 90%.	
Low NO _x Burners (LNB), typical control efficiency 40%–60%.	
Selective Non-Catalytic Reduction (SNCR), typical control efficiency 35%–50%.	
Overfire Air (OFA), typical control efficiency 20%.	
Flue Gas Recirculation (FGR).	
Low Excess Air (LEA).	

⁴³ The EPA also interprets the requirement to be permanent and federally enforceable as being practically enforceable, *i.e.*, an operational or

emissions limit with the necessary reporting and recordkeeping requirements such that the source

reports compliance with and that can practically be measured and enforced.

The full details for the state and source performed four-factor analyses are included in Appendix C to the state

submittal included in the docket for this action.

TABLE 3—SUMMARY OF RESULTS OF MISSOURI'S FOUR-FACTOR ANALYSES

Facility	Unit	Pollutant	Control technology	Annualized cost (\$)	Emission reduction (tons per year)	Effective cost (\$/ton)
Labadie Energy Center *	B1	SO ₂	DSI	\$27,074,061	7,011	\$3,862
		NO _x	SNCR	3,261,106	450	7,247
	B2	SO ₂	DSI	27,074,061	7,031	3,851
		NO _x	SNCR	3,261,106	450	7,247
	B3	SO ₂	DSI	25,419,801	6,592	3,856
		NO _x	SNCR	3,333,575	425	7,844
	B4	SO ₂	DSI	25,419,801	6,854	3,709
		NO _x	SNCR	3,333,575	425	7,844
	B1	SO ₂	DSI	28,751,220	6,831	4,209
		NO _x	SNCR	3,000,218	375	8,001
Rush Island Energy Center *.	B2	SO ₂	DSI	28,822,931	7,337	3,928
		NO _x	SNCR	3,000,218	375	8,001
	EP-069, EP-070, EP-071.	SO ₂	DSI	984,041	11.61	84,800
		NO _x	SNCR	465,644	24	19,100
Mississippi Lime Company *.	EP-640, EP-645	SO ₂	DSI	1,344,685	8.62	156,000
		NO _x	SNCR	809,506	85	9,500
	EP-180H, EP-186N, EP-187N.	SO ₂	Wet Lime Scrubber	1,632,862	171.09	9,500
		NO _x	Wet Lime Scrubber	1,632,862	171.09	9,500
New Madrid Power Plant *.	B1	SO ₂	DSI	20,268,773	5,025	4,033
	B2	SO ₂	DSI	22,003,761	5,561	3,957
Thomas Hill Energy Center *.	B1	SO ₂	DSI	8,255,270	1,837	4,494
	B2	SO ₂	DSI	12,245,800	2,867	4,271
John Twitty Energy Center *.	B3	SO ₂	DSI	29,936,230	7,698	3,889
	B1	SO ₂	DSI	6,764,511	1,794	3,771
Sikeston Power Station *	B1	SO ₂	DSI	13,532,594	3,443	3,930
		NO _x	SCR	7,899,846	774	10,209

* Missouri noted these cost estimates were calculated assuming a remaining useful life consistent with the EPA's control cost manual (CCM), however, some values still do not comport with EPA's control cost manual. Specifically, Missouri assumed a 25-year useful life for Wet FGD, SDA and DSI controls when the EPA recommends a 30-year useful life. Missouri assumed a 30-year useful life for SCR and a 20-year useful life for SNCR, consistent with the CCM.

The results of Missouri's four-factor analyses are shown in Table 3 of this preamble. Missouri details the cost effectiveness for each control type and unit and categorically concludes that each control measure is not reasonable because the cost effectiveness exceeds the cost threshold set by Missouri, as discussed later in this section. Consistent with the finding that new control measures are not necessary, Missouri finds that current existing operations at each facility are needed for reasonable progress.

For the reasons described below, the EPA proposes to find that Missouri has not adequately supported the conclusion that existing measures satisfy the requirement to make reasonable progress. Missouri has not definitively shown that further reductions of visibility impairing pollutants are not reasonable and has not adequately explained how its approach is consistent with the CAA's

requirement to make reasonable progress. The EPA discusses each of the following lines of evidence that support this proposed finding. First, the state rejected otherwise reasonable control measures that would reduce tens of thousands of tons of visibility impairing pollutants and improve visibility at Missouri and other states' Class I areas. This decision was based primarily on the unreasonable justification and use of the selected cost threshold. Second, the state's cost effectiveness calculations do not fully align with EPA guidance such as the Control Cost Manual. When the EPA corrects the deficiencies of Missouri's cost analysis, we find cost effective controls are available on most if not all sources evaluated by Missouri. Third, Missouri has not included practically enforceable emissions limits as part of its long-term strategy to make reasonable progress. Specifically, the included source agreements do not contain explicit enforceable emissions

limits associated with existing operations in addition to problematic provisions included in the source agreements rendering them unenforceable and not permanent.

Missouri's Justification and Use of the Selected Cost Threshold Is Unreasonable

Missouri chose to establish a cost threshold based on control cost values from the first planning period adjusted to 2021 dollars. Using a database of first planning period control costs,⁴⁴ Missouri selected a cost threshold of \$3,658 per ton specific to SO₂ for EGUs by calculating the first planning period

⁴⁴ Missouri relied on a dataset compiled by the State of Arkansas. Note that the EPA is not proposing an action with respect to Arkansas's regional haze SIP and we are not commenting on the approvability of Arkansas's use of the cost methodology, their cost threshold, or their overall SIP. Missouri's cost threshold dataset is available in Appendix F to the state submittal, in the docket for this action.

mean cost per ton value plus one standard deviation specifically for new control technologies (*i.e.*, excluding upgrades to existing controls or reliance on lower sulfur coal). Application of this threshold means that Missouri considers all cost effectiveness values greater than \$3,658 per ton to be not cost effective and therefore rejects the control measure. Using a similar methodology for NO_x controls, Missouri selected a cost threshold of \$5,370 per ton. The EPA commented during both the early engagement period and the formal comment period requesting further documentation and justification for use of such a cost threshold. In response to comments, Missouri revised the control cost thresholds to be slightly higher than originally proposed and provided additional documentation. The EPA also commented on the fact that multiple sources in the underlying statistical data (in the Appendix F spreadsheet) installed controls at costs above the state's threshold including at sources similar to the sources selected by Missouri. This dataset does not include any Missouri units. By selecting the mean plus one standard deviation as a cost effectiveness threshold, Missouri appears to ignore those costs that fall above the threshold, costs that were found reasonable at nine units (or twenty percent) of the previously analyzed EGUs, most of similar size to the Missouri EGUs. EPA guidance states that "when the cost/ton of a possible measure is within the range of the cost/ton values that have been incurred multiple times by sources of similar type to meet regional haze requirements or any other [Clean Air Act] requirement, this weighs in favor of concluding that the cost of compliance is not an obstacle to the measure being considered necessary to make."⁴⁵ Missouri states that higher cost/ton values are largely associated with smaller capacity EGUs and therefore are not directly comparable with cost values for their larger capacity EGUs. However, in the EPA's review of the state's cost threshold statistical data, the EPA finds that values presented for EGUs greater than 500 MW yield maximum costs in the range of \$5,000/ton to \$6,000/ton for SO₂ control and generally exceed the cost effectiveness of SO₂ control at smaller (less than 500 MW) EGUs.

Additionally, the EPA notes that CenRAP (predecessor organization to CenSARA) conducted a sensitivity

analysis which evaluated controls for sources with a Q/d>5 and cost-effectiveness up to \$10,000/ton related to the first regional haze planning period. Based on that analysis, CenRAP suggested that a range from \$4,000 to \$5,000/ton (in 2005 dollars) would be a reasonable threshold for controls because of diminishing emission reductions as costs increase beyond that range.⁴⁶ In 2021 dollars, the CenRAP range becomes \$6,060 to \$7,600/ton.⁴⁷ As described earlier, Missouri relied on other analyses performed by CenSARA for this planning period, as well as considered costs from the prior planning period so the EPA finds this analysis further undermines the reasonableness of Missouri's selected cost threshold.

Similarly, the EPA recently proposed a BART FIP for Texas that references past BART decisions, specifically that several controls were required by either the EPA or States as BART with average cost-effectiveness values in the \$4,200 to \$5,100/ton range (escalated to 2020 dollars).⁴⁸ In 2021 dollars, this range is \$5,300/ton to \$6,500/ton.

Despite the costs from the first planning period being adjusted to 2021 dollars, the cost thresholds set by Missouri are lower than historical values found necessary for BART and reasonable progress determinations as evidenced by the control costs above Missouri's threshold in the cost effectiveness spreadsheet.⁴⁹ Missouri's cost thresholds are based on costs found reasonable during the first planning period and therefore do not account for control costs found reasonable since that time. For example, other states have since found higher control costs to be reasonable, such as Oregon⁵⁰ selecting a \$10,000/ton threshold. Additionally, Arkansas's second planning period regional haze SIP,⁵¹ which relies on the same underlying statistical cost data to establish a threshold as used by Missouri, sets a threshold of \$5,086 per

ton for EGUs for both SO₂ and NO_x control measures.

One reason for considering higher cost effectiveness thresholds for the second planning period (compared to the first planning period) is that most of the cheapest available cost-effective emissions reductions were required and implemented during the first planning period. These were typically SO₂ and NO_x controls at the largest uncontrolled point sources (mostly electric generating units), which in many cases had cost-effectiveness values well under \$1,000 per ton. These relatively cheap controls lead to a low bias when using first planning period cost database numbers to calculate mean costs (even when adding in one standard deviation). Most remaining point sources have smaller emissions and do not have cost effective controls at those previously "cheap" levels. However, by itself, that is not a reasonable justification to reject otherwise potentially cost-effective controls in the second planning period and beyond. As we move forward in time to subsequent planning periods, source emissions will get smaller and potential controls will get more expensive on a cost per ton basis. However, the statute still requires states to continue to make reasonable progress towards the national goal.

Missouri's use of the selected cost threshold has the effect of rejecting control measures that historically have been widely used to meet the regional haze rule requirements, without requiring additional emissions reductions or enforceable shutdowns beyond existing operations. The EPA has not established a bright line or a recommended cost effectiveness threshold to be used by States. However, the EPA finds that Missouri's justification and use of the selected cost threshold to summarily reject control measures, often with cost effectiveness values just above the selected threshold value, is not reasonable and does not comport with the stated goals of the CAA and RHR. This is especially apparent when considering the magnitude of available emissions reductions at Missouri sources and associated visibility improvements at Missouri and other states' Class I Areas.

Missouri still has multiple power plants that are uncontrolled for SO₂. In fact, Missouri has had the second highest statewide total SO₂ emissions in the country for each of the last five years (2018–2022). Further, of the EGUs selected by Missouri, three were among the top 15 SO₂ emitters in the country in 2023, with Ameren Labadie being the

⁴⁵ EPA's 2019 "Guidance on Regional Haze State Implementation Plans for the Second Implementation Period" <https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period>.

⁴⁶ See "Sensitivity Run Specifications for CenRAP Consultation.pdf," available in the docket for this action. See also "so2_cost_ton.xls" and "nox_cost_ton.xls," also available in the docket for this action.

⁴⁷ Based on the Chemical Engineering Plant Cost Index (CEPCI). For 2005 the CEPCI value is 468.2. For 2021, the CEPCI value is 708.8.

⁴⁸ See 88 FR 28918, 28963. For 2020 the CEPCI value is 596.2.

⁴⁹ The sources listed in the cost effectiveness spreadsheet (Appendix F to the state submittal) are accompanied by a link to the relevant EPA action.

⁵⁰ The EPA proposed approval of Oregon's second planning period regional haze SIP on February 23, 2024, 89 FR 13622.

⁵¹ <https://www.adeq.state.ar.us/air/planning/sip/regional-haze.aspx>.

highest SO₂ emitter in 2023.⁵² As described earlier, many states relied on transport programs to satisfy BART in the first planning period instead of requiring source specific control determinations, including Missouri.⁵³ While trading programs are effective at reducing emissions on a regional scale, they do not require emission reductions or installation of controls on specific sources. Therefore, individual sources may avoid installing controls or reducing emissions through the purchase or trading of allowances from other sources that did opt to install controls or reduce emissions. Many of the sources selected by Missouri for further evaluation, such as Ameren Labadie, have not installed post combustion control equipment. Generally, sources that did not install or consistently operate post combustion control equipment relied on the purchase of allowances for trading program compliance. And as discussed further below, the EPA proposes to find that sources in Missouri have the potential for cost-effective control options.

As noted previously, the EPA agrees with FLM assertions that there is the potential for significant visibility improvement associated with the controls evaluated by Missouri at these sources. However, MoDNR argues in each four-factor analysis summary that additional controls are not needed. Among the reasons cited, MoDNR states that “All Class I areas impacted by sources in Missouri have made steady and significant improvement in visibility, and modeling shows they are projected to be below, or well below, their uniform rate of progress (URP) glidepaths in 2028.”⁵⁴ Although the EPA agrees there has been improvement in the Class I areas impacted by Missouri sources, several of these Class I areas have the highest remaining anthropogenic visibility impairment in the country. In particular, based on the latest available IMPROVE data averaged over the five-year period of 2018–2022, Mammoth Cave, Mingo, and Hercules-Glades are in the top 10 of Class I areas with the greatest anthropogenic visibility impairment.⁵⁵ Furthermore,

the EPA’s modeling shows that a significant amount of visibility impairment is projected to remain in these Class I areas in 2028.⁵⁶ While not explicitly presented by the state as a reason for rejecting additional controls, the EPA has reiterated through regulation and guidance that the URP is not a safe harbor and an area’s position with respect to the URP should not be a factor in determining whether a control measure is reasonable. See 2019 Guidance at 22, 49, and 50 and 2021 Clarifications Memo at 2, 12, 13 and 15.

The national goal set by Congress outlines both the remedying of any existing visibility impairment, and also preventing any future visibility impairment. CAA section 169A(a). Further, the EPA has stated that in order to accomplish the national goal set by Congress, cumulative progress must be made including relatively small reductions and visibility benefits from many sources over a wide area over time. To that end, visibility should not be used as the sole factor in rejecting an otherwise reasonable control measure. See 2021 Clarifications Memo at 13.

CAA section 169A(b)(2) requires states to include in their SIPs “emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress.” While these emission limits must apply to individual sources or units, CAA section 169A(g)(1) does not explicitly require states to consider the four factors on a source-specific basis when determining what amount of emission reductions (and corresponding visibility improvement) constitutes “reasonable progress.” The EPA has consistently interpreted the CAA to provide states with the flexibility to conduct four-factor analyses for specific sources, groups of sources, or even entire source categories, depending on state policy preferences and the specific circumstances of each state. While the CAA and the RHR provide states with flexibility in evaluating the four reasonable progress factors, states must exercise reasoned judgment when choosing which sources, groups of sources, or source categories to analyze. Consistent with the state’s obligation to exercise reasoned judgment in its

analysis, the EPA’s role in reviewing a SIP is not limited to accepting at face value a state’s analysis in its own SIP submission and its determination that it has fully satisfied the requirements of the CAA. Rather, Congress tasked the EPA with the responsibility of ensuring that a SIP submission satisfies the requirements of the CAA. Abundant case law reflects an understanding that the EPA must evaluate SIP submissions under CAA section 110(k)(2) and (3).⁵⁷ If a SIP submission is deficient in whole or in part, the EPA must so find, and if not corrected, implement the relevant requirements through a FIP under CAA section 110(c). Courts have held that the EPA’s ability to ensure that a SIP submission satisfies the requirements of the CAA includes the ability to review a state’s analysis to ensure that it is “reasonably moored to the Act’s provisions and . . . based on reasoned analysis.”⁵⁸ Thus, EPA’s oversight role is “more than the ministerial task of routinely approving SIP submissions.”⁵⁹ If the EPA’s role were otherwise, Congress would not have expressly tasked the agency with both reviewing SIPs for completeness (CAA section 110(k)(1)(B)) and reviewing the substance of SIPs (CAA section 110(k)(2)–(4)).

For these reasons, the EPA finds that Missouri does not sufficiently justify the use of the selected cost threshold to repeatedly reject otherwise reasonable control measures that would result in potentially meaningful visibility improvements and significant emissions reductions. And as explained later in this section, the EPA’s revised cost analyses for many of the selected Missouri sources result in cost effective controls. For these reasons, the EPA finds that Missouri’s rejection of new control measures is unreasonable and inconsistent with the goals of the RHR.

Deficiencies in Missouri’s Cost Analyses

The EPA thoroughly reviewed Missouri’s cost analysis for each

⁵² According to 2023 reported emissions available at <https://campd.epa.gov/>.

⁵³ 77 FR 38007, June 26, 2012 and 83 FR 48242, September 24, 2018.

⁵⁴ See Appendix C–1–7 to the state’s submission.

⁵⁵ Based on “Daily Impairment Values Including Patched Values” IMPROVE data spreadsheet, <https://vista.cira.colostate.edu/Improve/rhr-summary-data/>. For the 20% most impaired days from 2018–2022, Mammoth Cave is the 5th most anthropogenically impaired Class I area with a 5-year average

anthropogenic impairment of 10.4 dv, and Mingo is 6th on the list at 10.1 dv. Hercules-Glades is 10th on the list with a 5-year average anthropogenic impairment of 8.9 dv.

⁵⁶ *Technical Support Document for EPA’s Updated 2028 Regional Haze Modeling*, Office of Air Quality Planning and Standards, United States Environmental Protection Agency (September 2019). See Table 3–2: Base and future year deciview values on the 20% clearest and 20% most impaired days at each Class I area for the base model period (2014–2017) and future year (2028).

⁵⁷ See e.g., *Oklahoma v. EPA*, 723 F.3d 1201, 1209 (10th Cir. 2013) (upholding EPA’s disapproval of “best available retrofit technology” (BART) SIP, noting BART “does not differ from other parts of the CAA—states have the ability to create SIPs, but they are subject to EPA review”); see also *Westar Energy v. EPA*, 608 Fed. App’x 1, 3 (D.C. Cir. 2015) (“EPA acted well within the bounds of its delegated authority when it disapproved of Kansas’s proposed [good neighbor] SIP.”).

⁵⁸ *North Dakota v. EPA*, 730 F.3d 750, 761 (8th Cir. 2013).

⁵⁹ *North Dakota v. EPA*, 730 F.3d 750, 761 (8th Cir. 2013). See also *Alaska Department of Environmental Conservation v. EPA*, 540 U.S. 461, (2004) (concluding that EPA was not limited to verifying that a BACT determination had been made, but rather EPA could examine the substance of the BACT determination).

selected source. During both the pre-proposal and formal public comment period, the EPA commented on the cost analysis presented in the state's plan. The EPA identified specific errors, over- or underestimations, inappropriate or unexplained assumptions, and inconsistencies with the EPA Air Pollution Control Cost Manual.⁶⁰ In response, Missouri addressed many of the EPA's concerns by correcting certain identified errors or assumptions. For example, Missouri removed disallowed costs from the cost assumptions such as owner's costs and updated cost estimates to also include the default remaining useful life as recommended by the EPA. However, the EPA believes that Missouri did not correct all the deficiencies in the cost assumptions and proposes to find certain aspects of the cost analyses are not well supported. The EPA further explains these deficiencies in the state's cost analyses in the technical support document (TSD), contained in the docket for this action. For example, the EPA commented on Missouri's reliance on Ameren's four-factor analysis which included a non-default retrofit factor of 1.5 for wet FGD and SDA and 1.2 for SCR evaluated at the Ameren facilities (Labadie and Rush Island). Missouri and Ameren did provide additional documentation in response to the EPA's comment. However, Missouri's reliance on Ameren's non-default retrofit factors should include more detailed cost estimates related to the specific retrofit hardships at each facility. The EPA Air Pollution Control Cost Manual (CCM) includes a retrofit factor in the control cost calculations to account for the relative difficulty in installing a control device. The default value of 1 is associated with average difficulty in retrofitting an existing unit with a control device. A value of 0.77 is generally assumed for new units. Therefore, the default retrofit factor of 1 already includes a 30% increase in costs compared to new construction. A retrofit factor of 1.5 is the maximum value allowed in the Control Cost Manual spreadsheets and has the effect of inflating base cost estimates by 50%. The Control Cost Manual (CCM) specifically notes that the retrofit factor should be between 0.7 and 1.3 for wet FGD systems and between 0.8 and 1.5 for dry FGD systems⁶¹ and

documentation of site congestion, site access, complex ductwork construction and capacity of existing infrastructure is needed to determine the complexity of the retrofit and associated retrofit factor. Therefore, to support a retrofit factor above 1 a source should provide site specific documentation detailing the inflated costs associated with the CCM criteria (site congestion, site access, ductwork complexity as well as capacity of existing infrastructure that would lead to above average retrofit difficulty). The EPA commented on Missouri's reliance on Ameren's four-factor analysis which included a non-default retrofit factor of 1.5 for SDA and wet FGD and 1.2 for SCR evaluated at the two Ameren facilities (Labadie and Rush Island). Specifically, the EPA commented that the state and source needed to provide additional documentation to support the use of this non-default retrofit factor. In response to the EPA's comment, Missouri and Ameren provided additional documentation in the form of aerial imagery documenting the site congestion and site access as well as engineering plans and schematics of potential control device location, rerouted ductwork, and other construction projected as part of installation of wet FGD at Labadie. However, these do not appear to be accompanied by site-specific cost estimates for the various aspects of the retrofit hardship. Ameren also included cost estimates based on prior source specific studies for wet FGD and DSI at Labadie and Rush Island (See Table 3 in Appendices C-6 and C-7 of the state submittal, respectively). However, no specifics are provided about these prior studies nor are the underlying cost assumptions provided for comparison with the new CCM calculations provided. Ameren reasoned that a higher retrofit factor was needed because the prior source-specific studies resulted in cost estimates higher than the estimates using the CCM assumptions. However, this assumption is not well supported. The EPA does not have access to and therefore cannot review the necessary underlying cost assumptions from these prior studies to determine the reasonableness of those estimates. To support the retrofit factor of 1.2 for SCR, the state points to the documentation provided for the wet FGD as supplied by Ameren but there is no documentation specific to the retrofit factor for SCR. Additionally, these higher retrofit factors are utilized in the cost calculations for both Ameren

facilities (Labadie and Rush Island) but the documentation including imagery and schematics appear specific to Labadie. Therefore, there appears to be no site-specific documentation provided for the non-default retrofit factors used for Rush Island.

Detailed, technical cost information and robust documentation is needed to justify the inflated costs resulting from the use of the maximum retrofit factor value for SO₂ controls at each Ameren facility. Other electric generating units in the state (and outside the state) do not rely on such a non-default retrofit factor despite having similar limitations, such as physical space limitations, to accommodate control device retrofits.⁶² The EPA invites comment on the reasonableness of using a non-default retrofit factor and whether other cases of using such a factor may be instructive to the outcome of this specific scenario.

In addition to reviewing Missouri's cost analyses, the EPA performed independent cost calculations for certain control measures at the selected sources to compare with Missouri's cost calculations. These calculations are summarized below and further detailed in the TSD included in the docket for this action. The EPA updated certain aspects of the Missouri cost calculations to follow EPA guidance. For example, the EPA used the default retrofit factor of 1 in our calculations for all facilities evaluated. This change, along with the other corrections made in the EPA's cost analyses, result in cost effectiveness values of SO₂ controls near or within the cost range established by Missouri. Further, the EPA calculated cost effectiveness numbers are similar to maximum control costs implemented in the first planning period for several states.

The EPA's analysis also changed the emissions baseline used in determining the emission reduction for a given control to arrive at the cost effectiveness (or cost per ton) value. While Missouri relied on the average of reported annual emissions to define the reduction estimate, the EPA recommends using the maximum annual emissions for the analyzed time period when setting the baseline emissions to calculate the cost effectiveness. Similarly, the time period selected for the baseline emissions also influences the final cost effectiveness value. For this reason, the EPA performed the cost analyses using both the same time period used by Missouri

⁶⁰ EPA Air Pollution Control Cost Manual, <https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution>.

⁶¹ Section 5—Chapter 1: Wet and Dry Scrubbers for Acid Gas Control, Section 1.2.3.5. <https://www.epa.gov/sites/default/files/2021-05/>

[documents/wet_and_dry_scrubbers_section_5_chapter_1_control_cost_manual_7th_edition.pdf](documents/wet_and_dry_scrubbers_section_5_chapter_1_control_cost_manual_7th_edition.pdf).

⁶² See the EPA's response to comment including comment on the range of retrofit factors for wet and dry FGD on EGUs. https://www.epa.gov/sites/default/files/2021-05/documents/rtdocument_wet_and_dry_scrubbers_controlcostmanual_7thedition.pdf.

(2016–2020) for a direct comparison and the most recent time period (2018–2022) in order to fully evaluate the range of cost effectiveness values using all currently available data. The baseline emissions assumption alone makes a significant difference when comparing the EPA’s cost effectiveness values with the state’s values, but other updates to the cost analysis refine and generally reduce the overall costs. Further, when the calculations are corrected to be consistent with EPA guidance, there are control costs near and within the cost range as identified as reasonable by Missouri. For example, the EPA’s calculations result in SO₂ control costs as low as \$2,688 per ton. Therefore, we propose to find there are likely cost-effective control options at most, if not all, sources selected by Missouri. As noted previously, there are control costs that were previously found reasonable by states or the EPA, in the dataset used by Missouri to set a cost threshold, that are similar to the range of costs as calculated by Missouri and the EPA. States should provide a sufficient justification in order to reject measures that have been required at similarly situated facilities in a similar cost range.

The Federal land managers commented on the state’s use of an “unreasonably low threshold” and the inappropriate assumptions utilized in the state’s cost analyses. On page 54 of Appendix G–2 to the state’s submittal, the National Park Service (NPS) references the aspects of Missouri’s cost analyses that are inconsistent with the EPA rules or guidance and provides their own estimates of cost effectiveness for the selected sources, often significantly lower than the values presented by Missouri. The cost values provided by the NPS further corroborate the EPA’s revised cost analyses, as contained in the TSD, that result in cost effective controls at most of the state’s selected sources.

In Table 21 of the TSD, the EPA identifies the cost effectiveness in 2021 dollars for SO₂ control measures such as DSI, SDA and wet FGD. For NO_x, the EPA evaluates SCR and SNCR. In Table 29 of the TSD, the EPA identifies the cost effectiveness in 2021 dollars for SCR and SNCR. The spreadsheets included in the docket contain all the underlying data for the EPA’s cost analyses including the cost effectiveness values in 2021 dollars using both baseline time periods as previously mentioned.⁶³ For example, the EPA’s estimated cost effectiveness values for DSI range from \$2,688 per ton to \$4,119 per ton. The EPA’s estimated cost effectiveness values for SDA range from \$3,966 per ton to \$7,846 per ton. The EPA’s estimated cost effectiveness values for wet FGD range from \$4,081 per ton to \$9,201 per ton. The EPA’s estimated cost effectiveness values for SCR range from \$795 per ton to \$27,208 per ton. The lowest costs in this dataset are associated with the units that already have SCR installed. In this case, the control cost is entirely associated with operation of the existing SCR with no additional capital cost of installation since they are already installed on those units. The EPA’s estimated cost effectiveness values for SNCR range from \$7,429 per ton to \$16,580 per ton. Consistent with Missouri’s cost analyses, the EPA did not calculate the cost effectiveness of SNCR on units that already have SCR installed. Additionally, the EPA did not evaluate SNCR for Sikeston as a prior technical infeasibility determination was made by the source.⁶⁴

Table 4 of this preamble below includes an abbreviated summary of the EPA’s cost analyses for certain SO₂ control devices. The EPA’s methodology for the cost calculations is included in the TSD along with the full table of control cost results. In table 4 of this preamble below, we present only the values associated with wet FGD with an

emissions limit of 0.06 lb/mmBTU. The TSD also presents costs associated with wet FGD with an emissions limit of 0.04 lb/mmBTU. Cost effectiveness values associated with the 0.04 lb/mmBTU emissions limit are lower due to the greater emissions reductions. To be conservative, this table presents only the highest cost per ton values (*i.e.*, least cost-effective) from the two time periods evaluated by the EPA for each control type by unit. Values for both time periods are presented in the TSD. Generally, the EPA’s resulting cost effectiveness values are lower (more cost effective) than the values presented by Missouri. The cost effectiveness of wet FGD is higher than SDA. However, wet FGD delivers significant improvements in cost effectiveness as the tonnage of SO₂ removal increases due to the greater level of control. DSI appears the most cost effective given the lower capital cost compared with SDA and wet FGD, but also comes with lower control efficiency. For facilities with higher cost effectiveness values for SDA and wet FGD, DSI may be a reasonable option. The EPA notes that there are examples nationally of each of these control types being implemented at large electric generating units such that these types of controls are technically and economically feasible at such sources. Specifically, these types of SO₂ controls were implemented at the sources included in the underlying data for Missouri’s cost threshold, and in some cases, with cost effectiveness values higher than the threshold set by Missouri. As previously discussed, if Missouri would have set the cost threshold for this planning period nearer other states thresholds or near the maximum of costs from the first planning period (*i.e.*, around \$6,000/ton), both the cost effectiveness values presented by Missouri and the EPA’s revised values would be below that threshold for most SO₂ control types.

TABLE 4—SUMMARY OF THE EPA’S COST EFFECTIVENESS VALUES FOR DSI, SDA AND WET FGD

Facility	Unit	Date range with highest cost per ton	Control	SO ₂ reduction (tons per year), based on CCM/RCA cost spreadsheet calculations	2021\$ Cost effectiveness (\$/ton), based on CCM spreadsheet (for SDA/WFGD) and 2023 version of RCA for DSI
John Twitty	1	2018–2022	DSI	2392	2928
		2018–2022	SDA	2520	7011
		2018–2022	WFGD	2520	8205

⁶³ The following values presented as minimum and maximum cost effectiveness values include the full range of values for both baseline emission time periods.

⁶⁴ In January 2009, Sikeston submitted an applicability determination request to install SNCR. However, after initial testing, Sikeston determined that SNCR was infeasible at the facility due to stalactite formation, dropping and damaging the

boiler tubes. Based on that information, Missouri removed SNCR from further consideration in Sikeston’s four-factor analysis. Similarly, the EPA did not evaluate SNCR at Sikeston. See Appendix C–5 to Missouri’s submittal for more information.

TABLE 4—SUMMARY OF THE EPA'S COST EFFECTIVENESS VALUES FOR DSI, SDA AND WET FGD—Continued

Facility	Unit	Date range with highest cost per ton	Control	SO ₂ reduction (tons per year), based on CCM/RCA cost spreadsheet calculations	2021\$ Cost effectiveness (\$/ton), based on CCM spreadsheet (for SDA/WFGD) and 2023 version of RCA for DSI
Labadie	1	2016–2020	DSI	8177	3609
		2016–2020	SDA	9008	4780
		2016–2020	WFGD	9008	5038
	2	2016–2020	DSI	8308	3608
		2016–2020	SDA	9023	4774
		2016–2020	WFGD	9023	5048
	3	2016–2020	DSI	8497	3606
		2016–2020	SDA	9100	4825
		2016–2020	WFGD	9100	5010
	4	2016–2020	DSI	8255	3614
		2016–2020	SDA	8692	5019
		2016–2020	WFGD	8692	5212
New Madrid	1	2018–2022	DSI	5657	3774
		2016–2020	SDA	6104	6444
		2016–2020	WFGD	6104	6730
	2	2018–2022	DSI	5953	3739
		2018–2022	SDA	6518	6057
		2018–2022	WFGD	6518	6322
Rush Island	1	2018–2022	DSI	7668	3629
		2018–2022	SDA	8264	4732
		2018–2022	WFGD	8264	5055
	2	2018–2022	DSI	9159	3580
		2018–2022	SDA	9689	4111
		2018–2022	WFGD	10114	4209
Sikeston	1	2018–2022	DSI	5661	3711
		2018–2022	SDA	4809	4292
		2018–2022	WFGD	4809	4901
Thomas Hill	1	2018–2022	DSI	2006	4119
		2018–2022	SDA	2248	7846
		2018–2022	WFGD	2248	9201
	2	2016–2020	DSI	2864	3982
		2016–2020	SDA	3210	7559
		2016–2020	WFGD	3210	8520
	3	2016–2020	DSI	8316	3658
		2016–2020	SDA	9371	5300
		2016–2020	WFGD	9371	5338

Table 5 below includes a summary of the EPA's cost effectiveness values for NO_x controls.

TABLE 5—SUMMARY OF THE EPA'S COST EFFECTIVENESS VALUES FOR SCR AND SNCR

Facility	Unit	Date range with highest cost per ton	Control	NO _x reduction (tons per year), based on CCM/RCA cost spreadsheet calculations	2021\$ Cost effectiveness (\$/ton), based on CCM spreadsheet for SCR and 2023 version of RCA for SNCR
John Twitty	1	2018–2022	SCR	359	3,313
Labadie	1	2018–2022	SCR	948	24,483
		2018–2022	SNCR	302	9,064
	2	2016–2020	SCR	977	23,960
		2018–2022	SNCR	301	9,130
	3	2018–2022	SCR	1,106	21,747
		2018–2022	SNCR	359	8,245
	4	2018–2022	SCR	971	23,878
		2018–2022	SNCR	355	8,306
New Madrid	1	2016–2020	SCR	10,691	798
	2	2018–2022	SCR	9,617	832
Rush Island	1	2016–2020	SCR	869	23,960
		2018–2022	SNCR	208	11,181
	2	2018–2022	SCR	763	26,659

TABLE 5—SUMMARY OF THE EPA'S COST EFFECTIVENESS VALUES FOR SCR AND SNCR—Continued

Facility	Unit	Date range with highest cost per ton	Control	NO _x reduction (tons per year), based on CCM/RCA cost spreadsheet calculations	2021\$ Cost effectiveness (\$/ton), based on CCM spreadsheet for SCR and 2023 version of RCA for SNCR
Sikeston	1	2018–2022	SNCR	130	15,427
Thomas Hill	1	2016–2020	SCR	598	15,520
	2	2016–2020	SCR	3,237	872
	3	2016–2020	SCR	4,695	876
			SCR	4,999	1,349

The cost effectiveness of SCR is higher than SNCR for units that do not already have SCR installed. However, SCR delivers significant improvements in cost effectiveness as the tonnage of NO_x removal increases due to the greater level of control of SCR over SNCR. The cost effectiveness of operating already installed SCR is extremely cost effective in comparison. As required in the Missouri source agreements submitted with the SIP, the EPA agrees that existing SCR should be required to be operated continuously on those units already equipped with SCR at the John Twitty, Thomas Hill, and New Madrid plants. Similar to the SO₂ control summary, the EPA's revised cost effectiveness values for NO_x controls are generally lower than the values presented by Missouri. For units that have relatively low inlet NO_x values, post-combustion controls have lower removal efficiency and accordingly high cost effectiveness values. Similar to Missouri's assessment, the EPA finds the cost effectiveness values for installing new post combustion NO_x controls are considerably higher than the highest cost effectiveness values found to be reasonable in the first planning period (the dataset underlying Missouri's cost threshold) and therefore may not be economically feasible for the second planning period.

Importantly as part of this action, the EPA is not proposing that any given control technology or numeric emissions limit as evaluated in our TSD is necessary for a given unit. Rather, the EPA provided its own cost effectiveness calculations as evidence that Missouri's control decisions, that reject what may be otherwise reasonable control measures based solely on the state's selected cost threshold, are unreasonable.

Legal Deficiencies of Missouri's Consent Agreements

To formalize the finding that existing measures are sufficient to make reasonable progress, Missouri entered

into new consent agreements with each source selected and analyzed, with the exception of Mississippi Lime Company.⁶⁵ The full source consent agreements are contained in Appendix E to the state's plan, available in the docket for this rulemaking.

In the new consent agreements, Missouri required that each facility's future fuel purchase be western sub-bituminous coal derived from the powder river basin. In addition, each facility agreed to operate any existing control devices at all times when burning coal in the boiler(s) except during periods of start-up, shutdown, or malfunction pursuant to 10 CSR 10–6.050. Through these consent agreements, the state required two facilities to run their existing selective catalytic reduction (SCR) technology when burning coal. The EPA reviewed the consent agreements and provided comment through the state's public process. The EPA commented on the significant approvability concerns related to the permanence and enforceability of the agreements. Specifically, the EPA commented that the agreements do not contain the necessary numerical emissions limitations associated with the operational requirements needed to be practically enforceable and, therefore, are not consistent with the relevant CAA and RHR requirements. For example, CAA section 110(a)(2)(A) states that each implementation plan submitted by a state shall “include enforceable emission limitations and other control measures, means, or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the

applicable requirements of this chapter.”⁶⁶ The EPA also commented that the sole requirement to burn western sub-bituminous coal still allows for a wide variability in the sulfur content of the coal and, therefore, emissions from the source. Similarly, the requirement to operate existing SCR technology without a particular numeric emissions limit or operating parameters allows for a wide variability in the control efficiency and operations of the SCR and, therefore, emissions from the source.⁶⁷ Missouri did not amend the agreements in response to the EPA's formal comments.

The CAA requires that SIPs, including regional haze SIPs, contain elements sufficient to ensure emission limitations are practically enforceable. CAA section 110(a)(2) states that the monitoring, recordkeeping, and reporting provisions of states' SIPs must: “(A) include enforceable emissions limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter; . . . (C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter; . . . (F) require, as may be

⁶⁵ For the Mississippi Lime Company, Missouri's plan appears to rely on current operational practices consistent with the parameters and limits in the Mississippi Lime Air Pollution Control Title V Permit to Operate instead of entering a new consent agreement. The EPA notes that Title V permit requirements are not permanent and therefore may not be relied upon for SIP requirements unless those components of the permit are submitted for inclusion into the SIP.

⁶⁶ See CAA Section 110(a)(2) and section 110(a)(2)(A); see also *Committee for a Better Arvin v. U.S. E.P.A.*, 786 F.3d 1169, 1175 (9th Cir. 2015).

⁶⁷ The EPA provided variability analyses to demonstrate how these operational requirements without a numerical emissions limit do not practically limit emissions to an explicit level. See the EPA's comment letters on both the pre-hearing draft (dated September 28, 2021) and the public notice draft (dated May 5, 2022) of Missouri's second planning period regional haze SIP.

prescribed by the Administrator—(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emissions limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection.”⁶⁸

Accordingly, 40 CFR part 51, subpart K, Source Surveillance, requires the SIP to provide for monitoring the status of compliance with the regulations in the SIP, including “[p]eriodic testing and inspection of stationary sources,”⁶⁹ and “legally enforceable procedures” for recordkeeping and reporting.⁷⁰ Furthermore, 40 CFR part 51, appendix V, Criteria for Determining the Completeness of Plan Submissions, states in section 2.2 that complete SIPs contain: “(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels”; and “(h) Compliance/enforcement strategies, including how compliance will be determined in practice.”⁷¹

As previously mentioned, emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures, or they may be the existing emission reduction measures that a source is already implementing. *See* 2019 Guidance at 43; 2021 Clarifications Memo at 8–10. Such measures must be represented by “enforceable emissions limitations, compliance schedules, and other measures” (*i.e.*, any additional compliance tools) in a state’s long-term strategy in its SIP. 40 CFR 51.308(f)(2). The EPA proposes to find that the source agreements, submitted by Missouri to serve as the enforceable mechanism of the long-term strategy, do not meet the requirements of 40 CFR 51.308(f)(2) to include *enforceable* emissions limitations. Specifically, the source agreements do not contain the necessary numeric emissions limits to constitute a practically enforceable measure needed for reasonable progress as required by the RHR.

The EPA also has concerns with the delayed compliance date in the

agreements. Specifically, the consent agreements state that requirements of the agreements must be complied with “Starting 180 days after the approval of this agreement by the EPA as an attachment to Missouri’s SIP for the second planning period of the RH program and consistent with the exemption and termination provisions set forth in the Consent Agreement.” The EPA believes the agreements should include a reasonable compliance date based on the expected time necessary to implement controls or other operational requirements. The control requirements under the consent agreements are premised on operating existing installed emissions controls (for NO_x) and for continued purchase and combustion of low sulfur coal (for SO₂). The EPA has consistently found that such emissions control strategies are capable of being implemented in a matter of weeks, if not immediately given the nature of the requirements. *E.g.*, 88 FR 36654, 36720–22 (June 5, 2023); 86 FR 23054, 23088–89 (April 30, 2021); and 81 FR 74504, 74561 (October 26, 2016). Instead, the state tied the effectiveness of these emissions reductions to an event that is irrelevant to substantive compliance with the regional haze program, *i.e.*, the effective date of any final action by the EPA to approve the Consent Agreements into Missouri’s SIP. This was improper; as a result of this provision, even at this point in time, Missouri has not imposed the requirements of the Consent Agreements on the affected sources and, under the plain terms of the Consent Agreements, to this day the covered sources are under no obligation to comply with them.

The EPA further has concerns with certain other provisions (including but not limited to termination provisions) in the agreements. For example, the consent agreements contain provisions that allow for the state and the affected sources to modify them without following the statutorily-mandated process for SIP revisions and without requisite analysis by the EPA under CAA section 110(l). *See* CAA section 110(i); 110(l). While the EPA will allow for consent agreements or permitting requirements to be incorporated by reference into a state’s SIP to meet SIP requirements, 50 CFR Pt. 51 App’x V, para. 2.1.(b), it is important that the state provides that to the extent such provisions are approved and incorporated into the state’s SIP, such provisions, as approved, cannot be modified by later changes made to the underlying agreements or permits outside of the SIP revision process. Once approved by the EPA into the SIP

as meeting the applicable SIP requirements, only changes made through the statutory SIP revision process may modify the approved requirements of the state’s SIP. In this instance, the terms of the Consent Agreements explicitly authorize the state and the affected sources to cancel the agreements in toto and without the EPA’s approval of such a modification, which would in effect negate the emissions limitations in their entirety. This is antithetical to the requirement that SIP provisions be permanent and enforceable, and not changed except pursuant to the statutory and regulatory processes for SIP revisions.

The consent agreements should not be unilaterally terminated by either the source or the state since the state has presented the consent agreements as necessary to achieve reasonable progress within the SIP revision submitted to the EPA for approval. Missouri is relying on Consent Agreements that include termination clauses that render the agreements and any contained requirements as not permanent and therefore not consistent with CAA and RHR requirements. Specifically, paragraph 12 of the consent agreements allows for termination of the agreement upon “mutual written agreement of” the source and the state. Paragraph 12 remains an unambiguous statement authorizing termination of the Agreements upon agreement of the parties to them.⁷² If the source and the MoDNR chose to exercise their rights in Paragraph 12, the Consent Agreements would be terminated without review or approval from the EPA and without input from the public, and the source would be under no obligation to comply. Therefore, the EPA concludes that paragraph 12 violates the CAA’s prohibition on modification of SIPs outside the authorized SIP revision process pursuant to sections 110(i) and (l) of the CAA. SIP provisions cannot authorize a state to make changes in the EPA-approved and federally enforceable SIP requirements applicable to sources without going through the statutorily required SIP-revision process. The EPA refers to SIP provisions that purport to authorize states to make unilateral changes to existing SIP requirements as impermissible “director’s discretion” provisions. *See, e.g.*, 86 FR 15104, 15116 (March 22, 2021). However, the EPA interprets the CAA to allow two

⁷² The courts would also likely interpret this language similarly to the EPA. *See, e.g., New York v. U.S. EPA*, 525 F.Supp.3d 340, 356 (N.D.N.Y. 2021) (“[T]he scope of a consent decree must be discerned within its four corners”) (quoting *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 574 (1984)).

⁶⁸ 42 U.S.C. 7410(a)(2)(A), (C), and (F).

⁶⁹ 40 CFR 51.212.

⁷⁰ *Id.* § 51.214.

⁷¹ 40 CFR part 51, appendix V.

types of such provisions: (1) where the provision provides director's discretion for the state to make changes, but specifies that such changes have no effect for purposes of Federal law or alter SIP requirements unless and until the EPA approves the changes through a SIP revision pursuant to CAA requirements; or (2) where the provision provides director's discretion that is adequately bounded, such that at the time the EPA approves the SIP provision the Agency can evaluate it for compliance with applicable CAA requirements and evaluate the potential impacts of the state's exercise of that discretion. The EPA interprets CAA section 110(l) to allow SIP provisions with director's discretion of either type. In the case of an adequately bounded provision, the EPA considers such provisions consistent with section 110(l) because, at the time of initial approval into the SIP, the Agency will already have evaluated the provision for compliance with applicable requirements and evaluated the potential impacts from exercise of the discretion. *E.g.*, 86 FR 15116, March 22, 2021.

In *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77 (D.C. Cir. 2024), the D.C. Circuit held that the EPA impermissibly issued a SIP call, under CAA section 110(k)(5), in its 2015 SSM SIP Action⁷³ for certain SIP provisions applicable to emissions during SSM events, including certain director's discretion type provisions that the EPA had previously approved. However, the Court did not foreclose that some director's discretion provisions may be so unbounded as to interfere with the Agency's ability to predict the impact on compliance with the CAA's requirements. *Id.* At 111. Further, *Enviro. Comm. Fl. Elec. Power* concerns the EPA's authority to issue a SIP call for certain provisions that it previously approved and not the EPA's authority to approve or disapprove a SIP submission in the first instance. Compare CAA section 110(k)(3) with (k)(5).

Here, Paragraph 12 of the Consent Agreements in effect provides unbounded discretion to the state to eliminate the requirements, even though the MoDNR has submitted these Consent Agreements as necessary to satisfy Missouri's obligation to achieve reasonable progress in the regional haze program. Thus, Paragraph 12, which allows Missouri and its sources to agree between themselves to terminate these emissions control requirements at any time for any reason, is unacceptably too unbounded to meet regional haze

obligations. Likewise, the EPA finds Paragraph 12 to be inconsistent with CAA section 110(i) and (l) because it permits the state not merely discretion to modify some provision within the overall operation of a broader regulatory scheme, but the ability to terminate the Agreements completely—*i.e.*, the entirety of the emissions control program the state has put forward—at will. The EPA agrees that emissions controls on these sources are necessary (albeit not sufficient as discussed earlier in this section) for Missouri to achieve reasonable progress and it would be inappropriate for the EPA to approve as SIP provisions these Consent Agreements that the state could eliminate without undertaking the necessary SIP revision process mandated by the Act.

Here, Paragraph 12 violates the anti-backsliding provisions of section 110(l) of the CAA, which requires that the EPA shall not approve any revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress. 42 U.S.C. 7410(l). The termination provision would allow a unilateral amendment to the SIP, potentially removing emissions and pollution control limits without an evaluation of whether the removal would interfere with attainment or reasonable further progress or would interfere with any other applicable requirement of the Act.

As mentioned above, the Consent Agreements include termination clauses that render them unenforceable depending on the nature of the action the EPA takes. Even if the EPA could have explored the possibility of a limited or partial approval of the consent agreements, it is not able to do this if doing so would render the emissions control measures established through the consent agreements unenforceable, by triggering the sources' ability to unilaterally withdraw from the agreements. Nor does the EPA have discretion to partially approve the consent agreements by not including within its approval those provisions of the Consent Agreements such as Paragraph 13 (and others discussed in this section) that are not approvable. To do so would be to render the SIP revision more stringent than the state intended, which the EPA is not authorized to do. See *Bethlehem Steel Corp. v. Gorsuch*, 742 F.2d 1028 (7th Cir. 1984).

Despite this, there remain multiple problematic provisions of the Consent Agreements that render them non-permanent and unenforceable. It is this language in the Agreements themselves,

in addition to the possibility of a future modification to them, that renders them not approvable as a SIP revision for the purposes of ensuring reasonable progress under the regional haze program. However, because the consent agreements are otherwise not approvable, the EPA need not further evaluate the SSM, force majeure, or other exemption provisions of the agreements for compliance with the Act. Due to the identified flaws in the consent agreements as described above, the EPA cannot approve these consent agreements as a revision to Missouri's SIP nor as enforceable measures of the long-term strategy under 40 CFR 51.308(f)(2).

For the reasons described in this section and in the TSD, the EPA proposes to find that Missouri failed to submit an approvable Long-Term Strategy because it (1) failed to reasonably "evaluate and determine the emission reduction measures that are necessary to make reasonable progress by considering the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected anthropogenic source of visibility impairment," as required by 40 CFR 51.308(f)(2)(i); CAA section 169A(g)(1); (2) has not adequately supported its conclusions that existing measures satisfy the requirement to make reasonable progress; and (3) has not shown that further reductions of visibility impairing pollutants are not reasonable and has not adequately explained how its approach is consistent with the CAA's requirement to make reasonable progress. In addition, the state rejected otherwise reasonable control measures based primarily on the unreasonable justification and use of the selected cost threshold and on cost effectiveness calculations that do not fully align with EPA guidance. Further, Missouri has not included practically enforceable emissions limits to ensure that selected sources comply with the requirements constituting *existing measures* Missouri determined as needed to make reasonable progress. Specifically, the included source agreements do not contain explicit enforceable emissions limits associated with existing operations and include problematic termination or other exemption provisions, rendering them unenforceable and not permanent. Therefore, the EPA is proposing to disapprove Missouri's Long-Term Strategy as required by 40 CFR 51.308(f)(2).

⁷³ See 80 FR 33840, June 12, 2015.

3. Additional Long-Term Strategy Requirements

The consultation requirements of § 51.308(f)(2)(ii) provides that states must consult with other states that are reasonably anticipated to contribute to visibility impairment in a Class I area to develop coordinated emission management strategies containing the emission reductions measures that are necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) and (B) require states to consider the emission reduction measures identified by other states as necessary for reasonable progress and to include agreed upon measures in their SIPs, respectively. Section 51.308(f)(2)(ii)(C) speaks to what happens if states cannot agree on what measures are necessary to make reasonable progress.

In Appendix G–3, Missouri included documentation of its consultation with other states and responses to requests from other states as it relates to the state's development of its long-term strategy. However, because these elements are not separable from the overall requirement at 40 CFR 51.308(f)(2) to develop an enforceable long-term strategy, the EPA accordingly proposes to disapprove all elements of Missouri's regional haze SIP submission as it relates to the 40 CFR 51.308(f)(2) rule requirements.

The documentation requirement of § 51.308(f)(2)(iii) provides that states may meet their obligations to document the technical bases on which they are relying to determine the emission reductions measures that are necessary to make reasonable progress through an RPO, as long as the process has been “approved by all State participants.”

Section 51.308(f)(2)(iii) also requires that the emissions information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the state has submitted triennial emissions data to the EPA (or a more recent year), with a 12-month exemption period for newly submitted data.

Missouri included emissions information from the most recent national emissions inventory (NEI) reporting year in its submittal. Section 4.1.1 of Missouri's submittal details how the state meets the emissions inventory requirement. Missouri also includes additional information on the inventory development in Appendix A to the state's submittal. However, because these elements are not separable from the overall requirement of 40 CFR 51.308(f)(2) to develop an enforceable

long-term strategy, the EPA accordingly proposes to disapprove all elements of Missouri's regional haze SIP submission as it relates to the 40 CFR 51.308(f)(2) rule requirements.

F. Reasonable Progress Goals

Section 51.308(f)(3) contains the requirements pertaining to RPGs for each Class I area. Section 51.308(f)(3)(i) requires a state in which a Class I area is located to establish RPGs—one each for the most impaired and clearest days—reflecting the visibility conditions that will be achieved at the end of the implementation period as a result of the emission limitations, compliance schedules and other measures required under paragraph (f)(2) to be in states' long-term strategies, as well as implementation of other CAA requirements. The long-term strategies as reflected by the RPGs must provide for an improvement in visibility on the most impaired days relative to the baseline period and ensure no degradation on the clearest days relative to the baseline period. Section 51.308(f)(3)(ii) applies in circumstances in which a Class I area's RPG for the most impaired days represents a slower rate of visibility improvement than the uniform rate of progress calculated under 40 CFR 51.308(f)(1)(vi). Under § 51.308(f)(3)(ii)(A), if the state in which a mandatory Class I area is located establishes an RPG for the most impaired days that provides for a slower rate of visibility improvement than the URP, the state must demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the state that would be reasonable to include in its long-term strategy. Section 51.308(f)(3)(ii)(B) requires that if a state contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in *another* state, and the RPG for the most impaired days in that Class I area is above the URP, the upwind state must provide the same robust demonstration.

In Chapters 5 and 6 of Missouri's SIP submission, the state describes the process followed to determine the RPGs for each of the state's Class I areas. Missouri relied on the EPA's modeling of projected 2028 visibility conditions as the basis for establishing the RPGs.⁷⁴ Specifically, Missouri established an RPG of 17.44 dv for Hercules-Glades

and 18.88 dv for Mingo. Each of these RPGs is slightly below the 2028 point on the uniform rate of progress line or glidepath (18.82 dv for Hercules-Glades and 19.48 dv for Mingo), meaning the state did not trigger the provision to provide a robust demonstration as just described.

At the time Missouri submitted its SIP, the provision triggering a robust demonstration did not apply because the states with Class I areas that are affected by Missouri sources did not submit any RPGs above the URP. Because we are proposing to disapprove certain elements of Missouri's SIP, if Missouri chooses to submit a revised SIP to the EPA, the state should re-evaluate whether the requirement of 40 CFR 51.308(f)(3)(iii) applies to Missouri.

The RPGs should reflect the visibility conditions as a result of the enforceable emissions limitations and other measures in the state's long-term strategy as required under 40 CFR 51.308(f)(2). Because the EPA is proposing to disapprove Missouri's long-term strategy under 40 CFR 51.308(f)(2) through this proposed rulemaking, the EPA is also proposing to disapprove the RPGs under 40 CFR 51.308(f)(3). If Missouri elects to submit a new long-term strategy, the state will also need to provide new RPGs associated with the new long-term strategy.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(f)(6) specifies that each comprehensive revision of a state's Regional Haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. A main requirement of this subsection is for states with Class I areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. Compliance with this requirement may be met through participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) network. As noted in Chapter 7 of Missouri's submittal, Missouri continues to rely on participation in the IMPROVE network for its two Class I areas monitoring strategies.

Section 51.308(f)(6)(i) requires SIPs to provide for the establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all mandatory Class I Federal areas within the state are being achieved. In Chapter 7 of the state plan,

⁷⁴ See the EPA's September 2019 memorandum titled, “Availability of Modeling Data and Associated Technical Support Document for the EPA's Updated 2028 Visibility Air Quality Modeling.” https://www.epa.gov/sites/default/files/2019-10/documents/updated_2028_regional_haze_modeling-td-2019_0.pdf.

Missouri describes how the two IMPROVE program monitors in Missouri are sufficient for determining progress in reducing visibility in the Missouri Class I areas due to their locations.

Section 51.308(f)(6)(ii) requires SIPs to provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the state to Regional Haze visibility impairment at mandatory Class I Federal areas both within and outside the state. In Chapter 7 of the state plan, Missouri explains that the assessments of visibility impairment and progress in reducing visibility impairment at Missouri's two Class I areas, and at Class I areas in other states that Missouri's emissions may affect, in the future will use the revised IMPROVE algorithm (Pitchford, 2007) and will use data as prescribed in the EPA's RHR (40 CFR part 51, subpart P—Visibility Protection). The assessment will follow, as appropriate, EPA guidance including *Guidance on Regional Haze State Implementation Plans for the Second Implementation Period* (EPA, 2019) and *Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program* (EPA, 2018).

Section 51.308(f)(6)(iii) does not apply to Missouri, as it has Class I areas.

Section 51.308(f)(6)(iv) requires the SIP to provide for the reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state. The monitoring strategy for Missouri relies upon the continued availability of the IMPROVE network. The IMPROVE monitor for the Hercules-Glades Wilderness Area (indicated as HEGL in the IMPROVE monitoring network database) is operated and maintained by the FS and is contained within the Mark Twain National Forest. The IMPROVE monitor for the Mingo National Wildlife Refuge (indicated as MING in the IMPROVE monitoring network database) is operated and maintained by the FWS. Since the state does not collect or handle IMPROVE data directly, the state commits to continue to participate in the IMPROVE Visibility Information Exchange Web System (VIEWS). The state considers VIEWS to be a core part of the overall IMPROVE program and will report IMPROVE data from the two Class I areas in Missouri to the EPA using the VIEWS web system.

Section 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment,

including emissions for the most recent year for which data are available and estimates of future projected emissions. It also requires a commitment to update the inventory periodically. Section 51.308(f)(6)(v) also requires states to include estimates of future projected emissions and include a commitment to update the inventory periodically. In Chapter 4.1 of the state plan, Missouri notes that it complies with 40 CFR part 51, subpart A, Air Emissions Reporting Requirements (AERR) to develop and submit periodic emissions inventories to the EPA every three years. Per the AERR, the state submitted to the EPA's National Emissions Inventory (NEI) 2011, 2014, and 2017 periodic emissions inventories as a comprehensive and detailed estimate of statewide air emissions. The reported pollutants include NO_x, VOC, carbon monoxide (CO), SO₂, NH₃, PM_{2.5}, and PM₁₀. The type of emissions sources, amount of each pollutant emitted, and the types of processes and control devices employed at each facility or source category are identified in the inventory. The AERR emissions inventories are derived from estimates developed for four general categories of anthropogenic emissions sources: point, area or nonpoint, nonroad mobile, and onroad mobile. Chapter 4.1 of the state plan discusses general emissions inventory development for each of the anthropogenic source categories. Appendix A to the state's plan describes how the state developed the most recent emissions inventory, 2017, including compilation and submission to the NEI through the EPA's Emissions Inventory System (EIS). The EPA proposes to find that Missouri satisfies the requirements of 40 CFR 51.308(f)(6)(v) through compliance with the AERR.

For the reasons described in this section, the EPA proposes to find Missouri's plan satisfies the requirements of 40 CFR 51.308(f)(6) and proposes to approve this element of the state plan.

H. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires that periodic comprehensive revisions of states' Regional Haze plans also address the progress report requirements of 40 CFR 51.308(g)(1) through (5). The purpose of these requirements is to evaluate progress towards the applicable RPGs for each Class I area within the state and each Class I area outside the state that may be affected by emissions from within that state. Sections 51.308(g)(1) and (2) apply to all states and require a description of the status

of implementation of all measures included in a state's first implementation period Regional Haze plan and a summary of the emission reductions achieved through implementation of those measures. Section 51.308(g)(3) applies only to states with Class I areas within their borders and requires such states to assess current visibility conditions, changes in visibility relative to baseline (2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report. Section 51.308(g)(4) applies to all states and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, § 51.308(g)(5), which also applies to all states, requires an assessment of any significant changes in anthropogenic emissions within or outside the state have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress towards reducing emissions and improving visibility.

Missouri addresses the requirements of 40 CFR 51.308(g)(1) through (5) in Chapter 8 of the state's submittal. To meet the requirement of 40 CFR 51.308(g)(1), the state points to Chapter 4 of the submittal which details the existing measures that control emissions in the state including Federal, state, stationary, and mobile source emissions measures. To address 40 CFR 51.308(g)(2), the state refers to the emissions inventory included in Chapter 4, section 4.1.1.4, Tables 13 and 14, which depict the NO_x and SO₂ emissions trends by source type and emission category for 2011, 2014, and 2017. To meet the requirement of 40 CFR 51.308(g)(3), the state evaluated the haze index and annual light extinction values for each IMPROVE site in Missouri between 2000 and 2018 and concluded that visibility conditions for the two Class I areas in Missouri have improved and are below the uniform rate of progress line. For 40 CFR 51.308(g)(4), the state refers to the emissions inventory in Chapter 4 of the submittal to show the change in emissions of pollutants contributing to

visibility impairment over time. To satisfy 40 CFR 51.308(g)(5), Missouri notes that most visibility impairing pollutants have decreased since the last planning period submittal with the exception of ammonia (NH₃). Missouri refers to Chapter 4 of which details the existing measures that have resulted in those emissions decreases such as Federal, state or mobile source emissions programs.

The EPA finds that Missouri satisfactorily refers to the included emissions inventory, describes the emissions trends or changes as well as the visibility trends for their two Class I Areas to meet the requirements contained in 40 CFR 51.308(g)(1) through (5). Therefore, the EPA proposes to approve Missouri's plan as meeting the requirements of 40 CFR 51.308(g)(1) through (5).

I. Requirements for State and Federal Land Manager Coordination

Section 169A(d) of the CAA requires states to consult with FLMs before holding the public hearing on a proposed Regional Haze SIP, and to include a summary of the FLMs' conclusions and recommendations in the notice to the public."

Section 51.308(i)(2)'s FLM consultation provision requires a state to provide FLMs with an opportunity for consultation that is early enough in the state's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs' can meaningfully inform the state's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough. Regardless, the opportunity for consultation must be provided at least sixty days before a public hearing or public comment period at the state level. Section 51.308(i)(2) also provides two substantive topics on which FLMs must be provided an opportunity to discuss with states: assessment of visibility impairment in any Class I area and recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires states, in developing their implementation plans, to include a description of how they addressed FLMs' comments. Section 51.308(i)(4) requires states to provide for ongoing consultation between the state and FLM's on the implementation of the given plan and on development of future plan revisions or progress reports.

Missouri included summaries of their consultation with various FLMs as well as responses to their comments in Appendix G–2 to their submittal. On July 30, 2021, Missouri shared the pre-proposal draft of its second planning period regional haze plan with the FS, the FWS, the NPS, and the EPA. On September 21, 2021, Missouri held a formal consultation call with the three FLM agencies as well as the EPA.

However, because the EPA is proposing to disapprove certain elements of Missouri's SIP, namely the long-term strategy under 40 CFR 51.308(f)(2) and the reasonable progress goals under 40 CFR 51.308(f)(3), the EPA is also proposing to disapprove the FLM consultation requirements under 40 CFR 51.308(i). The requirements contained in 40 CFR 51.308(i): (i)(2), (i)(3), and (i)(4) are not separable from one another. While Missouri did take administrative steps to provide the FLMs the requisite opportunity to review and provide feedback on the state's draft plan, the EPA cannot approve the requirements under 40 CFR 51.308(i) because Missouri's consultation was based on a SIP revision that did not meet the required statutory and regulatory requirements of the CAA and the RHR, respectively. In addition, if the EPA were to finalize the partial approval and partial disapproval of Missouri's SIP, in the process of correcting the deficiencies outlined above with respect to the RHR and statutory requirements, the state (or the EPA in the case of an eventual FIP) will be required to again satisfy the FLM consultation requirements under 40 CFR 51.308(i). Therefore, the EPA proposes to disapprove the respective elements of Missouri's plan as not meeting the requirements of 40 CFR 51.308(i).

VI. What action is the EPA proposing to take?

The EPA is proposing to partially approve and partially disapprove the Missouri SIP revision relating to Regional Haze for the second planning period received on August 26, 2022, pursuant to section 110(k)(3) of the CAA and 40 CFR (f)(3)(iv). The EPA is proposing to approve the elements of Missouri's plan related to requirements contained in 40 CFR 51.308(f)(1), (f)(5), (f)(6), and (g)(1) through (g)(5). The EPA is proposing to disapprove the elements of Missouri's plan related to requirements contained in 40 CFR 51.308(f)(2) and (f)(3), and (i). The EPA is not proposing a Federal Implementation Plan (FIP) at this time. If the EPA finalizes the disapproval, that will start a two-year clock for the EPA

to propose and finalize a FIP.⁷⁵ However, the EPA is already on a two-year FIP clock that began September 29, 2022, when the EPA published a finding that Missouri failed to submit the required regional haze plan for the second planning period by the regulatory deadline.⁷⁶ We are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

VII. Environmental Justice Considerations

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."⁷⁷ Recognizing the importance of these considerations to local communities, the EPA conducted an environmental justice screening analysis around the location of the facilities associated with this action to identify potential environmental stressors on these communities and the potential impacts of this action. However, the EPA is providing the information associated with this analysis for informational purposes only. The information provided herein is not a basis of the proposed action. The EPA conducted the screening analyses using EJScreen, an EJ mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.⁷⁸ The EJScreen tool presents these indicators at a Census block group (CBG) level or a larger user specified "buffer" area that covers multiple CBGs.⁷⁹ An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains

⁷⁵ The EPA is only stating this second FIP clock as a factual result that a disapproval leads to a FIP clock. The FIP clock from the finding of failure to submit is primary and the FIP clock from a future disapproval does not supersede or reset the FIP clock from the finding of failure to submit.

⁷⁶ See 87 FR 52856, August 30, 2022.

⁷⁷ See <https://www.epa.gov/environmentaljustice/learn-about-environmentaljustice>.

⁷⁸ The EJSCREEN tool is available at <https://www.epa.gov/ejscreen>.

⁷⁹ See <https://www.census.gov/programssurveys/geography/about/glossary.html>.

between 600 and 3,000 people. EJScreen is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to EJ and is subject to uncertainty in some underlying data (e.g., some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).⁸⁰ For informational purposes, we have summarized EJScreen data within larger “buffer” areas covering multiple block groups and representing the average resident within the buffer areas surrounding the facilities selected by Missouri for further control analysis. EJScreen environmental indicators help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population in the U.S. These indicators of overall pollution burden include estimates of ambient PM_{2.5} and ozone concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.⁸¹ EJScreen also provides information on demographic indicators, including percent low-income, communities of color, linguistic isolation, and less than high school education. The EPA prepared EJScreen reports covering buffer areas of approximately 6-mile radii around the facilities selected by Missouri for further analysis. For each facility, the EPA indicates in the following statements whether there is an environmental or socioeconomic indicator for the selected source area above the 80th percentile nationally. These indicators are displayed in the table on page 3 of each report. The report for New Madrid Power Plant showed socioeconomic indicators greater than the 80th national percentile for low income.⁸² The report

for Sikeston showed environmental and socioeconomic indicators greater than the 80th national percentiles for wastewater discharge and low life expectancy. The report for John Twitty showed environmental indicators greater than the 80th national percentiles for wastewater discharge and superfund proximity. The report for Thomas Hill showed environmental indicators greater than the 80th national percentiles for wastewater discharge. The report for Mississippi Lime showed environmental indicators greater than the 80th national percentiles for risk management plan facility proximity. Other facility reports not mentioned here do not include environmental or socioeconomic indicators greater than the 80th national percentiles. The full, detailed EJScreen reports for each facility selected by Missouri for further analysis are provided in the docket for this rulemaking. This action is proposing to disapprove certain elements of Missouri’s second planning period regional haze plan as not meeting the requirements of the CAA or the EPA’s RHR. Exposure to PM and SO₂ is associated with significant public health effects. Short-term exposures to SO₂ can harm the human respiratory system and make breathing difficult. People with asthma, particularly children, are sensitive to these effects of SO₂.⁸³ Exposure to PM can affect both the lungs and heart and is associated with: premature death in people with heart or lung disease, nonfatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing. People with heart or lung diseases or conditions, children, and older adults are the most likely to be affected by PM exposure.⁸⁴ This action which proposes to partially disapprove Missouri’s regional haze plan, if finalized, will not directly result in a change to emissions or air quality. There is nothing in the record which indicates that this proposed action, if finalized, would have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

value. The EPA identified the 80th percentile filter as an initial starting point for interpreting EJScreen results. The use of an initial filter promotes consistency for EPA programs and regions when interpreting screening results.

⁸³ See <https://www.epa.gov/so2-pollution/sulfurdioxide-basics#effects>.

⁸⁴ See <https://www.epa.gov/pm-pollution/healthand-environmental-effects-particulate-matter-pm>.

VIII. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866, 13563 (76 FR 3821, January 21, 2011) and 14094 (88 FR 21879, April 11, 2023).

B. Paperwork Reduction Act (PRA)

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act (RFA)

This action merely proposes to partially approve and partially disapprove state law as meeting or not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the

⁸⁰ In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (*i.e.*, lower sampling error), particularly for small geographic areas and population groups. For more information, see https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.

⁸¹ For additional information on environmental indicators and proximity scores in EJSCREEN, see “EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,” Chapter 3 and Appendix C (September 2019) at https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.

⁸² For a place at the 80th percentile nationwide, that means 20% of the U.S. population has a higher

relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. This 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).

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission as not meeting the CAA.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994)

Executive Order 12898 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 Missouri Department of Natural Resources 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 performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis

of the action. Due to the nature of the action being taken here, merely proposing to partially approve and partially disapprove the state’s plan as meeting requirements of the Act or EPA regulations, this action will not directly impact air quality or emissions in the affected areas. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 27, 2024.

Meghan A. McCollister,
Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

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 AA—Missouri

■ 2. In § 52.1320, the table in paragraph (e) is amended by adding the entry “(86)” in numerical order to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(86) Missouri Regional Haze Plan for the Second Implementation Period.	Statewide	8/26/22	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule].	This action approves the plan as only meeting the requirements of 40 CFR 51.308(f)(1), (f)(5), (f)(6), and (g)(1) through (g)(5). This action disapproves the plan as not meeting the requirements of 40 CFR 51.308(f)(2), (f)(3), and (i).

■ 3. Amend § 52.1339 by adding paragraph (b) to read as follows:

§ 52.1339 Visibility protection.

* * * * *

(b) The requirements of section 169A of the Clean Air Act are not fully met for the second implementation period

because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308(f)(2), (f)(3), and (i) for protection of visibility in mandatory Class I Federal areas. The plan does meet the requirements of 40 CFR 51.308(f)(1), (f)(5), (f)(6), and (g)(1) through (g)(5).

[FR Doc. 2024-14612 Filed 7-2-24; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 425

[CMS-1799-P]

RIN 0938-AV20

Medicare Program: Mitigating the Impact of Significant, Anomalous, and Highly Suspect Billing Activity on Medicare Shared Savings Program Financial Calculations in Calendar Year 2023

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule addresses policies for assessing performance year (PY) 2023 financial performance of Medicare Shared Savings Program (Shared Savings Program) Accountable Care Organizations (ACOs); establishing benchmarks for ACOs starting agreement periods in 2024, 2025, and 2026; and calculating factors used in the application cycle for ACOs applying to enter a new agreement period beginning on January 1, 2025, and the change request cycle for ACOs continuing their participation in the program for PY 2025, as a result of significant, anomalous, and highly suspect billing activity for selected intermittent urinary catheters on Medicare Durable Medical Equipment, Prosthetics, Orthotics & Supplies (DMEPOS) claims. Under the Shared Savings Program, providers of services and suppliers that participate in ACOs continue to receive traditional Medicare fee-for-service (FFS) payments under Medicare Parts A and B, but the ACO may be eligible to receive a shared savings payment if it meets specified quality and savings requirements. ACOs participating in two-sided models may also share in losses.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by July 29, 2024.

ADDRESSES: In commenting, please refer to file code CMS-1799-P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1799-P, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1799-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Richard (Chase) Kendall, (410) 786-1000, or SharedSavingsProgram@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on [Regulations.gov](http://www.regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

Plain Language Summary: In accordance with 5 U.S.C. 553(b)(4), a plain language summary of this rule may be found at <https://www.regulations.gov/>.

CPT (Current Procedural Terminology) Copyright Notice

Throughout this proposed rule, we use CPT codes and descriptions to refer to a variety of services. We note that CPT codes and descriptions are copyright 2019 American Medical Association. All Rights Reserved. CPT is a registered trademark of the American Medical Association (AMA). Applicable Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulations (DFAR) apply.

I. Background

A. Statutory Background on Shared Savings Program Financial Calculations

Section 1899 of the Social Security Act (the Act) (42 U.S.C. 1395jj), as added by section 3022 of the Patient Protection and Affordable Care Act (Pub. L. 111-148, enacted March 23, 2010), establishes the general requirements for payments to participating Accountable Care Organizations (ACOs) in the Shared Savings Program. Specifically, section 1899(d)(1)(A) of the Act provides that providers of services and suppliers participating in an ACO will continue to receive payment under the original Medicare fee-for-service program under Parts A and B in the same manner as they would otherwise be made. However, section 1899(d)(1)(A) of the Act also provides for an ACO to receive payment for shared savings provided that the ACO meets both the quality performance standards established by the Secretary and demonstrates that it has achieved savings against a benchmark of expected average per capita Medicare FFS expenditures. Additionally, section 1899(i) of the Act authorizes the Secretary to use other payment models in place of the one-sided model described in section 1899(d) of the Act. This provision authorizes the Secretary to select a partial capitation model or any other payment model that the Secretary determines will improve the quality and efficiency of items and services furnished to Medicare beneficiaries without additional program expenditures. We have used our authority under section 1899(i)(3) of the Act to establish the Shared Savings Program's two-sided payment models (see for example, 80 FR 32771 and 32772, and 83 FR 67834 through 67841) and to mitigate shared losses owed by ACOs affected by extreme and uncontrollable circumstances during performance year (PY) 2017 and subsequent performance years (82 FR 60916 and 60917, 83 FR 59974 through 59977), among other uses of this

authority described elsewhere in this proposed rule.

Section 1899(d)(1)(B)(i) of the Act specifies that, in each year of the agreement period, an ACO is eligible to receive payment for shared savings only if the estimated average per capita Medicare expenditures under the ACO for Medicare FFS beneficiaries for Parts A and B services, adjusted for beneficiary characteristics, is at least the percent specified by the Secretary below the applicable benchmark under section 1899(d)(1)(B)(ii) of the Act. Section 1899(d)(1)(B)(ii) of the Act addresses how ACO benchmarks are to be established and updated under the Shared Savings Program. This provision specifies that the Secretary shall estimate a benchmark for each agreement period for each ACO using the most recent available 3 years of per beneficiary expenditures for Parts A and B services for Medicare FFS beneficiaries assigned to the ACO. This benchmark shall be adjusted for beneficiary characteristics and such other factors as the Secretary determines appropriate and updated by the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program, as estimated by the Secretary.

In past rulemaking, we have used our authority under sections 1899(d)(1)(B)(ii) and 1899(i)(3) of the Act to establish adjustments to the benchmark and program expenditure calculations, respectively, to exclude certain Medicare Parts A and B payments. In the November 2011 final rule (76 FR 67920 through 67922), we adopted an alternate payment methodology that excluded Indirect Medical Education (IME) and Disproportionate Share Hospital (DSH) payments from ACO benchmark and performance year expenditures due to concerns that the inclusion of these amounts would incentivize ACOs to avoid referring patients to the types of providers that receive these payments. In the Calendar Year (CY) 2023 Physician Fee Schedule final rule (87 FR 69954 through 69956), we excluded new supplemental payments to Indian Health Service/Tribal hospitals and hospitals located in Puerto Rico consistent with our longstanding policy to exclude IME, DSH and uncompensated care payments from ACOs' assigned and assignable beneficiary expenditure calculations. In the interim final rule with comment period entitled "Medicare and Medicaid Programs; Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the

COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program" which was effective on May 8, 2020, and appeared in the May 8, 2020 **Federal Register** (85 FR 27550) (hereinafter referred to as the "May 8, 2020 COVID-19 IFC"), we established a methodology to adjust Shared Savings Program financial calculations to account for the COVID-19 Public Health Emergency (85 FR 27577 through 27582). Specifically, we established a methodology that would exclude all Medicare Parts A and B FFS payment amounts for a beneficiary's episode of care for treatment of COVID-19 to prevent distortion to, among other calculations, an ACO's benchmark and program expenditure calculations.

B. Background on Significant, Anomalous, and Highly Suspect Billing Activity in Calendar Year 2023

Recently, ACOs and other interested parties have raised concerns about an increase in billing to Medicare for selected intermittent urinary catheter supplies on Durable Medical Equipment, Prosthetics, Orthotics & Supplies (DMEPOS) claims in CY 2023, alleging that the increase in payments represents fraudulent activity (the "alleged conduct"). Numerous ACOs have alerted the Centers for Medicare & Medicaid Services (CMS) to potential impacts on their PY 2023 expenditures because of the increased catheter billings.

As of the time of this proposed rule, our investigation into the matter is ongoing, and we have taken initial actions in response. We have made referrals to law enforcement, recouped improper Medicare payments, and terminated certain suppliers from the Medicare program. CMS continues to adapt its monitoring, investigative targeting, and data analytics programs to prevent future fraud, waste, and abuse. CMS also continues to work closely with the Department of Health and Human Services Office of Inspector General and Department of Justice, as well as our Uniform Program Integrity Contractors, to investigate health care fraud activities that exploit our Federal program, such as those involving urinary catheter supplies.

The observed DMEPOS billing volume for intermittent urinary catheters in CY 2023 represents significant, anomalous, and highly suspect (SAHS) billing activity. Generally, this means that a given HCPCS or CPT code exhibits a level of billing that represents a significant claims increase either in volume or

dollars (for example, dollar volume significantly above prior year, or claims volume beyond expectations) with national or regional impact (for example, not only impacting one or few ACOs) and represents a deviation from historical utilization trends that is unexpected and is not clearly attributable to reasonably explained changes in policy or the supply or demand for covered items or services. The billing level is significant and represents billing activity that would cause significantly inaccurate and inequitable payments and repayment obligations in the Shared Savings Program if not addressed.

Current Shared Savings Program regulations, codified at 42 CFR part 425, do not provide a basis for CMS to adjust program expenditure or revenue calculations to remove the impact of SAHS billing activity such as that arising from the alleged conduct in advance of issuing an initial determination. CMS may reopen an initial determination or a final agency determination and issue a revised initial determination at any time in the case of fraud or similar fault, and not later than 4 years after the date of the notification to the ACO of the initial determination of savings or losses for the relevant performance year for good cause (§ 425.315). This does not allow for CMS to address SAHS billing activity, which must be addressed prior to conducting financial reconciliation, which is an initial determination, to prevent significant inequity and inaccurate payment determinations.

We share the concerns recently raised by some ACOs and other interested parties that SAHS billing activity surrounding the selected codes for intermittent urinary catheters would impact Shared Savings Program calculations for PY 2023 and we are also concerned about the impact on other program calculations based on CY 2023 data. Specifically, we are concerned that absent mitigation measures, this SAHS billing activity would inflate Medicare Parts A and B payment amounts, including:

- PY 2023 reconciliation calculations, including expenditures for each ACO's assigned beneficiaries for PY 2023, the national-regional blended update factor used to update the benchmark for all ACOs (refer to § 425.601(b)), and factors based on ACO participant revenue to determine the loss recoupment limits for ACOs participating under two-sided models of the BASIC track (Levels C, D, E) (refer to § 425.605(d)).
- Historical benchmark calculations for establishing the benchmark for ACOs beginning new agreement periods on

January 1, 2024, January 1, 2025, or January 1, 2026, for which CY 2023 serves as benchmark year (BY) 3, BY2 and BY1, respectively (refer to § 425.652(a)).

- Factors used in the application cycle for ACOs applying to enter a new agreement period beginning on January 1, 2025, and the change request cycle for ACOs continuing their participation in the program for PY 2025, including data used to determine an ACO's eligibility for Advance Investment Payments under § 425.630(b), or for the CMS Innovation Center's new ACO Primary Care Flex Model (ACO PC Flex Model) for the January 1, 2025, start date based on ACO revenue status (high revenue or low revenue), and to determine repayment mechanism amounts for ACOs entering, or continuing in, two-sided models for PY 2025 (refer to § 425.204(f)).

The accuracy of the Shared Savings Program's determination of an ACO's financial performance (through a process referred to as financial reconciliation) in terms of the ACO's eligibility for and amount of a shared savings payment or liability for shared losses, depends on the accuracy of claims data. Absent CMS action, the SAHS billing activity would affect PY 2023 financial reconciliation program-wide rather than being limited to ACOs that have assigned beneficiaries directly impacted by the issue. For instance:

- An ACO with assigned beneficiaries impacted by the SAHS billing activity for intermittent urinary catheters will see an increase in performance year expenditures, reducing the ACO's shared savings or increasing the amount of shared losses owed by the ACO. The impact on the ACO's performance may be partially mitigated if the SAHS billing activity also increases the ACO's regional service area expenditures and the national expenditures used to calculate the two-way national-regional blended benchmark update factor.

- An ACO with assigned beneficiary expenditures and regional service area expenditures with little or no impact from the SAHS billing activity will receive a relatively higher benchmark update under the national-regional blended update factors used in PY 2023 reconciliation, and therefore, may appear to perform better as a result of the national impact of the intermittent urinary catheters billing increase, resulting in higher earned performance payments or lower or no losses for the ACO.

Unaddressed, the SAHS billing activity will distort the historical benchmarks for an ACO that entered an agreement period beginning on January

1, 2024, or will enter an agreement period beginning on January 1, 2025, or January 1, 2026 (for which CY 2023 will continue to be a benchmark year) and the accuracy of any future financial reconciliation performed against those benchmarks. Similarly, inaccurate revenue and expenditure calculations based on CY 2023 data may affect an ACO's revenue status and the amount of funds an ACO in a two-sided model must secure as a repayment mechanism, one of the program's important safeguards for protecting the Medicare Trust Funds. Given the scope of the SAHS billing activity, there is a high likelihood that, absent CMS action, shared savings and losses calculations for PY 2023, and for future performance years where CY 2023 is a benchmark year, will be significantly impacted for ACOs. Under these circumstances, some ACOs are likely to experience adverse impacts (for example, lower or no shared savings or higher shared losses) while other ACOs will experience windfall gains (for example, higher shared savings or lower or no shared losses).

Failing to address SAHS billing activity that occurred in CY 2023 would jeopardize the integrity of the Shared Savings Program. There are 480 ACOs in the Shared Savings Program with over 608,000 health care providers who care for 10.8 million assigned FFS beneficiaries.¹ In PY 2022, the most recent year for which data is available, savings achieved by ACOs relative to benchmarks amounted to \$4.3 billion, of which ACOs received shared savings payments totaling \$2.5 billion, and Medicare retained \$1.8 billion in savings.² ACOs are held accountable for 100 percent of total Medicare Parts A and B expenditures for their assigned beneficiary populations (with limited exceptions). This incentivizes ACOs to generate savings for the Medicare program as they have the opportunity to share in those savings if certain requirements are met. It also discourages the ACO from generating unnecessary expenditures for Medicare as they may be required to repay those amounts to CMS. Accountable care arrangements such as this cannot function if the ACO may be held responsible for all SAHS billing activity that is outside of their control. Holding

an ACO accountable for substantial losses due to SAHS billing activity, such as that observed in connection with the increase in billing for intermittent urinary catheters, is not only inequitable but will dramatically increase the level of risk associated with participation, making the Shared Savings Program unattractive.

For these reasons, it is thus timely and appropriate to undertake notice and comment rulemaking to propose an approach for mitigating the impact of SAHS billing activity in CY 2023 on Shared Savings Program financial calculations.

II. Provisions of the Proposed Regulations

A. Identifying Codes Displaying Significant, Anomalous, and Highly Suspect Billing Activity in CY 2023

DMEPOS billing to Medicare for selected intermittent urinary catheter supplies has increased significantly since the first quarter of CY 2023, with a relatively small number of suppliers submitting a large majority of all claims for these devices. At a program level, spending in these codes remained less than 0.1 percent of total FFS spending in every year from CY 2016 to CY 2022 before increasing to nearly 1 percent in CY 2023. The SAHS billing activity has had a national impact, as evidenced by discussion of the issue in the 2024 Medicare Trustees Report, which noted a significant increase in suspected fraudulent spending on certain intermittent catheters in 2023. The DME projections in the report include the assumption that this suspected fraud will be addressed during 2024.³

Based on our evaluation of billing trends for individual catheter codes across CY 2023 and in consultation with the CMS Center for Program Integrity (CPI) and the CMS Office of the Actuary (OACT), we have determined that two specific HCPCS codes displayed SAHS billing activity in CY 2023: A4352 (*Intermittent urinary catheter; Coude (curved) tip, with or without coating (Teflon, silicone, silicone elastomeric, or hydrophilic, etc.), each*) and A4353 (*Intermittent urinary catheter, with insertion supplies*). Both HCPCS codes were billed at significantly higher rates in CY 2023 compared to CY 2022 (claims increasing by 163 percent for A4352 and by over 5,000 percent for A4353), for which CMS was unable to

¹ Refer to CMS, Shared Savings Program Fast Facts—As of January 1, 2024, available at <https://www.cms.gov/files/document/2024-shared-savings-program-fast-facts.pdf>.

² Refer to CMS, Shared Savings Program Performance Year Financial and Quality Results, 2022, available at <https://data.cms.gov/medicare-shared-savings-program/performance-year-financial-and-quality-results/data>.

³ The Boards of Trustees, Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, "2024 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds", available at <https://www.cms.gov/oact/tr/2024>.

identify a clear justification for the increases (for example, neither represent a newly adopted code for which a natural increase in billing might be expected). The change in claim volume is significant and unexplained, and if not addressed, would cause inaccurate and inequitable payments and repayment obligations in the Shared Savings Program. Furthermore, the growth in claims is not attributable to Medicare providers or suppliers participating in Shared Savings Program ACOs and thus outside of the ACOs' ability to reasonably control.

B. Removing Payment Amounts for Codes Displaying Significant, Anomalous, and Highly Suspect Billing Activity in Calendar Year 2023 From Shared Savings Program Expenditure and Revenue Calculations

Given our concerns about leaving SAHS billing activity unaddressed and the limitations with using an approach available under the current regulations (as we described elsewhere in this proposed rule), we propose to revise the policies governing Shared Savings Program financial calculations to mitigate the impact of SAHS billing activity for selected catheter codes identified for CY 2023. The proposals would rely on our authority under section 1899(d)(1)(B)(ii) of the Act to adjust benchmark expenditures for beneficiary characteristics and such other factors as the Secretary determines appropriate. Here, we are proposing to adjust the benchmark to remove payments for the specified catheter codes from the determination of benchmark expenditures. We propose to use our authority under section 1899(i)(3) of the Act to apply this adjustment to certain other program calculations, including the determination of performance year expenditures.

We propose to exclude all Medicare Parts A and B payment amounts for the selected catheter HCPCS codes on DMEPOS claims from expenditure and revenue calculations for CY 2023. We would perform these adjustments for calculations for CY 2023 when it is the performance year, including when CY 2023 is used to calculate the ACO's performance year expenditures and when it is used to calculate the national-regional blended update to the benchmark used in determining financial performance for PY 2023, and also when CY 2023 is a benchmark year for ACOs in agreement periods beginning on January 1, 2024, January 1, 2025, or January 1, 2026. In performing this adjustment, we would remove payment amounts for the selected

catheter HCPCS codes on DMEPOS claims submitted by any supplier; that is, we would not limit the exclusion to payment amounts on claims submitted by certain suppliers that may have individually displayed SAHS billing activity so as to protect the integrity of any potential investigations which may be ongoing.

Specifically, we would adjust the following Shared Savings Program calculations, as applicable, to exclude all Medicare Parts A and B payment amounts on DMEPOS claims (claim types 72 and 82)⁴ associated with HCPCS codes A4352 and A4353 in CY 2023:

- Calculation of Medicare Parts A and B FFS expenditures for an ACO's assigned beneficiaries for all purposes including the following: Establishing, adjusting, updating, and resetting the ACO's historical benchmark and determining performance year expenditures.

- Calculation of FFS expenditures for assignable beneficiaries as used in determining county-level FFS expenditures and national Medicare FFS expenditures, including the following calculations:

- ++ Determining average county FFS expenditures based on expenditures for the assignable population of beneficiaries in each county in the ACO's regional service area according to §§ 425.601(c) and 425.654(a) for purposes of calculating the ACO's regional FFS expenditures.

- ++ Determining the 99th percentile of national Medicare FFS expenditures for assignable beneficiaries for purposes of the following:

- Truncating assigned beneficiary expenditures used in calculating benchmark expenditures under § 425.652(a)(4), and performance year expenditures under §§ 425.605(a)(3) and 425.610(a)(4).

⁴ We note that in some Shared Savings Program documentation (see, for example, Table 2 in the Medicare Shared Savings Program, Shared Savings and Losses, Assignment and Quality Performance Standard Methodology Specifications (version #11, January 2023), available at <https://www.cms.gov/files/document/medicare-shared-savings-program-shared-savings-and-losses-and-assignment-methodology-specifications.pdf>), we classify claim type 72 (along with claim type 71) as Carrier (including physician/supplier Part B) and we classify claim type 82 (along with claim type 81) as DME. We will continue to use these classifications, which are based on the type of carrier to which the claim was submitted, for other program operations. As described by the CMS Research Data Assistance Center (ResDAC), claim type 71 refers to local carrier non-DMEPOS claims, 72 to local carrier DMEPOS claims, 81 to durable medical equipment regional carrier (DMERC) non-DMEPOS claims, and 82 to DMERC DMEPOS claims (see <https://resdac.org/cms-data/variables/nch-claim-type-code>).

- Truncating expenditures for assignable beneficiaries in each county for purposes of determining county FFS expenditures according to §§ 425.601(c)(3) and 425.654(a)(3).

- Truncating expenditures for assignable beneficiaries for purposes of determining truncated national per capita FFS expenditures for purposes of calculating the Accountable Care Prospective Trend (ACPT) according to § 425.660(b)(3).

- ++ Determining truncated national per capita expenditures FFS per capita expenditures for assignable beneficiaries for purposes of calculating the ACPT according to § 425.660(b)(3).

- ++ Determining national per capita expenditures for Parts A and B services under the original Medicare FFS program for assignable beneficiaries for purposes of capping the regional adjustment to the ACO's historical benchmark according to § 425.656(c)(3), and capping the prior savings adjustment according to

- § 425.658(c)(1)(ii).

- ++ Determining national growth rates that are used as part of the blended growth rates used to trend forward benchmark year (BY) 1 and BY2 expenditures to BY3 according to § 425.652(a)(5)(ii) and as part of the blended growth rates used to update the benchmark according to §§ 425.601(b)(2) and 425.652(b)(2)(i).

- Calculation of Medicare Parts A and B FFS revenue of ACO participants for purposes of calculating the ACO's loss recoupment limit under the BASIC track as specified in § 425.605(d).

- Calculation of total Medicare Parts A and B FFS revenue of ACO participants and total Medicare Parts A and B FFS expenditures for the ACO's assigned beneficiaries for purposes of identifying whether an ACO is a high revenue ACO or low revenue ACO, as defined under § 425.20, and determining an ACO's eligibility to receive advance investment payments according to § 425.630.

- Calculation or recalculation of the amount of the ACO's repayment mechanism arrangement according to § 425.204(f)(4).

This approach would recognize that SAHS billing activity has the potential to impact an ACO's savings and loss determination for both PY 2023 (the year when the SAHS billing activity occurred) and future performance years for which CY 2023 is a benchmark year. Making adjustments when the affected period represents a performance year or benchmark year is consistent with our approach for the exclusion of payment amounts for episodes of care for treatment of COVID-19 that we

established in the May 8, 2020 COVID–19 IFC (85 FR 27577 through 27581).

The listed calculations reflect the same set of calculations that CMS adjusts for a beneficiary's episode of care for treatment of COVID–19, specified at § 425.611(c), as amended by the CY 2021 PFS final rule (85 FR 85044), the CY 2023 PFS final rule (87 FR 70241), and the CY 2024 PFS final rule (88 FR 79548), with a few exceptions. First, § 425.611(c) includes certain provisions that are not relevant for the proposed policy.⁵ Second, the proposed policy includes calculations related to truncated national per capita expenditures used in determining the ACPT as described in § 425.660(b)(3) that are not included in § 425.611(c).⁶

For agreement periods beginning on January 1, 2024, and in subsequent years, CMS incorporates a fixed projected growth rate determined at the beginning of the ACO's agreement period called the ACPT into the blended update factor described in § 425.652(b) when updating an ACO's benchmark for each performance year of the agreement period.⁷ Specifically, the ACPT is an annual rate of growth in projected expenditures during the ACO's 5-year agreement period relative to BY3 and is calculated using a modified version of the existing FFS United States Per Capita Cost (USPCC) growth trend

projections. The USPCCs are calculated by OACT and projects Medicare program spending for various recurring deliverables, including the Medicare Trustees Report and the Advance Notice and Announcement of Medicare Advantage capitation rates and Part C and Part D payment policies. These publications include both historical and projected future Medicare spending amounts expressed on a per capita basis. The Modified USPCC Annualized Growth Rate used for calculating the ACPT in the Shared Savings Program reflects the following: (1) exclusion of IME and DSH payments, and the supplemental payment for Indian Health Service/Tribal hospitals and Puerto Rico hospitals; and (2) inclusion of payments associated with hospice claims (see § 425.660(b)(1), see also 87 FR 69882).

In considering whether to propose adjusting calculations used for the ACPT, we considered whether adjusting Shared Savings Program calculations detailed earlier in this section to exclude all payment amounts for the selected catheter codes but not adjusting projected growth rates used in the three-way blend would result in a bias. We expect that a bias would be introduced if we adjusted Shared Savings Program calculations to remove SAHS billing activity from expenditures but did not make an adjustment for SAHS billing activity from the corresponding year used in ACPT projections. We thus determined it was necessary to adjust the ACPT to promote continued integrity and fairness and improve the accuracy of Shared Savings Program financial calculations. This would ensure that the projected growth rates in future years (for which billing for the selected catheter claims is expected to revert to typical levels) would not be biased.

As noted in the Regulatory Impact Statement (section VI. of this proposed rule), we anticipate that the magnitude and direction of the net impact of these various adjustments may vary from ACO to ACO. For example, excluding the selected catheter payments may reduce an ACO's performance year expenditures, but may also reduce the performance year regional and national expenditures and, in turn, the update factors applied to the ACO's historical benchmark. If the reduction to an ACO's expenditures is larger than the reduction to the national-regional blended update to the benchmark (indicating that the ACO's performance year assigned population was disproportionately impacted by the SAHS billing activity than assignable beneficiaries in the ACO's regional

service area or the nation as a whole), the ACO would see an increase in total savings (or a reduction in total losses) relative to the current methodology, which makes no adjustments for SAHS billing activity. Conversely, if the reduction to the ACO's performance year expenditures is smaller than the reduction to the national-regional blended update to the benchmark, the ACO would see a decrease in total savings (or increase in total losses) relative to the current methodology.

We acknowledge that by excluding all payments for the selected HCPCS codes from CY 2023 calculations, we would exclude some payments that would have been made during the period in the absence of any SAHS billing activity. This, in turn, would create some degree of inconsistency between performance year expenditure calculations and expenditure calculations for the historical benchmark against which the performance year will be reconciled, as years not directly affected by the SAHS billing activity include some level of payments for the selected codes. We considered whether to propose adjusting historical benchmarks that will be used for PY 2023 financial reconciliation to remove all payments for the selected codes from benchmark year expenditures (for example, for an ACO that started an agreement period in 2022, adjusting the benchmark used for PY 2023 financial reconciliation to remove payments for the selected codes from benchmark years 2019, 2020, and 2021). We opted against this approach for two reasons.

First, historical billing for the selected catheter HCPCS codes has generally been relatively low, including in recent years. As noted in the Regulatory Impact Statement (section VI. of this proposed rule), billing for these codes remained less than 0.1 percent of total FFS billing in every year from 2016 to 2022, the period encompassing all benchmark years for ACOs being financially reconciled for PY 2023. Thus, in a year not impacted by SAHS billing activity, payments for these codes would likely represent only a very small portion of an ACO's total per capita expenditures or total expenditures for an ACO's regional service area or the national assignable population. This conclusion is supported by analysis at the regional level. Tabulating the difference in per capita spending for these codes at the Hospital Referral Region (HRR) from national average per capita spending across 2016 to 2022 (and expressing such difference as a percentage of per capita spending) results in a standard deviation of only 0.03 percentage points. Therefore, we believe that the

⁵ This includes provisions under §§ 425.600, 425.602, 425.603, 425.604, and 425.606 which are not relevant for the proposed policy because they are not applicable to PY 2023 or for agreement periods where CY 2023 is a benchmark year. It also includes certain provisions under § 425.601 which are not relevant for the proposed policy because the proposed policy does not include adjustments to benchmark year calculations for the benchmarks used to financially reconcile ACOs for PY 2023. These provisions are relevant for the COVID–19 episode exclusion policy under § 425.611 because they are applicable to performance or benchmark years that overlap with the PHE for COVID–19.

⁶ When establishing the ACPT in the CY 2023 PFS final rule, we noted that the first ACPT release would be published in 2024 for agreement periods beginning on January 1, 2024, and would provide a projected annualized growth rate (or rates) relative to the 2023 benchmark year (BY3). We noted further that to the extent that Medicare projections made at that time (2024) anticipated lingering effects from the COVID–19 pandemic then they would be reflected in the ACPT (see 87 FR 69894), and we opted not to amend § 425.611 to include adjustments of ACPT-related calculations. However, given the known nation-wide impact of the SAHS billing activity in CY 2023, it is appropriate to propose making adjustments to ACPT-related calculations in this proposed rule.

⁷ For more details on the ACPT and the terminology used to describe it, refer to the CY 2023 PFS final rule (87 FR 69881 through 69898) and Medicare Shared Savings Program, Shared Savings and Losses, Assignment and Quality Performance Standard Methodology, Specifications of the Accountable Care Prospective Trend (ACPT) and Three-Way Blended Benchmark Update Factor (May 2023, Version #1), available at <https://www.cms.gov/files/document/medicare-ssp-acpt-specifications.pdf>.

impact of adjusting the benchmarks to be used for PY 2023 financial reconciliation to exclude the selected catheter payments would be very small.

Second, adjusting benchmarks for over 450 ACOs being reconciled for PY 2023 would require the recalculation of ACO, national, and regional expenditures for seven benchmark calendar years and recalculation of benchmarks under multiple benchmarking methodologies. Performing these adjustments would delay the issuance of initial determinations, and thus the disbursement of earned performance payments, potentially by several months. The SAHS billing activity in CY 2023 was unforeseen and could not have been planned for or integrated into existing operational timelines. It would take time to recompute expenditure calculations for multiple years and benchmark calculations for multiple cohorts of ACOs and review and validate the results. Such a delay would be harmful to ACOs and the beneficiaries they care for, as ACOs rely on earned performance payments for critical investments in care delivery. The negative implications of a delay to the issuance of initial determinations and earned performance payments for PY 2023 outweighs the potential benefits gained by adjusting the benchmarks, especially as we anticipate the magnitude of the impact of such adjustments would be small.

Section 1899(d)(1)(B)(ii) of the Act permits the Secretary to adjust the benchmark for beneficiary characteristics and such other factors as the Secretary determines appropriate. This proposal, if finalized, would rely on this authority to remove payments for the specified catheter codes from the determination of benchmark expenditures where CY 2023 serves as a benchmark year when establishing benchmarks for ACOs in agreement periods beginning in January 2024, 2025, or 2026.

Other changes are proposed using our authority under section 1899(i)(3) of the Act. Specifically, we would rely on section 1899(i)(3) of the Act to remove payment amounts for HCPCS or CPT codes for which CMS has identified SAHS billing activity from the following calculations: (1) performance year expenditures; (2) updates to the historical benchmark; and (3) ACO participants' Medicare FFS revenue used for multiple purposes across the Shared Savings Program, including determinations of loss sharing limits in the two-sided models of the BASIC

track⁸ and determinations of eligibility for advance investment payments.⁹ Section 1899(i)(3) of the Act requires that we determine that the alternative payment methodology adopted under that provision would improve the quality and efficiency of items and services furnished to Medicare beneficiaries, without resulting in additional program expenditures. The adjustments we are proposing herein, which would remove payment amounts for codes with identified SAHS billing activity from the specified Shared Savings Program calculations specified in a proposed new section of the regulations at § 425.670, would capture and remove from program calculations expenditures that are outside of an ACO's control, but that could significantly affect the ACO's performance under the program. In particular, failing to remove these payments would create highly variable savings and loss results for individual ACOs that happen to have over-representation or under-representation of SAHS billing activity for the selected codes among their assigned beneficiary populations.

As described in the Regulatory Impact Statement (section VI. of this proposed rule), excluding payment amounts for the selected catheter HCPCS codes from the specified calculations is not expected to result in an increase in spending beyond the expenditures that would otherwise occur under the statutory payment methodology in section 1899(d) of the Act. Further, these adjustments to our calculations to remove payment amounts for these codes would promote continued integrity and fairness and improve the accuracy of Shared Savings Program financial calculations as well as timely completion of PY 2023 financial reconciliation. As a result, we expect these policies would support ACOs continued participation in the Shared Savings Program and the program's goals of lowering growth in Medicare FFS expenditures and improving the quality of care furnished to Medicare beneficiaries.

Based on these considerations, and as specified in the Regulatory Impact Statement (section VI. of this proposed rule), we have determined that adjusting certain Shared Savings Program calculations to remove payment amounts for selected codes identified as having SAHS billing activity in CY 2023 from the calculation of performance

year expenditures, updates to the historical benchmark, and ACO participants' Medicare FFS revenue used for multiple purposes across the Shared Savings Program, meets the requirements for use of our authority under section 1899(i)(3) of the Act when incorporated into the existing other payment model we have established pursuant to that section.

The proposals described in this proposed rule would be applied retroactively, as they affect a performance year that has already been completed (PY 2023) and a performance year that has already started (PY 2024). More specifically, we would retroactively apply the changes (if finalized) to adjust expenditure calculations used in determining shared savings and losses for PY 2023 and certain other calculations including to establish historical benchmarks for ACOs entering an agreement period beginning on January 1, 2024, that would be used to determine ACO financial performance for PY 2024 and subsequent years of an ACO's agreement period. Therefore, if finalized, these changes would constitute retroactive rulemaking. Section 1871(e)(1)(A)(ii) of the Act permits a substantive change in regulations, manual instructions, interpretive rules, statements of policy, or guidelines of general applicability under Title XVIII of the Act to be applied retroactively to items and services furnished before the effective date of the change if the failure to apply the change retroactively would be contrary to the public interest.

Failing to apply the proposed changes retroactively would be contrary to the public interest because it would unfairly punish Shared Savings Program ACOs by forcing them to unexpectedly assume a substantial magnitude of unexpected financial risk for costs outside their control and not previously contemplated in the Shared Savings Program, undermining both the sustainability of the Shared Savings Program and the public's faith in CMS as a fair partner. We did not fully contemplate the potential for SAHS billing activity outside of an ACO's control when the Shared Savings Program was established.¹⁰ For this reason, the Shared Savings Program financial methodology and the procedures we have utilized in the past did not provide a means to adequately account for instances of SAHS billing activity outside of an ACO's control,

⁸ See § 425.605(d)(1)(iii)(D), 425.605(d)(1)(iv)(D), and 425.605(d)(1)(v)(D) for BASIC track Levels C, D and E, respectively.

⁹ See § 425.630(b).

¹⁰ See, for example, 76 FR 67948 through 67950. Such approaches were more focused on policies to support monitoring of ACO performance and ensuring program integrity.

and thereby the related financial risk is assumed entirely by ACOs. We view this outcome as particularly inequitable to ACOs because they have no direct means of controlling such costs. Unlike Medicare Advantage organizations, ACOs are not responsible for processing claims for their assigned beneficiaries and otherwise have no means of causing the denial of such claims. CMS thus cannot reasonably have expected ACOs to have assumed responsibility for all instances of SAHS billing activity outside of an ACO's control when they joined the Shared Savings Program. For these reasons, it would be contrary to the public interest for CMS to fail to apply a policy mitigating this issue retroactively.

Undertaking notice and comment rulemaking for this issue prior to the start of PY 2023 to avoid retroactive rulemaking was not possible because we could not have foreseen the SAHS billing activity prior to the start of the performance year. More specifically, we were only able to determine that the increase in billing on HCPCS codes A4352 and A4353 in CY 2023 was significant, anomalous, and highly suspect after the calendar year ended. To identify that the billing activity in CY 2023 was significant, anomalous, and highly suspect, CMS reviewed actual billing levels after the calendar year closed and services furnished in CY 2023 had occurred and the billing level could then be compared to billing levels observed in prior calendar years.

We are proposing adding and reserving §§ 425.661 through 425.669 in subpart G and adding a new section at § 425.670 to describe adjustments CMS would make to Shared Savings Program calculations to mitigate the impact of SAHS billing activity occurring in CY 2023. We propose that § 425.670(b) would specify that CMS has determined that the billing of HCPCS codes A4352 (*Intermittent urinary catheter; Coude (curved) tip, with or without coating (Teflon, silicone, silicone elastomeric, or hydrophilic, etc.), each*) and A4353 (*Intermittent urinary catheter, with insertion supplies*) represents significant, anomalous, and highly suspect billing activity for CY 2023 that warrants adjustment. We propose under § 425.670(c) to specify the Shared Savings Program calculations for which CMS would exclude all Medicare Parts A and B FFS payment amounts on DMEPOS claims (claim types 72 and 82) associated with HCPCS codes A4352 and A4353 and include references to all relevant sections of the regulations in these provisions. In § 425.670(d), on the period of adjustment, we propose to specify that CMS would adjust Shared

Savings Program calculations for SAHS billing activity of HCPCS codes A4352 and A4353 for CY 2023, when CY 2023 is either a performance year or a benchmark year. We propose to specify under § 425.670(e) that we would make adjustments for payments associated with HCPCS codes A4352 and A4353 for BY3 in projecting per capita growth in Parts A and B FFS expenditures, according to § 425.660(b)(1), for purposes of calculating the ACPT for agreement periods beginning on January 1, 2024.

We seek comment on these proposals.

III. Exception to the 60-Day Comment Period and Possible Reduction or Waiver of 30-Day Delay in Effective Date of a Final Rule

A. Reduction of the Comment Period to 30 Days

There is an urgent need to address the impact of SAHS billing activity on Shared Savings Program calculations based on CY 2023 data used in determining PY 2023 financial performance, in establishing benchmarks for ACOs participating in agreement periods beginning on January 1, 2024, and in calculating factors used in the application cycle for ACOs applying to enter a new agreement period beginning on January 1, 2025, and the change request cycle for ACOs continuing their participation in the program for PY 2025.¹¹ These program operations depend on the timely use of CY 2023 data. Notice and comment rulemaking to consider the proposed adjustments to Shared Savings Program calculations for SAHS billing activity identified for CY 2023 necessitates delaying key program operations that depend on CY 2023 data, pending the issuance of a final rule that would specify our final policy as informed by public comment on our proposals. We describe in this section of this proposed rule the impact of delayed use of CY 2023 data in the aforementioned program operations and approaches that would allow us to continue to meet the statutory requirements for notice and comment rulemaking procedures, such as by reducing the comment period, and possibly reducing or eliminating the delay in the effective date of a final rule (if issued).

Significant delays in the issuance of initial determinations for PY 2023 financial performance, and related

shared savings payments, would be substantially disruptive to ACOs that exclusively receive revenue from shared savings payments, particularly small, rural, and low revenue ACOs and those serving underserved populations. With few exceptions, the Shared Savings Program historically completes calculations of shared savings and shared losses and issues initial determinations of ACO financial performance approximately 8 months after the conclusion of the performance year, and shortly thereafter issues performance payments to ACOs eligible to share in savings.¹² CMS initiates payments to ACOs that have earned shared savings for a performance year in September of the year following the applicable performance year. ACOs have come to rely on the orderly and timely calculation of financial reconciliation, and distribution of shared savings. Modifications to Shared Savings Program financial methodology as proposed in this proposed rule would necessitate delaying the delivery of financial reconciliation reports to ACOs, and issuance of performance payments to ACOs that have earned shared savings.

Delayed use of CY 2023 data would also impair administration of the Shared Savings Program in 2024 and 2025. CY 2023 data is instrumental in determining factors used in the application cycle for ACOs applying to enter a new agreement period beginning on January 1, 2025, and change request cycle for existing ACOs continuing their participation in the program for PY 2025. For instance, CY 2023 data will be used in the calculation of total Medicare Parts A and B FFS revenue of ACO participants and total Medicare Parts A and B FFS expenditures for the ACO's assigned beneficiaries for purposes of identifying whether an ACO is high revenue or low revenue, as defined under § 425.20. The high/low revenue status is then used to determine an ACO's eligibility to receive advance investment payments to expand accountable care to underserved communities according to § 425.630, and an ACO's eligibility for the CMS Innovation Center's new ACO PC Flex Model for the January 1, 2025 start date. CY 2023 data will also be the basis for calculating the amount of required repayment mechanism arrangements for ACOs entering two-sided models for PY 2025. The proposed approach would help ensure the accuracy of the calculations used in determining ACO revenue status and repayment

¹¹ Failing to take any action to address this SAHS billing activity may require CMS to use inaccurate data to make eligibility determinations and require ACOs establish repayment mechanism arrangements for inflated amounts that include the impact of SAHS billing activity.

¹² Refer to discussion in the CY 2023 PFS final rule, 87 FR 69869 through 69870.

mechanism amounts. Delays in the application cycle already underway could jeopardize our ability to timely issue application dispositions, execute participation agreements with eligible ACOs for the new agreement period beginning on January 1, 2025, deliver PY 2025 initial assignment list reports, and timely deliver initial advance investment payments for newly eligible ACOs. Substantial delays in change request cycle milestones also would jeopardize our ability to ensure ACOs have met program requirements to facilitate their continued participation in the Shared Savings Program for the performance year beginning on January 1, 2025.

Modifications to Shared Savings Program financial methodology as proposed in this proposed rule also necessitate delaying the delivery of final historical benchmark reports to ACOs. We recognize that delaying the availability of these program reports to ACOs could hamper ACOs' ability to set effective cost targets that may depend on the ACO's projected financial performance based on its benchmark value. Substantial delays in issuance of the historical benchmark reports to ACOs could make it more challenging for ACOs to effectively curb growth in Medicare FFS expenditures, a central aim of the Shared Savings Program.

Section 1871(b)(1) of the Act generally requires that Medicare rules must be proposed with a 60-day comment period. Section 1871(b)(2) of the Act provides that this requirement does not apply where a statute specifically permits a regulation to be issued in interim final form or otherwise with a shorter period for public comment; a statute establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained; or subsection (b) of section 553 of title 5, United States Code, does not apply under subparagraph (B) of such subsection. Subparagraph (B) of 5 U.S.C. 553(b) provides an exception to the requirement for an agency to publish a general notice of proposed rulemaking in the **Federal Register** when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

We find that a 60-day comment period is both impracticable and contrary to the public interest. For the reasons stated in the following discussion, we are therefore reducing the comment period of this proposed

rule to 30 days. Failing to use a 30-day comment period in lieu of a 60-day comment period here would be impracticable and contrary to the public interest in part for the same reasons described in section II.B. of this proposed rule that failing to apply this rule retroactively to PY 2023 and PY 2024 would be contrary to the public interest. Additionally, failing to use the reduced comment period would be impracticable and contrary to the public interest because the additional time would not substantially enhance the public's ability to participate in this rulemaking, and it would substantially impair CMS's ability to administer the Shared Savings Program, by delaying the following:

- Issuance of initial determinations of shared savings and shared losses to ACOs for PY 2023.
- Disbursement of PY 2023 earned performance payments to ACOs.
- Determination of ACO revenue status used in determining ACO eligibility for advance investment payments and eligibility for the ACO PC Flex Model, in connection with the application cycle for ACOs applying to enter a new agreement period beginning on January 1, 2025.
- Calculation of required amounts for repayment mechanism arrangements for ACOs entering a two-sided model for PY 2025 and the deadline for ACO submission of repayment mechanism documentation to CMS for review, to ensure compliance with related requirements.
- Calculation of final historical benchmarks for ACOs beginning an agreement period on January 1, 2024, and delivery of final historical benchmark reports to ACOs.

It would be contrary to the public interest for ACOs to be harmed by the delay in administration of the Shared Savings Program caused by the rule that intended to relieve them from the unexpected harm arising from SAHS billing activity. A 60-day comment period would likely necessitate delaying these key operations until at least late 2024, substantially delaying these operations and related processes, which would harm ACOs and impair the operation of the Shared Savings Program and thwart the relief to ACOs that would otherwise be provided by this rule.

A substantial delay to initial determinations of shared savings and losses for PY 2023 and disbursement of earned performance payments would be financially ruinous to the many ACOs that rely on these payments to operate. For example, in PY 2022, 304 ACOs earned \$2.52 billion in performance

payments. Shared savings payments are the primary revenue source of ACOs. Many ACOs, particularly small, rural, and low revenue ACOs and those serving underserved populations, depend on receiving shared savings payments on a predictable annual schedule to continue operating. It is self-evident that enabling ACOs to continue to operate with minimal disruption is itself in the public interest and in particular is in the interest of Medicare beneficiaries whose care is coordinated by ACOs.

Delaying adjudication of application and repayment mechanism decisions also would jeopardize or prevent CMS and ACOs starting performance year 2025. CMS and ACOs cannot timely enter into agreements for the agreement period beginning on January 1, 2025, jeopardizing the expansion of accountable care to underserved communities, stifling innovation in primary care payment reform and restricting ACOs' ability to meet requirements for entering or continuing their participation in a two-sided model for PY 2025. Phase 1 of the application period closed June 17, 2024.¹³ Failing to timely adjudicate hundreds of applications and over ten thousand change requests, for new and renewing ACOs, and ACOs continuing their participation in Shared Savings Program, impairs our ability to timely and accurately evaluate ACOs based on statutorily required eligibility criteria and existing regulatory requirements. We cannot start performance year 2025 until all applications and change requests have been reviewed, processed, and adjudicated.

Additionally, given the limited scope of this proposed rule, addressing a single issue through proposed changes to the Shared Savings Program regulations, a 30-day comment period is a reasonable amount of time for public inspection and comment. Furthermore, many interested parties have written to the Administrator requesting relief from SAHS billing activity so they are familiar with this issue and are likely ready to review the policy and impacts within the thirty day timeframe.

Furthermore, starting notice and comment rulemaking sooner to allow a 60-day comment period was impracticable. As we described elsewhere in this proposed rule, we could not have foreseen the SAHS billing activity in advance and were

¹³ See for example, Medicare Shared Savings Program, Key Application Actions and Deadlines For Agreement Period Beginning on January 1, 2025, available at <https://www.cms.gov/files/document/key-application-actions-and-deadlines.pdf>.

only able to determine that the increase in billing on HCPCS codes A4352 and A4353 in CY 2023 was significant, anomalous, and highly suspect after the calendar year ended. To identify that the billing activity in CY 2023 was SAHS billing activity, CMS reviewed actual billing levels after the calendar year closed and services furnished in CY 2023 had occurred and the billing level could then be compared to billing levels observed in prior calendar years. Careful analysis of the billing activity, plus careful analysis of the impact on ACOs in the Shared Savings Program, was critical to determining whether mitigation measures were necessary. Given the unprecedented nature of the circumstances, time was also required to develop the appropriate proposed mitigation approach. Once we determined that this billing activity in CY 2023 was significant, anomalous, and highly suspect, that it was necessary to mitigate its impact on Shared Savings Program expenditures and revenue calculations, and the appropriate proposed mitigation approach, we immediately began the process to undertake notice and comment rulemaking. For the aforementioned reasons, among others discussed in this section of this proposed rule, we view a failure to use a reduced comment period as impracticable and contrary to the public interest, and thus find the agency has good cause to set a 30-day comment period.

The modifications to the Shared Savings Program financial methodology proposed in this proposed rule, with a 30-day comment period, would allow us to maintain timely adjudication of certain determinations of applicant ACOs' eligibility to participate under the advance investment payment option, or the ACO PC Flex Model, for an agreement period beginning on January 1, 2025, and timely finalization of repayment mechanism arrangements required for ACOs to enter or continue their participation in two-sided models for PY 2025. While using a 30-day comment period would minimize disruptions to timelines for certain milestones, we anticipate that the issuance of initial determinations and the disbursement of earned performance payments for PY 2023 would still be delayed by approximately 6 weeks. Where possible, we will work to reduce delays and will proactively communicate with ACOs about changes in timelines for these, or other, milestones.

B. Possible Waiver of the 30-Day Delay in Effective Date of a Final Rule

Section 1871(e)(1)(B)(i) of the Act prohibits a substantive change in Medicare regulations from taking effect before the end of the 30-day period beginning on the date the rule is issued or published. However, section 1871(e)(1)(B)(ii) of the Act permits a substantive rule to take effect on a date that precedes the end of the 30-day period if the Secretary finds that a waiver of the 30-day period is necessary to comply with statutory requirements or that the application of the 30-day period is contrary to the public interest. The Administrative Procedure Act (APA), 5 U.S.C. 553(d), similarly requires a 30-day delay in the effective date of a substantive final rule. This 30-day delay in effective date can be waived, however, if an agency finds good cause to support an earlier effective date, among other reasons. 5 U.S.C. 553(d)(3). Should CMS finalize a rule based on this proposed rule, we would strongly consider reducing or waiving the 30-day delay in effective date under the provisions described above to the extent that the delay in effective date would also harm ACOs or thwart the purpose of this proposal by delaying our timely administration of the Shared Savings Program functions described in section III.A of this proposed rule. This waiver would be in part for the same reasons that we are reducing the comment period on this proposed rule from 60 days to 30 days, as described in section III.A of this proposed rule. We request comment on this approach, including a possible finding of good cause and how ACOs are impacted by the delay.

IV. Collection of Information Requirements

Section 1899(e) of the Act provides that chapter 35 of title 44 U.S.C., which includes such provisions as the Paperwork Reduction Act of 1995, shall not apply to the Shared Savings Program. Accordingly, we are not setting out burden estimates under this section of the preamble. Please refer to section VI. (Regulatory Impact Statement) of this proposed rule for a discussion of the impacts associated with the proposed changes to the Shared Savings Program as described in section II. (Provisions of the Proposed Regulations) of this proposed rule.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them

individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Statement

A. Overview

We have examined the impact 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 Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104-4), and Executive Order 13132 on Federalism (August 4, 1999).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). 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). A Regulatory Impact Analysis (RIA) must be prepared for major rules with significant effects (\$200 million or more in any 1 year). Based on our estimates, OMB's Office of Information and Regulatory Affairs (OIRA) has determined this rulemaking is not significant per section 3(f)(1) as measured by the \$200 million or more in any 1 year.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than \$9.0 million to \$47.0 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2024, that threshold is approximately \$183 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

B. Analysis

In this proposed rule, we discuss the reasons that excluding payment amounts incurred in 2023 for two urinary catheter HCPCS codes¹⁴ on

DMEPOS claims will prevent SAHS billing activity from deteriorating the accuracy of Shared Savings Program calculations determining both: (1) shared savings or losses for PY 2023 and (2) historical benchmarks for future performance years for ACOs entering agreement periods in 2024, 2025 or 2026. Total FFS spending in the two specified codes was minimal in preceding years before the SAHS billing activity in 2023 sharply increased in highly-disparate ways. At a program level, billing for these codes remained less than 0.1 percent of total FFS billing in every year from 2016 to 2022 before increasing to nearly 1 percent in 2023. And while a handful of hospital referral regions (HRRs) still managed to exhibit billing for the specified codes totaling less than 0.1 percentage points of total spending, approximately 10 percent of HRRs showed billing for the specified codes rising to at least 2 percentage points of total spending. In the most impacted HRR, billing for these codes in 2023 accounted for over a 5 percentage-point increase in total per capita billing from 2022, an astonishing and plainly unjustifiable increase in billing for the medical device supplied under these codes. By analyzing ACO-level program data, we observed material impacts likely for many PY 2023 ACOs related to these geographically heterogeneous and highly suspect increases in spending for the specified urinary catheter codes.

A preliminary estimate of PY 2023 performance using fourth-quarter reports with limited claims runout was used to estimate the impact of removing the specified codes. Despite limitations inherent in this analysis (including reliance on non-final beneficiary assignment lists, the absence of 3-months of claims run out, and the exclusion of risk adjustment), simulating the removal of actual

observed spending for the specified codes from preliminary estimates for ACO-level spending and regional and national growth and resulting updated benchmark spending provides a meaningful approximation of the distribution of impacts that the policy would have across the mix of ACOs in the program in 2023.

Billing for the specified codes was estimated in this study to have a nominal impact to overall shared savings (net of losses) across the mix of ACOs in PY 2023. The neutral overall impact exemplifies to the fact that billing for these specific codes was not correlated to any ability for an average ACO to actively manage the rapid growth. For most ACOs, the inclusion of the specified catheter codes do not substantially change their estimated financial outcome in PY 2023. When expressing projected shared savings (or losses) as a percentage of benchmark, the impact of spending in the specified codes on projected shared savings (or losses) was projected to be within +/- 0.05 percent for 49 percent of ACOs, within +/- 0.10 percent for 72 percent of ACOs, and within 0.15 percent for 82 percent of ACOs. However, the impacts will potentially be substantial at the tails of the distribution. Table 1 shows that including the specified codes would have increased the net earnings for one ACO in the study by an amount equivalent to 1.5 percent of benchmark spending relative to the proposal to exclude such specified spending. At the other extreme, leaving in the specified codes was estimated to reduce earnings to another ACO by an amount equivalent to 2.8 percent of benchmark relative to the proposed method to exclude such specified codes. The impact estimated at these extremes highlights the benefit of the proposed policy to prevent highly suspect billing in the two specified codes from materially impacting outcomes in the program.

¹⁴ A4352 (Intermittent urinary catheter; Coude (curved) tip, with or without coating (Teflon, silicone, silicone elastomeric, or hydrophilic, etc.),

each), and A4353 (Intermittent urinary catheter, with insertion supplies).

TABLE 1: Distribution of Estimated Impacts Elevated Catheter Spending (HCPCS codes A4352 and A4353) Would Have Impacted on Individual ACOs in PY 2023 Absent the Proposal (ACO Impacts Expressed as Percent of Estimated Updated PY 2023 Benchmark Excluding Specified Catheter Codes)

		Change in ACO Gross Savings	Change in ACO Earnings (Shared Savings /Losses)
	Mean	-0.1%	0.0%
	Min	-7.3%	-2.8%
Percentiles	5th	-0.7%	-0.4%
	10th	-0.3%	-0.1%
	20th	-0.1%	-0.1%
	30th	0.0%	0.0%
	40th	0.0%	0.0%
	50th	0.1%	0.0%
	60th	0.1%	0.0%
	70th	0.1%	0.0%
	80th	0.2%	0.1%
	90th	0.3%	0.1%
	95th	0.4%	0.2%
	Max	1.0%	1.5%

While still providing a valid illustration of the impacts likely across the distribution of ACOs, the simulation relied on preliminary data for PY 2023 with less than seven days of claims runout and without risk adjustment. Because of the limitations in the data used for this simulation, and because of the potential for the overall impact to be influenced by the proximity of individual ACO-level outcomes to the applicable minimum savings rate or minimum loss rate (particularly for large ACOs), a stochastic simulation was employed to generate a range of outcomes surrounding the best estimate. Assuming final gross savings (expressed on percent of benchmark basis) would vary relative to data used in the analysis under a normal distribution with standard deviation of 0.3 percentage points, the impact of removing spending in the specified codes was estimated to reduce overall program shared savings outlays by \$10 million on average, ranging from a \$40 million decrease at the 10th percentile to a \$20 million dollar increase at the 90th percentile.

C. Compliance With Requirements of Section 1899(i)(3) of the Act

Certain policies, including both existing policies and the proposed new policy described in this proposed rule, rely upon the authority granted in section 1899(i)(3) of the Act to use other payment models that the Secretary determines will improve the quality and efficiency of items and services furnished under the Medicare program, and that do not result in program expenditures greater than those that would result under the statutory payment model. By preventing SAHS spending growth in the two catheter codes from disrupting the accuracy and fairness of shared savings and loss outcomes for ACOs in the 2023 performance year, the proposed policy furthers the goals of quality and efficiency by protecting the validity and integrity of the program's incentive for quality and efficiency. The proposal in this proposed rule, together with all existing program policies (including but not limited to those requiring authority granted in section 1899(i)(3) of the Act), results in a program that is expected to improve the quality and efficiency of items and services furnished under the Medicare program and is not expected

to result in a situation in which the payment methodology under the Shared Savings Program, including all policies adopted under the authority of section 1899(i) of the Act, results in more spending under the program than would have resulted under the statutory payment methodology in section 1899(d) of the Act.

In the CY 2023 PFS final rule, we estimated that the projected impact of the payment methodology that incorporates all policies finalized by that final rule would result in \$4.9 billion in greater program savings compared to a hypothetical baseline payment methodology that excluded the policies that required section 1899(i)(3) of the Act authority (see 87 FR 70195 and 70196). The marginal impact of the proposed changes in the CY 2024 PFS final rule were estimated to lower net spending by \$330 million over the ten-year window for all new policies combined, including the cap an ACO's regional service area risk score growth, the addition of a new third step to the beneficiary assignment methodology, and the revised approach to identify the assignable beneficiary population (88 FR 79496). The marginal impact of the proposed changes in this proposed rule

are estimated to lower net spending by an additional \$10 million in net program shared savings payments for the 2023 performance year, with a range of uncertainty spanning \$40 million lower spending at the 10th percentile to \$20 million higher spending at the 90th percentile. The cumulative impact of all policies including the proposals in this proposed rule are estimated to result in more than \$4.9 billion in greater program savings compared to the hypothetical baseline payment methodology that excludes policies that require 1899(i)(3) of the Act authority. Therefore, we estimate that the implementation of the proposal made in this proposed rule would not result in a program with spending greater than what would result under the statutory payment model, consistent with the requirements of section 1899(i)(3)(B) of the Act.

We will continue to reexamine this projection in the future to ensure that the requirement under section 1899(i)(3)(B) of the Act that an alternative payment model not result in additional program expenditures continues to be satisfied. Additional Shared Savings Program data beginning to accumulate after the end of the COVID-19 public health emergency, along with emerging information on the characteristics of new entrants in the Shared Savings Program for agreement periods beginning on January 1, 2024 and January 1, 2025, are anticipated to gradually improve our ability to reevaluate program impacts in a comprehensive fashion. In the event that we later determine that the payment model that includes policies established under section 1899(i)(3) of the Act no longer meets this requirement, we would undertake additional notice and comment rulemaking to make adjustments to the payment model to assure continued compliance with the statutory requirements.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on June 27, 2024.

List of Subjects in 42 CFR Part 425

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare &

Medicaid Services proposes to amend 42 CFR part 425 as set forth below:

PART 425—MEDICARE SHARED SAVINGS PROGRAM

■ 1. The authority citation for part 425 continues to read as follows:

Authority: 42 U.S.C. 1302, 1306, 1395hh, and 1395jjj.

§§ 425.661 through 425.669 [Reserved]

■ 2. Add reserved §§ 425.661 through 425.669 to subpart G.

■ 3. Section 425.670 is added to subpart G to read as follows:

§ 425.670 Adjustments to mitigate the impact of significant, anomalous, and highly suspect billing activity on Shared Savings Program financial calculations involving calendar year 2023.

(a) *General.* This section describes adjustments CMS makes to Shared Savings Program calculations to mitigate the impact of significant, anomalous, and highly suspect billing activity occurring in calendar year 2023.

(b) *Significant, anomalous, and highly suspect billing activity for a HCPCS or CPT code impacting Shared Savings Program calculations.* CMS has determined that the billing of the following HCPCS codes represents significant, anomalous, and highly suspect billing activity for calendar year 2023 that warrants adjustment—

(1) A4352 (*Intermittent urinary catheter; Coude (curved) tip, with or without coating (Teflon, silicone, silicone elastomeric, or hydrophilic, etc.), each*); and

(2) A4353 (*Intermittent urinary catheter, with insertion supplies*).

(c) *Applicability of adjustments to performance year and benchmark year calculations.* Notwithstanding any other provision in this part, CMS adjusts the following Shared Savings Program calculations, as applicable, to exclude all Medicare Parts A and B fee-for-service payment amounts on DMEPOS claims (claim types 72 and 82) associated with a HCPCS code specified in paragraph (b) of this section for the period specified in paragraph (d) of this section:

(1) Calculation of Medicare Parts A and B fee-for-service expenditures for an ACO's assigned beneficiaries for all purposes including the following: Establishing, adjusting, updating, and resetting the ACO's historical benchmark and determining performance year expenditures.

(2) Calculation of fee-for-service expenditures for assignable beneficiaries as used in determining county-level fee-for-service expenditures and national

Medicare fee-for-service expenditures, including the following calculations:

(i) Determining average county fee-for-service expenditures based on expenditures for the assignable population of beneficiaries in each county in the ACO's regional service area according to §§ 425.601(c) and 425.654(a) for purposes of calculating the ACO's regional fee-for-service expenditures.

(ii) Determining the 99th percentile of national Medicare fee-for-service expenditures for assignable beneficiaries for purposes of the following:

(A) Truncating assigned beneficiary expenditures used in calculating benchmark expenditures under § 425.652(a)(4), and performance year expenditures under §§ 425.605(a)(3) and 425.610(a)(4).

(B) Truncating expenditures for assignable beneficiaries in each county for purposes of determining county fee-for-service expenditures according to §§ 425.601(c)(3) and 425.654(a)(3).

(C) Truncating expenditures for assignable beneficiaries for purposes of determining truncated national per capita fee-for-service expenditures for purposes of calculating the ACPT according to § 425.660(b)(3).

(iii) Determining truncated national per capita fee-for-service Medicare expenditures for assignable beneficiaries for purposes of calculating the ACPT according to § 425.660(b)(3).

(iv) Determining national per capita expenditures for Parts A and B services under the original Medicare fee-for-service program for assignable beneficiaries for purposes of capping the regional adjustment to the ACO's historical benchmark according to § 425.656(c)(3) and capping the prior savings adjustment according to § 425.658(c)(1)(ii).

(v) Determining national growth rates that are used as part of the blended growth rates used to trend forward BY1 and BY2 expenditures to BY3 according to § 425.652(a)(5)(ii) and as part of the blended growth rates used to update the benchmark according to §§ 425.601(b)(2) and 425.652(b)(2)(i).

(3) Calculation of Medicare Parts A and B fee-for-service revenue of ACO participants for purposes of calculating the ACO's loss recoupment limit under the BASIC track as specified in § 425.605(d).

(4) Calculation of total Medicare Parts A and B fee-for-service revenue of ACO participants and total Medicare Parts A and B fee-for-service expenditures for the ACO's assigned beneficiaries for purposes of identifying whether an ACO is a high revenue ACO or low revenue ACO, as defined under § 425.20, and

determining an ACO's eligibility to receive advance investment payments according to § 425.630.

(5) Calculation or recalculation of the amount of the ACO's repayment mechanism arrangement according to § 425.204(f)(4).

(d) *Period of adjustment.* CMS adjusts the Shared Savings Program calculations specified in paragraph (c) of this section for significant, anomalous, and highly suspect billing activity identified pursuant to paragraph (b) of this section for calendar year 2023, when calendar year 2023 is either a performance year or a benchmark year.

(e) *Adjustments for growth rates used in calculating the ACPT.* In addition to adjustments described in paragraph (c) of this section, CMS makes adjustments for payments associated with a HCPCS code specified in paragraph (b) of this section for BY3 in projecting per capita growth in Parts A and B fee-for-service expenditures, according to § 425.660(b)(1), for purposes of calculating the ACPT for agreement periods beginning on January 1, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024-14601 Filed 6-28-24; 4:15 pm]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket Nos. 21-346, 15-80; ET Docket No. 04-35; FCC 24-5; FR ID 225803]

Petition for Reconsideration of Action in a Rulemaking Proceeding; Correction

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** on June 7, 2024, containing the oppositions and replies to oppositions dates for a petition for reconsideration. While the date for oppositions was correct, the date for replies to oppositions requires a correction.

DATES: July 3, 2024.

FOR FURTHER INFORMATION CONTACT: Logan Bennett, Attorney Advisor, 202-418-7790.

SUPPLEMENTARY INFORMATION:

Federal Register Correction

In proposed rule FR document 2024-12472 beginning on page 48540 in the issue of June 7, 2024, make the following correction in the **DATES** section. On page 48540, in the second column, the second sentence of the **DATES** section is corrected to read as follows:

“Replies to oppositions to the Petition must be filed July 5, 2024.”

Dated: June 11, 2024.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024-13404 Filed 7-2-24; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 240621-0172]

RIN 0648-BM74

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy Repair and Replacement of the Q8 Bulkhead at Naval Station Norfolk

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

ACTION: Proposed rule, request for comment.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to the Q8 Bulkhead repair and replacement project at Naval Station (NAVSTA) Norfolk in Norfolk, Virginia over the course of 5-years (*i.e.*, 2025-2029) (the Project). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations. Agency responses will be included in the notice of the final decision.

DATES: Comments and information must be received no later than August 2, 2024.

ADDRESSES: A copy of the Navy's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navys->

[construction-activities-q8-bulkhead-naval-station](https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navys-construction-activities-q8-bulkhead-naval-station).

In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2024-0055 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public records and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427-8401 or craig.cockrell@noaa.gov.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the Navy's construction activities including pile driving at NAVSTA Norfolk.

We received an application from the Navy requesting 5-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level B harassment, incidental to impact and vibratory pile driving. Please see Background below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to 5-years if,

after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the “least practicable adverse impact” on the affected species or stocks and their habitat (see the discussion below in the Proposed Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA, and the implementing regulations at 50 CFR part 216 subpart I, provide the legal basis for issuing this proposed rule containing 5-year regulations, and for any subsequent letters of authorization (LOAs). As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule regarding Navy construction activities. These measures include:

- Required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities;
- Shutdown of construction activities under certain circumstances to avoid injury of marine mammals; and
- Soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power.

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions Section 101(a). Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, where relevant. Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the

affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth (Section 101 (5)(A)(i)(II)(aa)). The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of regulations) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (*i.e.*, incidental harassment authorizations (IHAs) with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed regulations and LOA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on final regulations and the final LOA.

Summary of Request

On September 14, 2024, NMFS received a request from the Navy for authorization to take marine mammals incidental to repair and replacement of the Q8 Bulkhead at NAVSTA Norfolk in Norfolk, VA. Following NMFS’ review of the application, the Navy submitted a revised version on December 18, 2024 and after review of that application a second revised version was submitted on January 16, 2024. The application was deemed adequate and complete on February 23, 2024. A notice of receipt of the Navy’s application was published in the **Federal Register** on March 14, 2024 (89 FR 18605). No comments were received on the application during the 30-day comment period. Navy’s request is for the take of four species by Level B harassment only. Neither Navy nor

NMFS expect serious injury or mortality to result from this activity. The proposed regulations would be valid for 5 years (2025–2029).

Description of Proposed Activity

Overview

The Navy proposes to repair and replace the Q8 bulkhead at NAVSTA Norfolk, originally constructed in 1957, that has failed in multiple locations, creating sinkholes and unsafe conditions. Work on the bulkhead would be conducted from Piers 12 and 14 to restore function of this Navy dock system. Vibratory and impact hammers would be used for pile removal and installation. Sounds produced from these pile removal and installation activities may result in the incidental take of marine mammals by Level B harassment in the form of behavioral harassment. The Q8 bulkhead consists of an approximately 2,583 feet (ft) (787.30 meters (m)) long anchored concrete sheet pile wall, beginning 400-ft (121.92 m) south of Pier 12 and terminating 1,024 ft (312.12 m) north of Pier 14 (the Project Area). The Project would occur at NAVSTA Norfolk in Norfolk, Virginia near the mouth of the James River. Work would be conducted over 212 non-consecutive days to complete the proposed pile removal and installation activities.

Dates and Duration

The proposed regulations would be valid for a period of 5 years (2025–2029). The specified activities may occur at any time during the 5-year period of validity of the proposed regulations. The Navy expects pile removal and driving activities for the entire Project to occur during approximately 212 non-consecutive days over three phases each of which would take a year to complete, with the greatest amount of work occurring during Phase III (year 3) (approximately 204 days). However, in the event of unforeseen delays, the Project may occur over the full 5-year duration of this proposed rule. The Navy plans to conduct all work during daylight hours.

Specific Geographic Region

The Q8 bulkhead at NAVSTA Norfolk is located at the confluence of the Elizabeth River, James River, Nansemond River, LaFayette River, Willoughby Bay, and Chesapeake Bay (figure 1). The water depth of the proposed action area can vary from six ft (1.83 m) to 50 ft (15.24 m) when measured at mean low water. The station is home to 59 ships (including five aircraft carriers), 187 aircraft, 18

aircraft squadrons, and 326 tenant commands. Waterfront structures include 13 large piers, numerous small piers, and bulkheads.

Anthropogenic sound is a significant contributor to the ambient acoustic environment surrounding NAVSTA

Norfolk, as it is located in close proximity to shipping channels as well as several Port of Virginia facilities with frequent vessel traffic that altogether have an annual average of 1,788 vessel calls (Port of Virginia, 2021). Other sources of human-generated underwater

sound not specific to naval installations include sounds from commercial and recreational vessel traffic. Additionally, on average, maintenance dredging of the navigation channel occurs every 2-years (USACE and Port of Virginia, 2018).

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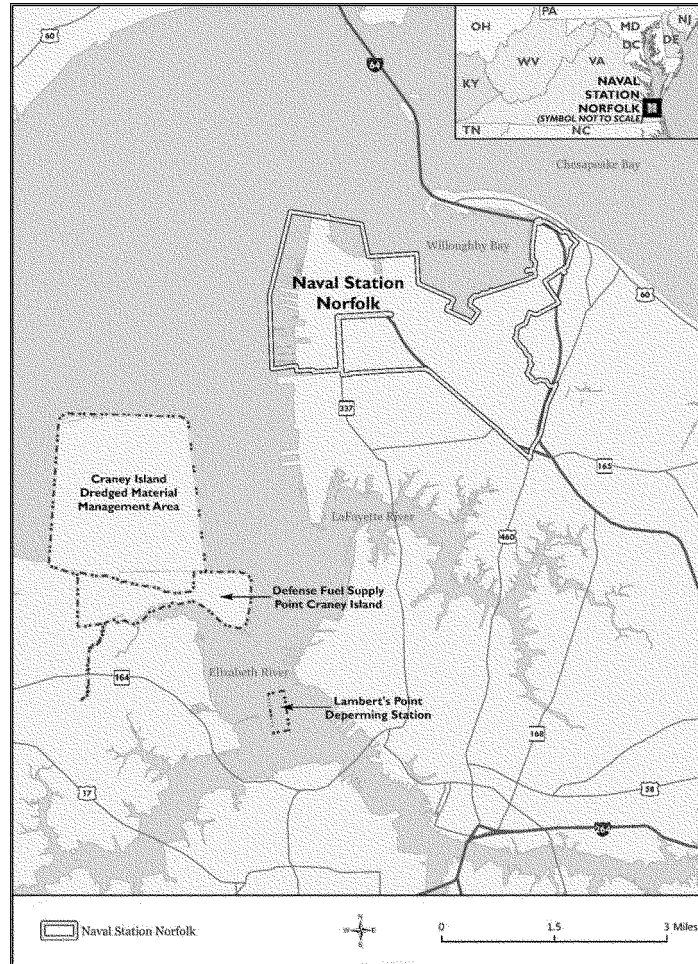


Figure 1. Site Location Map for NAVSTA Norfolk

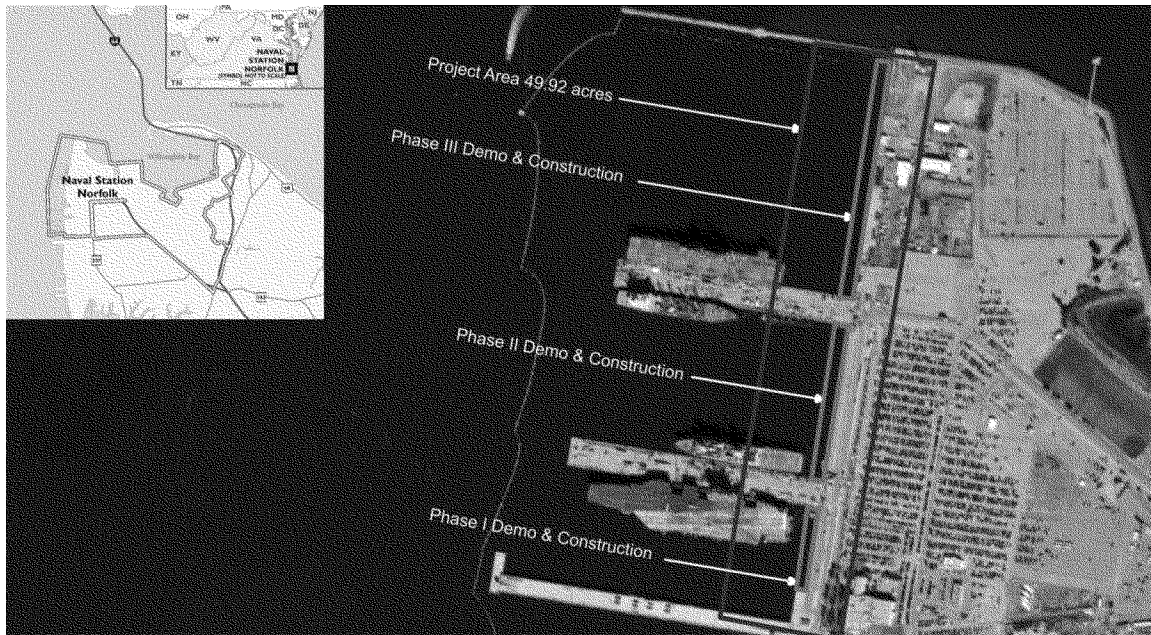


Figure 2. Location of the Q8 Bulkhead at NAVSTA Norfolk

Detailed Description of the Specified Activity

The proposed Project at NAVSTA Norfolk would involve the repair and replacement of the Q8 bulkhead. Excavation of the shoreside portion existing bulkhead would occur to expose the existing concrete relieving platform for inspection, to facilitate removal and replacement of existing stormwater outfall pipes and catch basins, and to accommodate installation of a new tie-back rod system. Once the replacement of the stormwater outfall pipes and catch basins are completed the pile removal and installation activities would begin in three phases. The new sheet piles would be installed outboard of the existing sheet pile wall and concrete and composite fender piles would be installed incrementally along the span of the bulkhead. Pile removal and installation activities over the three phases are presented below in table 1. Once construction is complete the previously excavated fill material would be placed in a similar location to allow for repaving of the shoreward area of the bulkhead. In-water construction activities, include pile removal and installation and are described in detail below:

Pile Removal—Vibratory hammers are expected to be used to remove piles; however, a direct pull method or clamshell device may be used to remove piles. These three pile removal methods are described below. Take is not

expected to occur for direct pull and clamshell removal methods; therefore, they will not be described past what is provided below nor included in the analysis presented in this rulemaking:

- **Vibratory Extraction**—This method uses a barge-mounted crane with a vibratory driver to remove all pile types. The vibratory driver is a large mechanical device (5–16 tons) suspended from a crane by a cable and positioned on top of a pile. The pile is then loosened from the sediments by activating the driver and slowly lifting up on the driver with the aid of the crane. Once the pile is released from the sediments, the crane continues to raise the driver and pull the pile from the sediment. The driver is typically shut off once the pile is loosened from the sediments. The pile is then pulled from the water and placed on a barge. Vibratory extraction usually takes between less than one minute (for timber piles) to 30 minutes per pile depending on the pile size, type, and substrate conditions;

- **Clamshell**—In cases where use of a vibratory driver is not possible (*e.g.*, when the pile may break apart from clamp force and vibration), a clamshell apparatus may be lowered from the crane in order to remove pile stubs. A clamshell is a hinged steel apparatus that operates similar to a set of steel jaws. The bucket is lowered from a crane and the jaws grasp the pile stub as the crane pulls upward. The use and size of the clamshell bucket would be minimized to reduce the potential for

generating turbidity during removal;
and

- **Direct Pull**—Piles may be removed by wrapping the piles with a cable or chain and pulling them directly from the sediment with a crane. In some cases, depending on access and location, piles may be cut at or below the mudline.

Pile Installation—Pile installation would occur using both vibratory and impact hammers. Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Concrete piles and composite piles would be installed using an impact or vibratory hammer. Steel sheet piles would be installed only using a vibratory hammer.

Table 1 provides the estimated construction schedule and production rates for the proposed construction activities considered for this proposed rulemaking beginning with Phase I. Each phase of the construction would occur over a 1-year period for a total of 3-years. Some Project elements will use only one method of pile installation while others may use two methods (*e.g.*, impact hammer or vibratory hammer and impact hammer), but all pile driving methods have been analyzed. The method of installation will be determined by the construction crew

once demolition and installation has begun.

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Table 1 -- Preliminary Construction Schedule for In-Water Activities

Phase (Year)	Method of pile driving/removal	Pile size/type	Total number of piles	Daily rate (piles/day)	Total days	Total days in phase
Phase I (Year 1)	Vibratory removal	18-in Pre-stressed concrete piles	139	6	24	74
	Vibratory install	56-in. steel sheet piles	183	6	31	
	Impact install	18-in Pre-stressed concrete piles	109	6	19	
Phase II (Year 2)	Vibratory removal	18-in Pre-stressed concrete piles	61	6	11	37
	Vibratory install	56-in. steel sheet piles	81	6	15	
	Impact install	18-in Pre-stressed concrete piles	49	6	11	
Phase III (Year 3)	Vibratory removal	16-in. Composite piles	178	6	30	101
	Vibratory install	56-in. steel sheet piles	283	6	48	
	Impact install	16-in. Composite piles	105	6	18	
	Impact install	18-in Pre-stressed concrete piles	26	6	5	

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Concurrent Activities—In order to maintain Project schedules, it is likely that multiple pieces of equipment would operate at the same time within the Project Area. Table 2 provides a summary of the possible equipment

combinations by phase where a maximum of four pieces of in-water equipment may be occurring simultaneously. As mentioned above, the method of installation, and whether concurrent pile driving scenarios will be

implemented, will be determined by the construction crew once the Project has begun. Therefore, the total take estimate reflects the highest amount for a given activity during the proposed Project.

Table 2 -- Summary of Possible Concurrent Pile Driving/Removal Equipment

Project phase	Equipment types	Total equipment operating
Phase I	Vibratory hammer (install and removal) and impact hammer	3
Phase II	Vibratory hammer (install and removal) and impact hammer	3
Phase III	Two Vibratory hammer (install and removal) and two impact hammers	4

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (see the Proposed Mitigation and Proposed Monitoring and Reporting sections).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and

behavioral descriptions) may be found on NMFS' website at: <https://www.fisheries.noaa.gov/find-species>.

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs) (Section 3 (19)(A)). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here

as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in table 3 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

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Table 3 -- Species Likely Impacted by the Specified Activities¹

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Order Artiodactyla – Infraorder Cetacea – Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals)						
Humpback whale	Megaptera novaeangliae	Gulf of Maine	-, -, N	1,396 (0, 1380, 2016)	22	12.15
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae						
Bottlenose dolphin	Tursiops truncatus	Northern Migratory Coastal	-, -, Y	6,639 (0.41, 4,759, 2016)	48	12.2-21.5
		Southern Migratory Coastal	-, -, Y	3,751 (0.6, 2,353, 2016)	24	0-18.3
		Northern NC Estuarine	-, -, N	823 (0.06, 782, 2017)	7.8	7.2- 30
Family Phocoenidae (porpoises)						
Harbor porpoise	Phocoena phocoena	Gulf of Maine/ Bay of Fundy	-, -, N	85,765 (0.53, 56,420, 2021)	649	145
Order Carnivora – Pinnipedia						
Family Phocidae (earless seals)						
Harbor Seal	Phoca vitulina	Western North Atlantic	-, -, N	61,336 (0.08, 57,637, 2018)	1,729	339

1-Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://www.marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>).

2 - ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

3 - NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports/>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

4 - These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

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As indicated above, all four species (with six managed stocks) in table 3

temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species

that could potentially occur in the proposed action area are included in table 3-1 of the IHA application. While

gray seals (*Halichoerus grypus*) have been documented in the area, the temporal and/or spatial occurrence of the species is such that take is not expected to occur, and it is not discussed further beyond the explanation provided here.

Surveys conducted in the lower Chesapeake Bay have observed gray seals regularly near the mouth of the Bay (Rees *et al.*, 2016; Jones *et al.* 2018; Jones & Rees, 2020, 2021, 2022). Although gray seals are present at the mouth of the Chesapeake Bay NMFS reviewed monitoring reports from the Hampton Roads Bridge-Tunnel Expansion Project IHA (85 FR 48153, August 10, 2020) and the Navy Pier 3 IHA (87 FR 15945, March 21, 2022) and there were no gray seals observed during either of those projects (Hampton Roads Connector Partners 2023; W.F. Magann Corporation 2023). Therefore, take is not expected for these species and they are not discussed further in this document.

Humpback Whale

In the winter months, humpback whales from waters off New England, Canada, Greenland, Iceland, and Norway, migrate to mate and calve primarily in the West Indies, where spatial and genetic mixing among these groups occurs. NMFS defines a humpback whale stock on the basis of feeding location (*i.e.*, Gulf of Maine). However, our reference to humpback whales in this document refers to any individual of the species that are found in the species geographic region. These individuals may be from the same breeding population (*e.g.*, West Indies breeding population of humpback whales) but visit different feeding areas.

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.*, 2015), NMFS established 14 Distinct Population Segments (DPSs) with different listing statuses (81 FR 62259, September 8, 2016) pursuant to the ESA. Humpback whales in the Project Area are expected to be from the West Indies DPS, which consists of the whales whose breeding range includes the Atlantic margin of the Antilles from Cuba to northern Venezuela, and whose feeding range primarily includes the Gulf of Maine, eastern Canada, and western Greenland. This DPS is not ESA listed. Bettridge *et al.*, (2003) estimated the size of the West Indies DPS at 12,312 (95 percent confidence interval 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.*,

2003; Smith *et al.*, 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.*, 2015).

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida. This event was declared an unusual mortality event (UME) in 2017. A portion of the whales have shown evidence of pre-mortem vessel strike; however, this finding is not consistent across all whales examined, and additional research is needed. Since May 3, 2024, 221 Atlantic humpback whales have been subject to the active UME. Additional information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2024-humpback-whale-unusual-mortality-event-along-atlantic-coast>.

Humpback whales are most likely to occur near the mouth of the Chesapeake Bay and coastal waters of Virginia Beach between January and March; however, they could be found in the area year-round, based on shipboard sighting and stranding data (Barco and Swingle, 2014; Aschettino *et al.*, 2015; 2016; 2017; 2018). Photo-identification data support the repeated use of the mid-Atlantic region by individual humpback whales. Results of the vessel surveys show site fidelity in the survey area for some individuals and a high level of occurrence within shipping channels—an important high-use area by both the Navy and commercial traffic (Aschettino *et al.*, 2015; 2016; 2017; 2018). Nearshore surveys conducted in early 2015 reported 61 individual humpback whale sightings, and 135 individual humpback whale sightings in late 2015 through May 2016 (Aschettino *et al.*, 2016). Subsequent surveys confirmed the occurrence of humpback whales in the nearshore survey area: 248 individuals were detected in 2016–2017 surveys (Aschettino *et al.*, 2017), 32 individuals were detected in 2017–2018 surveys (Aschettino *et al.*, 2018), and 80 individuals were detected in 2019 surveys (Aschettino *et al.*, 2019). Sightings in the Hampton Roads area in the vicinity of NAVSTA Norfolk were reported in nearshore surveys and through tracking of satellite-tagged whales in 2016, 2017 and 2019. The numbers of whales detected, most of which were juveniles, reflect the varying level of survey effort and changes in survey objectives from year to year, and do not indicate abundance trends over time. Recent monitoring reports from the Hampton Roads Bridge-Tunnel Expansion Project and the Pier 3 Navy Construction Project did not observe any humpback whales near the project sites. Monitoring for the Hampton Roads Bridge-Tunnel

Expansion Project spanned from September 2020 through July 2021 (over a 197-day period) and monitoring for the Pier 3 Navy Construction Project spanned from August 2022 to December 2022 (*i.e.*, over a 45-day period) (Hampton Roads Connector Partners 2023; W.F. Magann Corporation 2023).

Bottlenose Dolphin

Along the U.S. East Coast and northern Gulf of Mexico, the bottlenose dolphin stock structure is well studied. There are currently 54 management stocks identified by NMFS in the western North Atlantic and Gulf of Mexico, including oceanic, coastal, and estuarine stocks (Hayes *et al.*, 2017; Waring *et al.*, 2015, 2016).

Bottlenose dolphins inhabiting nearshore coastal and estuarine waters between New York and Florida may be a separate species from their offshore counterparts (Costa *et al.*, 2022). The offshore form is larger in total length and skull length and has wider nasal bones than the coastal form. Both inhabit waters in the western North Atlantic Ocean and Gulf of Mexico (Curry and Smith, 1997; Hersh and Duffield, 1990; Mead and Potter, 1995) along the U.S. Atlantic coast. The coastal species of bottlenose dolphin is continuously distributed along the Atlantic coast south of Long Island, New York, around the Florida peninsula, and along the Gulf of Mexico coast. This type typically occurs in waters less than 25 meters deep (Waring *et al.*, 2015). The range of the offshore bottlenose dolphin includes waters beyond the continental slope (Kenney, 1990), and offshore bottlenose dolphins may move between the Gulf of Mexico and the Atlantic (Wells *et al.*, 1999).

Two coastal stocks are likely to be present in the Project Area: (1) the Western North Atlantic Northern Migratory Coastal stock; and (2) the Western North Atlantic Southern Migratory Coastal stock. Additionally, the Northern North Carolina Estuarine System stock may occur in the Project Area.

Bottlenose dolphins are the most abundant marine mammal along the Virginia coast and within the Chesapeake Bay, typically traveling in groups of 2–15 individuals, but occasionally in groups of over 100 individuals (Engelhaupt *et al.*, 2014; 2015; 2016). Bottlenose dolphins of the Western North Atlantic Northern Migratory Coastal stock winter along the coast of North Carolina and migrate as far north as Long Island, New York, in the summer. They are rarely found north of North Carolina in the winter (NMFS, 2018). The Western North

Atlantic Southern Migratory Coastal stock occurs in waters of southern North Carolina from October to December, moving south during winter months and north to North Carolina during spring months. During July and August, the Western North Atlantic Southern Migratory Coastal stock is presumed to occupy coastal waters north of Cape Lookout, North Carolina, to the eastern shore of Virginia (NMFS, 2018). It is possible that these animals also occur inside the Chesapeake Bay and in nearshore coastal waters. The North Carolina Estuarine System stock dolphins may also occur in the Chesapeake Bay during July and August (NMFS, 2018).

Vessel surveys conducted along coastal and offshore transects from NAVSTA Norfolk to Virginia Beach in most months from August 2012 to August 2015 reported bottlenose dolphins throughout the survey area, including the vicinity of NAVSTA Norfolk (Engelhaupt *et al.*, 2014; 2015; 2016). The final results from this project confirmed earlier findings that bottlenose dolphins are common in the study area, with highest densities in the coastal waters in summer and fall months. However, bottlenose dolphins do not completely leave this area during colder months, with approximately 200–300 individuals still present in winter and spring months, which is commonly referred to as the Chesapeake Bay resident dolphin population (Engelhaupt *et al.*, 2016). During monitoring of Pier 3 Navy Construction Project, 18 bottlenose dolphins were observed over 45 days of construction (W.F. Magann Corporation 2023). Over the 197 days of construction a total of 94 bottlenose dolphins were observed during the Hampton Roads Bridge-Tunnel Expansion Project (Hampton Roads Connector Partners 2023). For both projects bottlenose dolphins were the only marine mammal observed while conducting monitoring activities.

Harbor Porpoise

Harbor porpoises inhabit cool temperate-to-subpolar waters, often where prey aggregations are concentrated (Watts and Gaskin, 1985). Thus, they are frequently found in shallow waters, most often near shore, but they sometimes move into deeper offshore waters. Harbor porpoises are rarely found in waters warmer than 63 degrees Fahrenheit (17 degrees Celsius) (Read 1999) and closely follow the movements of their primary prey, Atlantic herring (Gaskin 1992).

In the western North Atlantic, harbor porpoise range from Cumberland Sound on the east coast of Baffin Island, southeast along the eastern coast of Labrador to Newfoundland and the Gulf of St. Lawrence, then southwest to about 34 degrees North on the coast of North Carolina (Waring *et al.*, 2016). During winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina, and lower densities are found in waters off New York to New Brunswick, Canada (Waring *et al.*, 2016). Harbor porpoises sighted off the mid-Atlantic during winter include porpoises from other western North Atlantic populations (Rosel *et al.*, 1999). There does not appear to be a temporally coordinated migration or a specific migratory route to and from the Bay of Fundy region (Waring *et al.*, 2016). During the fall (October to December) and the spring (April to June), harbor porpoises are widely dispersed from New Jersey to Maine, with lower densities farther north and south (LaBrecque *et al.*, 2015).

Based on stranding reports, passive acoustic recorders, and shipboard surveys, harbor porpoise occur in coastal waters primarily in winter and spring months, but there is little information on their presence in the Chesapeake Bay. They do not appear to be abundant in the NAVSTA Norfolk area in most years, but this is confounded by wide variations in stranding occurrences over the past decade. There were no harbor porpoise observed during construction activities for the Pier 3 Navy Construction Project or the Hampton Roads Bridge-Tunnel Expansion Project (Hampton Roads Connector Partners 2023; W.F. Magann Corporation 2023).

Harbor Seal

The Western North Atlantic stock of harbor seals occurs in the Project Area. Harbor seal distribution along the U.S. Atlantic coast has shifted in recent years, with an increased number of seals reported from southern New England to the mid-Atlantic region (DiGiovanni *et al.*, 2011; Hayes *et al.*, 2021). Regular sightings of seals in Virginia have become a common occurrence in winter and early spring (Costidis *et al.*, 2019). Winter haulout sites for harbor seals have been documented in the Chesapeake Bay at the Chesapeake Bay Bridge Tunnel (CBBT), on the Virginia Eastern Shore, and near Oregon Inlet, North Carolina (Waring *et al.*, 2016; Rees *et al.*, 2016; Jones *et al.*, 2018).

Harbor seals regularly haul out on rocks around the portal islands of the CBBT and on mud flats on the nearby southern tip of the Eastern Shore from December through April (Rees *et al.*, 2016; Jones *et al.*, 2018). Seals captured in 2018 on the Eastern Shore and tagged with satellite-tracked tags that lasted from 2 to 5 months spent at least 60 days in Virginia waters before departing the area. All tagged seals returned regularly to the capture site while in Virginia waters, but individuals utilized offshore and Chesapeake Bay waters to different extents (Ampela *et al.*, 2019). The area that was utilized most heavily was near the Eastern Shore capture site, but some seals ranged into the Chesapeake Bay. To supplement this information, there were no harbor seals observed during construction activities for the Pier 3 Navy Construction Project or the Hampton Roads Bridge-Tunnel Expansion Project (Hampton Roads Connector Partners 2023; W.F. Magann Corporation 2023).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 4.

Table 4 -- Marine Mammal Hearing Groups (NMFS, 2018)

Hearing Group	Generalized Hearing Range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	275 Hz to 160 kHz
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz
* Represents the generalized hearing range for the entire group as a composite (<i>i.e.</i> , all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall <i>et al.</i> 2007) and PW pinniped (approximation).	

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day

(Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the Project would include vibratory pile driving and removal and impact pile driving. The sounds produced by these activities fall into one of two general sound types: (1) impulsive; and (2) non-impulsive. Impulsive sounds (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (*i.e.*, less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018). Non-impulsive sounds (*e.g.*, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward 1997 in Southall *et al.*, 2007).

Impact hammers operate by repeatedly dropping a heavy piston onto

a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. The vibrations produced also cause liquefaction of the substrate surrounding the pile, enabling the pile to be extracted or driven into the ground more easily. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.*, 2005).

The likely or possible impacts of the Navy's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in nature and no takes specifically attributed to non-acoustic stressors are expected to occur. Acoustic stressors include effects of heavy equipment operation during pile driving and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving is the primary means by which marine mammals may be harassed from the Navy's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.*, 2007 and Southall *et al.* 2021). In general, exposure to pile driving noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.*, avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.*,

impulsive vs. non-impulsive), the species, age and sex class (*e.g.*, adult male vs. mom with calf), duration of exposure, the distance between the pile and there animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004; Southall *et al.*, 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.*, impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.*, how an animal uses sound within the frequency band of the signal; *e.g.*, Kastelein *et al.*, 2014), and the overlap between the animal and the source (*e.g.*, spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.*, 1958, 1959; Ward 1960; Kryter *et al.*, 1966; Miller 1974; Ahroon *et al.*, 1996; Henderson *et al.*, 2008). PTS levels for marine mammals are estimates (with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.*, 2008)), and there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a

specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.*, 2007), a TTS of six dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion. At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (*i.e.*, bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocaena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured

pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and table 5 in NMFS (2018).

Installing piles for this Project requires a combination of impact pile driving and vibratory pile driving. For this Project, these activities would not occur at the same time and there would be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the ensonified area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Effects

Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005; Southall *et al.*, 2021).

Disturbance may result in: (1) changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; (2) reduced/increased vocal activities; (3) changing/cessation of certain behavioral activities (*e.g.*, socializing or feeding); (4) visible startle response or aggressive behavior (*e.g.*, tail/fluke slapping or jaw clapping); (5) avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific, and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay

between those factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007; Southall *et al.*, 2021; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within exposures of an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012; Southall *et al.*, 2021), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. For a review of studies involving marine mammal behavioral responses to sound, see: Southall *et al.*, 2007; Gomez *et al.*, 2016; and Southall *et al.*, 2021.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.*, Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

In 2021, the Navy monitored construction activities at Pier 3 during pile driving activities from August through December. That project was in roughly the same location as the Q8 bulkhead. Four detections of 35 bottlenose dolphins occurred over 45 total days of construction. All 35 of the bottlenose dolphins that were observed were in estimated Level B harassment zones and occurred just in the month of August (W.F. Magann Corporation 2023). The I-64 Hampton Roads Bridge-Tunnel Expansion Project pile driving occurred from January through December of 2023 over 234 days. During that work, 94 bottlenose dolphins were observed entering harassment zones (92 in estimated Level B harassment zones

and two in estimated Level A harassment zones) (Hampton Roads Connector Partners 2023). During both of these projects, the only marine mammals observed were bottlenose dolphins and no visible signs of disturbance were noted for any of the dolphins. Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to the specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.*, small area movements).

Airborne Acoustic Effects—Although pinnipeds are known to haul-out regularly on man-made objects (*e.g.*, the CBBT), we believe that incidents of take resulting solely from airborne sound are unlikely due to the sheltered proximity between the proposed Project Area and these haulout sites (*i.e.*, over 16 miles (26 km)). There is a possibility that an animal could surface in-water, but with head out, within the area in which airborne sound exceeds relevant thresholds and thereby be exposed to levels of airborne sound that we associate with harassment, but any such occurrence would likely be accounted for in our estimate of incidental take from underwater sound. Therefore, authorization of incidental take resulting from airborne sound for pinnipeds is not warranted, and airborne sound is not discussed further here. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Marine Mammal Habitat Effects

The Navy's construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water sound pressure levels and slightly decreasing water quality. However, since the focus of the proposed action is pile driving, no net habitat loss is expected as the new Q8 bulkhead would be immediately seaward of the existing bulkhead or would encapsulate the existing bulkhead. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sounds. Increased noise levels may affect the acoustic habitat and adversely affect marine mammal prey in the vicinity of the Project Area (see discussion below). During pile driving activities, elevated levels of underwater noise would ensonify the Project Area where both fishes and marine mammals may occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction,

however displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. The area likely impacted by the Project is relatively small compared to the available habitat in the surrounding waters of the Chesapeake Bay.

Temporary and localized reduction in water quality will occur because of in-water construction activities as well. Most of this effect will occur during the installation and removal of piles when bottom sediments are disturbed. The installation of piles will disturb bottom sediments and may cause a temporary increase in suspended sediment in the Project Area. In general, turbidity associated with pile installation is localized to an approximately 25-ft (7.6 m) radius around the pile (Everitt *et al.*, 1980). Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat—The proposed activities would not result in permanent impacts to habitats used directly by marine mammals except for the actual footprint of the new Q8 bulkhead. The total seafloor area affected by pile installation and removal is a very small area that is not known to be of particular importance compared to the vast foraging area available to marine mammals in the Project Area and lower Chesapeake Bay. Pile extraction and installation may have impacts on benthic invertebrate species primarily associated with disturbance of sediments that may cover or displace some invertebrates. The impacts will be temporary and highly localized, and no habitat will be permanently displaced by construction. Therefore, it is expected that impacts on foraging opportunities for marine mammals due to the construction of the Q8 bulkhead would be minimal.

It is possible that avoidance by potential prey (*i.e.*, fish) in the immediate area may occur due to temporary loss of this foraging habitat. The duration of fish avoidance of this area after pile driving stops is unknown, but we anticipate a rapid return to normal recruitment, distribution, and behavior. Any behavioral avoidance by fish of the disturbed area would still leave large areas of fish and marine mammal foraging habitat in the nearby vicinity in the Project Area and lower Chesapeake Bay.

Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.*, fish). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.*, Zelick *et al.*, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fish hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fishes depend on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, pressure-related injuries (*i.e.*, barotrauma), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.*, feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.*, Fewtrell and McCauley, 2012; Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Paxton *et al.*, 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.*, Pena *et al.*, 2013; Wardle *et al.*, 2001; Jorgenson and Gyselman, 2009; Cott *et al.*, 2012).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of

auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012b; Casper *et al.*, 2013).

The most likely impact to fish from pile driving activities in the Project Area would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

The area impacted by the Project is relatively small compared to the available habitat in the remainder of the Project Area and the lower Chesapeake Bay, and there are no areas of particular importance that would be impacted by this Project. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the Navy's construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization, which will inform both NMFS' consideration of "small numbers," and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment) (16 U.S.C. 1362(18)(A)(i)–(ii)).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for

individual marine mammals resulting from exposure to sounds emitted from pile driving. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.*, shutdown zones) discussed in detail below in the Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, bathymetry, other noises in the area, predators in the area), and the state of the receiving animals (*e.g.*, hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.*, Southall *et al.*, 2007, 2021, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS

SPL) of 120 dB (referenced to one micropascal (re one μPa)) for continuous (*e.g.*, vibratory pile driving) and above RMS SPL 160 dB re one μPa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (*i.e.*, conspecific communication, predators, and prey) may result in changes in behavior patterns that would not otherwise occur.

The Navy's activity includes the use of continuous (*e.g.*, vibratory pile driving and removal) and impulsive (*e.g.*, impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re one μPa are applicable.

These thresholds are provided in table 5 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

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Table 5 -- Thresholds Identifying the Onset of Permanent Threshold Shift.

	PTS Onset Acoustic Thresholds* (Received Level)	
Hearing Group	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	<i>Cell 1</i> $L_{pk,flat}$: 219 dB $L_{E,LF,24h}$: 183 dB	<i>Cell 2</i> $L_{E,LF,24h}$: 199 dB
Mid-Frequency (MF) Cetaceans	<i>Cell 3</i> $L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB	<i>Cell 4</i> $L_{E,MF,24h}$: 198 dB
High-Frequency (HF) Cetaceans	<i>Cell 5</i> $L_{pk,flat}$: 202 dB $L_{E,HF,24h}$: 155 dB	<i>Cell 6</i> $L_{E,HF,24h}$: 173 dB
Phocid Pinnipeds (PW) (Underwater)	<i>Cell 7</i> $L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB	<i>Cell 8</i> $L_{E,PW,24h}$: 201 dB
Otariid Pinnipeds (OW) (Underwater)	<i>Cell 9</i> $L_{pk,flat}$: 232 dB $L_{E,OW,24h}$: 203 dB	<i>Cell 10</i> $L_{E,OW,24h}$: 219 dB
* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered. <u>Note:</u> Peak sound pressure (L_{pk}) has a reference value of one μPa, and cumulative sound exposure level (L_E) has a reference value of $1\mu\text{Pa}^2\text{s}$. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (<i>i.e.</i>, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.		

BILLING CODE 3510-22-C**Ensonified Area**

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the Project Area is the existing background noise plus additional construction noise from the proposed Project. Marine mammals are expected to be affected via sound generated by the primary components of the Project (*i.e.*, impact pile driving and

vibratory pile driving and removal). The maximum underwater area ensonified above the thresholds for individual activities of behavioral harassment referenced above is 93.5 km² (36.1 mi²) and would consist of an area reaching the opposite shoreline of the river (see figures 6.6, 6.8, and 6.10 in the Navy's application for the Incidental Take Authorization for the Q8 bulkhead Project). The maximum (underwater) area ensonified above the thresholds for concurrent activities of behavioral harassment referenced above is 97.9 km² (37.8 mi²) and would consist of a

similar area reaching the opposite shoreline of the river as individual activities (see figures 6.11–6.16 in the Navy's application). Additionally, vessel traffic and other commercial and industrial activities in the Project Area may contribute to elevated background noise levels which may mask sounds produced by the Project.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth,

water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R_1/R_2),$$

where

TL = transmission loss in dB

B = transmission loss coefficient

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (*i.e.*, free-field) environment not limited by depth or water surface, resulting in a 6-dB reduction in sound level for each doubling of distance from the source ($20 * \log[\text{range}]$). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the

water surface and sea bottom, resulting in a reduction of three dB in sound level for each doubling of distance from the source ($10 * \log[\text{range}]$). A practical spreading value of 15 is often used under conditions, such as the Project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this Project, the Navy and NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes, and methods. The Project includes vibratory and impact installation of prestressed concrete and composite piles and vibratory removal of existing concrete piles. Steel sheet piles to make up the

wall of the bulkhead would be installed with vibratory hammers. Source levels for each pile size and driving method for individual activities are presented in table 6. For concurrent activities where two noise sources have overlapping sound fields, there is potential for higher sound levels than for non-overlapping sources because the isopleth of one sound source encompasses the sound source of another isopleth. In such instances, the sources are considered additive and combined using the rules of decibel addition. For addition of two simultaneous sources, the difference between the two sound source levels is calculated, and: (1) if that difference is between zero and one dB, three dB are added to the higher sound source level; (2) if the difference is between two or three dB, two dB are added to the highest sound source level; (3) if the difference is between four to nine dB, one dB is added to the highest sound source level; and (4) with differences of 10 dB or more, there is no addition. Source levels for each pile size and vibratory driving for concurrent activities are presented in table 7.

Table 6 -- Proxy Sound Source Levels for Pile Sizes and Driving Methods

Pile Size	Method	Proxy Source Level			Literature source
		dB RMS re 1µPa	dB SEL re 1µPa ² sec	dB peak re 1µPa	
56-in sheet pile	Vibratory	168	N/A	N/A	Illingworth and Rodkin, 2017
18-in concrete	Vibratory	162	N/A	N/A	Caltrans, 2020
16-in composite	Vibratory	158	N/A	N/A	Illingworth and Rodkin, 2017
18-in concrete	Impact	170	160	185	e4sciences, 2023
16-in composite	Impact	169	157	177	Illingworth and Rodkin, 2017

Table 7 -- Proxy Sound Source Levels for concurrent activities

Pile Size and Type	Vibratory Installation Source 1 [dB RMS]	Vibratory Extract Source 2 [dB RMS]	Revised SL to be used [dB RMS]
Source 1: Vibratory hammer 56-inch steel sheet pile; Source 2: Vibratory extraction of 18-inch concrete pile	168	162	169
Source 1: Vibratory hammer 18-inch concrete pile; Source 2: Vibratory extraction of 18-inch concrete pile	162	162	165
Source 1: Vibratory hammer 56-inch steel sheet pile; Source 2: 16 in composite pile	168	158	168

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the

resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources impact or vibratory pile driving and removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the

activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported below. For concurrent activities where combined impact and vibratory hammer scenarios shown in table 10, the estimated Level A isopleth distances reflect the impact driving activity and the estimated Level B isopleth distances reflect the combined vibratory source levels for that activity.

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Table 8 -- User Spreadsheet Input Parameters Used for Calculating Level A Harassment**Isopleths**

Phase (Year)	Pile size and installation method	Spreadsheet tab used	Weighting factor adjustment (kHz)	Number of strikes per pile	Number of piles per day	Activity duration (minutes)
Phase I (Year 1)	18-in concrete impact installation	E.1 Impact pile driving	2	307	6	N/A
	18-in concrete vibratory extraction	A.1 Vibratory pile driving	2.5	N/A	6	14
	56-in sheet pile vibratory installation	A.1 Vibratory pile driving	2.5	N/A	6	24
Phase II (Year 2)	18-in concrete impact installation	E.1 Impact pile driving	2	499	6	N/A
	18-in concrete vibratory extraction	A.1 Vibratory pile driving	2.5	N/A	6	26
	56-in sheet pile vibratory installation	A.1 Vibratory pile driving	2.5	N/A	6	28
Phase III (Year 3)	16-in composite impact installation	E.1 Impact pile driving	2	540	6	N/A

	18-in concrete vibratory installation	E.1 Impact pile driving	2	540	6	N/A
	16-in composite vibratory extraction	A.1 Vibratory pile driving	2.5	N/A	6	20
	56-in sheet pile vibratory installation	A.1 Vibratory pile driving	2.5	N/A	6	38

Table 9 -- Calculated Level A and Level B Harassment Isopleths for Individual Activities

Phase (Year)	Activity	Level A harassment zone (m)				Level B harassment zone (m)
		LF-cetaceans	MF-cetaceans	HF-cetaceans	Phocids	
Phase I (Year 1)	18-in concrete impact installation	43.9	1.6	52.3	23.5	46.4
	18-in concrete vibratory extraction	10.0	0.9	14.7	6.1	6,310
	56-in sheet pile vibratory installation	35.9	3.2	53.0	21.8	15,849
Phase II (Year 2)	18-in concrete impact installation	60.8	2.2	72.4	32.5	46.4
	18-in concrete vibratory extraction	15.1	1.3	22.3	9.2	6,310
	56-in sheet pile vibratory installation	39.7	3.2	58.7	24.2	15,849
Phase III (Year 3)	16-in composite impact installation	40.4	1.4	48.1	21.6	39.8
	18-in concrete impact installation	64.0	2.3	76.3	34.3	46.4
	16-in composite vibratory extraction	6.8	0.6	10.1	4.2	3,415
	56-in sheet pile vibratory installation	48.7	4.3	72.0	29.6	15,849

Table 10 -- Calculated Level A and Level B Harassment Isopleths for Concurrent Activities

Phase (Year)	Activity	Level A harassment zone (m) ¹				Level B harassment zone (m)
		LF-cetaceans	MF-cetaceans	HF-cetaceans	Phocids	
Phase I (Year 1)	Vibratory extract 18-in concrete piles and vibratory install 56-in steel sheet piles	41.8	3.7	61.8	25.4	18,478
	Vibratory extract 18-in concrete piles; vibratory install 56-in steel sheet piles; impact install 18-in concrete piles	43.9	1.6	52.3	23.5	18,478
Phase II (Year 2)	Vibratory extract 18-in concrete piles and vibratory install 56-in steel sheet piles	46.3	4.1	68.5	28.2	18,478
	Vibratory install 56-in steel sheet piles and impact install 18-in concrete piles	60.8	2.2	72.4	32.5	15,849
Phase III (Year 3)	Vibratory extract 18-in concrete piles and vibratory install 56-in steel sheet piles	56.8	5.0	84.0	34.5	18,478
	Vibratory install 56-in steel sheet piles and impact install 16-in composite piles	40.4	1.4	48.1	21.6	15,849

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The maximum distance to the Level A harassment threshold during construction would be during the impact driving of 18-inch (in) concrete piles during Phase III of individual activities (*i.e.*, 64.0 m for humpback whale) and during the concurrent vibratory extraction of 18-in concrete piles, vibratory installation of 56-in steel sheet piles, and impact install 18-in concrete piles for concurrent activities of Phase I (*i.e.*, 5.4 m for bottlenose dolphin; 89.8 m for harbor porpoises; and 36.9 m for pinnipeds). Given these

relatively small isopleths, if a marine mammal enters the shutdown zone during impact pile driving it is expected that the construction activity would be shut down before any marine mammal would incur PTS. Therefore, no take by Level A harassment is expected during the construction activities associated with the Q8 bulkhead. The largest calculated Level B harassment isopleth extends out to 18,478 m, which would result from concurrent pile driving of the scenarios presented in table 9. The largest Level B harassment zone of 18,478 m is not an attainable observable

distance in all directions, but in some areas the distance is smaller due to the zone being cut off by landmasses. The Level B harassment zone will be monitored to the maximum extent possible.

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. We describe how the information provided is synthesized

to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

Humpback Whale

Humpback whales occur in the mouth of the Chesapeake Bay and nearshore waters of Virginia during winter and spring months. Several satellite tagged humpback whales were detected west of the Chesapeake Bay Bridge Tunnel, including two individuals with locations near NAVSTA Norfolk and Joint Expeditionary Base Little Creek (Aschettino *et al.*, 2017). Group size was not reported in these surveys; however, most whales detected were juveniles. Although two individuals were detected in the vicinity of the proposed Project Area during shipboard surveys conducted in 2020, there is no evidence that they lingered for multiple days (Aschettino, 2020). Because no density estimates are available for the species in this area, the Navy estimated, and NMFS concurs, that one potential sighting of an average size group (*i.e.*, two individuals) could occur every 60 days of pile driving. Therefore, given the number of Project days expected in each year (table 1), NMFS is proposing to authorize a total of 16 takes by Level B harassment of humpback whale over the 5-year authorization, with no more than four takes by Level B harassment in a given year.

The largest Level A harassment zone for low-frequency cetaceans extends approximately 64 m from the source during impact pile driving of the 18-in concrete piles (table 9). The Navy plans to shut down if a humpback whale is sighted within any of the Level A harassment zones for all activities. Therefore, NMFS is not proposing to authorize take by Level A harassment of humpback whales.

Bottlenose Dolphins

The expected number of bottlenose dolphins in the Project Area was estimated using inshore seasonal densities provided in Engelhaupt *et al.* (2016) from vessel line-transect surveys near NAVSTA Norfolk and adjacent areas near Virginia Beach, Virginia, from August 2012 through August 2015. This density includes sightings inshore of the Chesapeake Bay from NAVSTA Norfolk west to the Thimble Shoals Bridge and is the most representative density for the Project Area. To calculate potential Level B harassment takes of bottlenose dolphin, NMFS conservatively multiplied the density of 1.38 dolphin/km² (from Engelhaupt *et al.*, 2016) by the largest Level B harassment isopleth

for each activity (tables 9 and 10), and then by the number of days associated with that activity (table 1). For example, to calculate Level B harassment takes associated with work at the Q8 bulkhead in Phase I for the vibratory removal of 18-in concrete piles, NMFS multiplied the density (*i.e.*, 1.38 dolphins/km²) by the Level B harassment zone for that activity (*i.e.*, 43.3 km²) by the proportional number of pile driving days for that activity (*i.e.*, 24 days) for a total of 1,437 Level B harassment takes for that activity during Phase I. Takes by Level B harassment were calculated for both individual pile driving activities and concurrent pile driving activities, as authorized takes are conservatively based on the scenario that produces more takes by Level B harassment (table 11). Therefore, NMFS proposes to authorize 14,191 takes by Level B harassment of bottlenose dolphin across all 5 years, with no more than 6,168 takes in a given year.

The largest Level A harassment zone for mid-frequency cetaceans extends approximately 5.4 m from the source during concurrent activities during Phase I (table 10). A minimum shutdown zone of 10 m would be established for all construction activities. The Navy plans to shut down all activities if a bottlenose dolphin is sighted within the shutdown zones for mid-frequency cetaceans. Therefore, NMFS is not proposing to authorize take by Level A harassment of bottlenose dolphins.

Harbor Porpoise

Harbor porpoises are known to occur in the coastal waters near Virginia Beach (Hayes *et al.*, 2019). Density data for this species within the Project vicinity do not exist or were not calculated because sample sizes were too small to produce reliable estimates of density. Harbor porpoise sighting data collected by the Navy near NAVSTA Norfolk and Virginia Beach from 2012 to 2015 (Engelhaupt *et al.* 2014; 2015; 2016) did not produce enough sightings to calculate densities. One group of two harbor porpoises was seen during spring 2015 (Engelhaupt *et al.* 2016). Elsewhere in their range, harbor porpoises typically occur in groups of two to three individuals (Carretta *et al.* 2001; Smultea *et al.* 2017).

Due to there being no density estimates for the species in the Project Area, the Navy conservatively estimated one exposure of two porpoises for every 60 days of pile driving. Total pile driving days for Phase I would be 74

days, Phase II would be 37 days, and Phase III would be 101 days. Takes by Level B harassment were calculated for both individual pile driving activities and concurrent pile driving activities, as authorized takes are conservatively based on the scenario that produced the larger exposure estimate (table 11). Using the above methodology, NMFS calculated an exposure estimate of eight incidents of take for harbor porpoises.

NMFS does not expect any Level A harassment of harbor porpoise during this Project. The largest Level A harassment zone for high-frequency cetaceans extends approximately 89.8 m from the source during concurrent activities during Phase I (table 10). The Navy plans to shut down all activities if a harbor porpoise is sighted within the shutdown zones for high-frequency cetaceans. Therefore, NMFS is not proposing to authorize take by Level A harassment of harbor porpoise.

Harbor Seal

The expected number of harbor seals in the Project Area was estimated using systematic land- and vessel-based survey data for in-water and hauled out seals collected by the U.S. Navy at the CBBT rock armor and portal islands from 2014 through 2019 (Jones *et al.*, 2020). The average daily seal count from the field season ranged from eight to 23 seals, with an average of 13.6 harbor seals across all the field seasons.

NMFS expects that harbor seals are likely to be present from November to April and, consistent with other recent projects (88 FR 31633, May 18, 2023; 87 FR 15945, March 31, 2022; 86 FR 24340; May 6, 2021, and 86 FR 17458; April 2, 2021), NMFS calculated take by Level B harassment by multiplying 13.6 seals by the maximum number of pile driving days expected to occur from November through April. Therefore, we expect the total number of takes by Level B harassment for harbor seals to be 2,882.

NMFS does not expect any Level A harassment of harbor seals during this Project. The largest Level A harassment zone for phocids extends approximately 36.9 m from the source during concurrent activities during Phase I (table 10). The Navy plans to shut down all activities if a harbor porpoise is sighted within the shutdown zones for phocids. Therefore, NMFS is not proposing to authorize take by Level A harassment of harbor seals.

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Table 11 -- Proposed Authorized Takes by Level B Harassment by Species and Stock in Comparison to Stock Abundance

LOA Construction Phase (Year)	Species	Level B (Individual activities)	Level B (Concurrent activities)	Total	Stock Abundance	Percentage of Stock
Phase 1	Humpback	2	2	2	1,396	<1
	Bottlenose dolphin – Northern Migratory (NM) ^{1, 2}	5,414	2,888	2,607	6,639	39.27
	Bottlenose dolphin – Southern Migratory (SM) ^{1, 2}			2,607	3,751	69.50
	Bottlenose dolphin - NC Estuarine ^{1, 2}			200	823	24.30
	Harbor porpoise	4	2	4	85,765	<1
	Harbor seal	1,006	408	1,006	61,336	1.64
Phase 2	Humpback	2	2	2	1,396	<1
	Bottlenose dolphin - NM ^{1, 2}	2,609	2,179	1,205	6,639	18.15
	Bottlenose dolphin - SM ^{1, 2}			1,205	3,751	32.12
	Bottlenose dolphin - NC Estuarine ^{1, 2}			200	823	24.30
	Harbor porpoise	2	2	2	85,765	<1

	Harbor seal	503	653	653	61,336	1.06
Phase 3	Humpback	4	2	4	1,396	<1
	Bottlenose dolphin - NM ^{1, 2}	6,168	6,712	3,256	6,639	49.04
	Bottlenose dolphin - SM ^{1, 2}			3,256	3,751	85.80
	Bottlenose dolphin - NC Estuarine ^{1, 2}			200	823	24.30
	Harbor porpoise	4	2	4	85,765	<1
	Harbor seal	1,236	625	1,373	61,336	2.24

¹Take estimates are weighted based on the assumed percentages of population for each

distinct stock, those percentages were also used to predict the proportion of animals present in the Project Area from each stock. Please see Small Numbers section for additional information.

²Assumes multiple repeated takes of the same individuals. Please see Small Numbers section for additional information.

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Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the

least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (e.g., likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which

may consider such things as cost, impact on operations.

In addition to the measures described later in this section, the Navy will employ the following mitigation measures:

- The Navy will conduct briefings between construction supervisors and crews, the marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- If a marine mammal comes within 10 m of construction activities, including in-water heavy machinery work, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions;
- Pile driving activity must be halted upon observation of either a species for

which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or is within the harassment zone.

The following mitigation measures apply to the Navy's in-water construction activities.

Establishment of Shutdown Zones—The Navy will establish shutdown zones for all pile driving and removal activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group (tables 12 and 13).

Protected Species Observers (PSOs)—The placement of PSOs during all pile driving and removal activities (described in the Proposed Monitoring and Reporting section) will ensure that the entire shutdown zone is visible. A minimum of two PSOs would be used during all activities.

Monitoring for Level A and B Harassment—The Navy will monitor the Level B harassment zones (*i.e.*, areas where SPLs are equal to or exceed the

160 dB rms threshold for impact pile driving, and the 120 dB rms threshold during vibratory pile driving and removal) to the extent practicable, and all of the Level A harassment zones and shutdown zones, during all pile driving days. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the Project Area outside the shutdown zone and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals. If a marine mammal is observed within the shutdown zones listed in table 12 or table 13, pile driving activity must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine

mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zones or 15 minutes have passed without re-detection of the animal. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.*, the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft Start—Soft start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft starts will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

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Table 12 -- Proposed Shutdown and Monitoring Zones for Individual Activities

Phase (Year)	Activity	Proposed Shutdown Zones (m)			Level B monitoring zones all marine mammals
		LF-cetaceans	HF-cetaceans	All other marine mammals	
Phase I (Year 1)	18-in concrete impact installation	50	60	30	50
	18-in concrete vibratory extraction	10	20	10	6,310
	56-in sheet pile vibratory installation	40	60	30	15,850
Phase II (Year 2)	18-in concrete impact installation	70	80	40	50
	18-in concrete vibratory extraction	20	30	10	6,310
	56-in sheet pile vibratory installation	40	60	30	15,850
Phase III (Year 3)	16-in composite impact installation	50	50	30	40
	18-in concrete impact installation	70	80	40	50
	16-in composite vibratory extraction	10	20	10	3,415
	56-in sheet pile vibratory installation	50	80	30	15,850

Table 13 -- Proposed Shutdown and Monitoring Zones for Concurrent Activities

Phase (Year)	Activity	Proposed Shutdown Zones (m)			Level B monitoring zones all marine mammals
		LF-cetaceans	HF-cetaceans	All other marine mammals	
Phase 1 (Year 1)	Vibratory extract 18-in concrete piles and vibratory install 56-in steel sheet piles	50	70	30	18,480
	Vibratory extract 18-in concrete piles; vibratory install 56-in steel sheet piles; impact install 18-in concrete piles	70	90	40	18,480
Phase II (Year 2)	Vibratory extract 18-in concrete piles and vibratory install 56-in steel sheet piles	50	70	30	18,480
	Vibratory install 56-in steel sheet piles and impact install 18-in concrete piles	50	80	30	15,850
Phase III (Year 3)	Vibratory extract 18-in concrete piles and vibratory install 56-in steel sheet piles	50	70	30	18,480
	Vibratory install 56-in steel sheet piles and impact install 16-in composite piles	50	80	30	15,850

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Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries,

mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that

requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the

most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring during pile driving and removal must be conducted by qualified, NMFS

approved PSOs, in accordance with the following:

- PSOs must be independent of the activity contractor (*e.g.*, employed by a subcontractor) and have no other assigned tasks during monitoring periods;
 - At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
 - Other PSOs may substitute other relevant experience, education (*i.e.*, a degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
 - PSOs must be approved by NMFS prior to beginning any activity subject to this proposed rulemaking; and
 - A lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
- PSOs must have the following additional qualifications:
- Ability to conduct field observations and collect data according to assigned protocols;
 - Experience or training in the field identification of marine mammals, including the identification of behaviors;
 - Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
 - Writing skills sufficient to prepare a report of observations including but not limited to: (1) the number and species of marine mammals observed; (2) dates and times when in-water construction

activities were conducted; (3) dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and (4) marine mammal behavior; and

- Ability to communicate orally, by radio or in person, with Project personnel to provide real-time information on marine mammals observed in the area as necessary.

Given the configuration of the harassment zones, which vary depending on the pile type/size and the pile driver type (tables 9 and 10), it is assumed that two PSO would be sufficient to monitor the zones for impact drivers, and three to four PSOs would be sufficient to monitor the zones for vibratory drivers given the proposed placement of the observers in the vicinity of the Project Area. However, additional monitors may be added if warranted by the level of marine mammal activity in the area. PSOs will be placed at the best vantage point(s) practicable (figure 3) to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown by the pile driver operator. PSOs would be deployed on the Green Mile Fishing Pier during vibratory driving of piles when monitoring zones are exceptionally large.

Monitoring will be conducted 30 minutes before, during, and after all in water construction activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

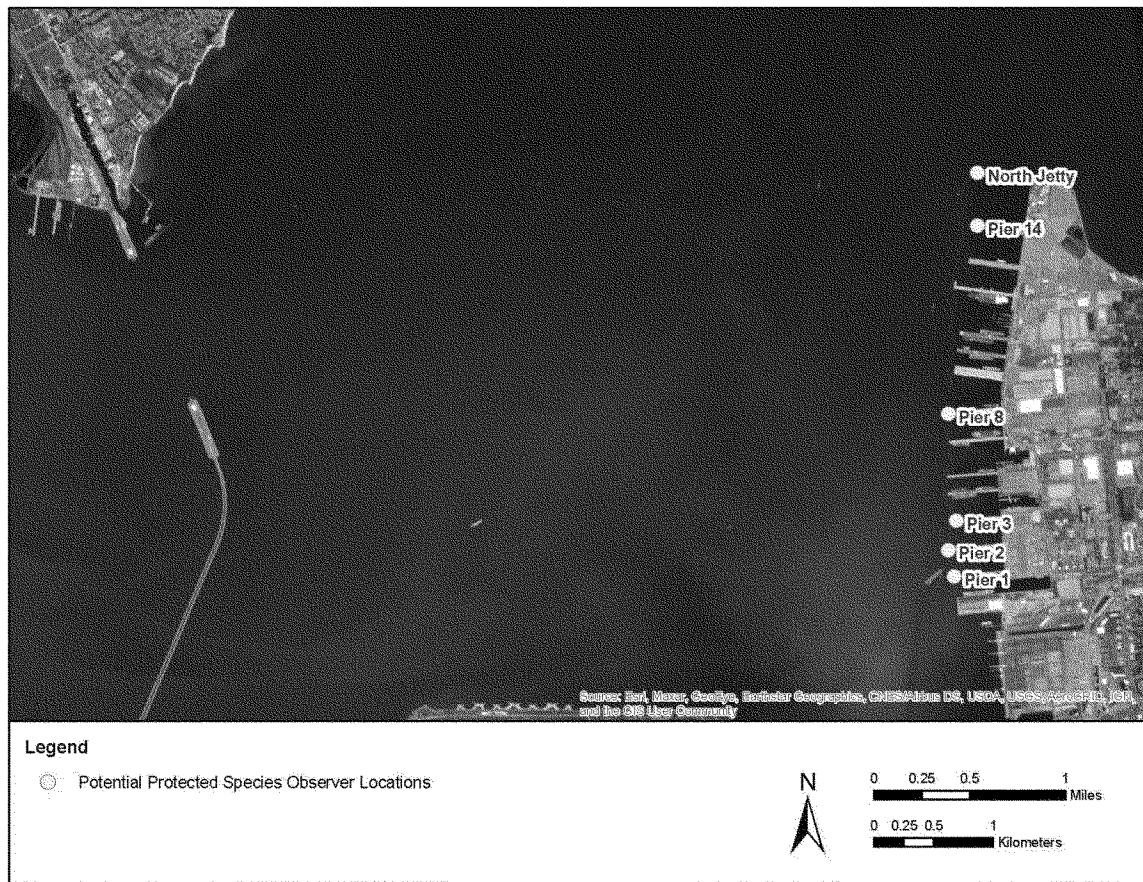


Figure 3. Proposed Protected Species Observer Locations at Naval Station Norfolk at Norfolk, Virginia (Green Mile Fishing Pier location not shown)

Acoustic Monitoring

The Navy will implement *in situ* acoustic monitoring efforts to measure SPLs from in-water construction activities for pile types and methods that have not been previously collected at NAVSTA Norfolk (table 14). The Navy will collect and evaluate acoustic

sound recording levels during pile driving activities. The Navy would collect data on 10 percent of the number of total piles driven for each pile type. Hydrophones would be placed at locations 33 ft from the noise source and, where the potential for Level A (PTS onset) harassment exists, at a second representative monitoring

location that is a distance of 20 times the depth of water at the pile location, to the maximum extent practicable. For the pile driving events acoustically measured, 100 percent of the data will be analyzed. Please see the Navy's Acoustic Monitoring Plan and section 13.2 in the application for additional detail.

Table 14 – Number of Piles for Hydroacoustic Monitoring

Pile Type	Total Piles	Method of Install of Removal	Number Monitored
18-in concrete	200	Vibratory	20
18-in concrete	184	Impact	18
56-in steel sheet	547	Vibratory	55
16-in composite	178	Vibratory	18
16-in composite	105	Impact	11

Environmental data shall be collected and will include, but will not be limited to, the following: (1) wind speed and direction; (2) air temperature; (3) humidity; (4) surface water temperature; (5) water depth; (6) wave height; (7) weather conditions; and (8) other factors that could contribute to influencing underwater sound levels (*e.g.*, aircrafts, boats, *etc.*).

Reporting

The Navy is required to submit an annual report on all activities and marine mammal monitoring results to NMFS within 90 days following the end of each construction year. Additionally, a draft comprehensive 5-year summary report must be submitted to NMFS within 90 days of the end of the Project. The annual reports will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including: (a) how many and what type of piles were driven or removed and the method (*i.e.*, impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) or number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal the following information must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at the time of the sighting;
- Time of the sighting;
- Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and bearing of each observed marine mammal relative to the pile being driven or removed for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (*e.g.*, adults, juveniles, neonates, group composition, *etc.*);
- Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about implementation of any mitigation (*e.g.*, shutdowns and delays), a description of specified actions that ensued, and resulting changes in behavior of the animal(s), if any.

The acoustic monitoring report must contain the informational elements described in the Acoustic Monitoring Plan and, at minimum, must include:

- Hydrophone equipment and methods: (1) recording device, sampling rate, distance (m) from the pile where

recordings were made; and (2) the depth of water and recording device(s);

- Type and size of pile being driven, substrate type, method of driving during recordings (*e.g.*, hammer model and energy), and total pile driving duration;
- Whether a sound attenuation device is used and, if so, a detailed description of the device used and the duration of its use per pile;
- For impact pile driving: (1) number of strikes and strike rate; (2) depth of substrate to penetrate; (3) pulse duration and mean, median, and maximum sound levels (dB re: one μ Pa); (4) root mean square sound pressure level (SPLrms); and (5) cumulative sound exposure level (SELcum), peak sound pressure level (SPLpeak), and single-strike sound exposure level (SELs-s); and
- For vibratory driving/removal: (1) duration of driving per pile; and (2) mean, median, and maximum sound levels (dB re: one μ Pa): SPLrms, SELcum (and timeframe over which the sound is averaged).

If no comments are received from NMFS within 30 days, the draft reports will constitute the final reports. If comments are received, a final report addressing NMFS' comments must be submitted within 30 days after receipt of comments. All PSO datasheets and/or raw sighting data must be submitted with the draft marine mammal report.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the LOA (if issued) and the regulations (*e.g.*, an injury, serious injury, or mortality) the Navy shall report the incident to Office of Protected Resources, NMFS, and the Greater Atlantic Region New England/Mid-

Atlantic Stranding Coordinator. The report must include the following information:

- Description of the incident;
- Environmental conditions (*e.g.*, Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with the Navy to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Navy would not be able to resume their activities until notified by NMFS.

In the event that the Navy discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition as described in the next paragraph), the Navy would immediately report the incident to the Office of Protected Resources, NMFS, and the Greater Atlantic Region New England/Mid-Atlantic Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the Navy to determine whether modifications in the activities are appropriate.

In the event that the Navy discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the LOA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Navy would report the incident to the Office of Protected Resources, NMFS, and the NMFS Greater Atlantic Region New England/Mid-Atlantic Stranding Coordinator, within 24 hours of the discovery. The Navy would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be

reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analysis applies to all the species listed in table 3, given that many of the anticipated effects of this Project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Construction activities associated with the Project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment from underwater sounds generated by pile driving and removal. Potential takes could occur if marine mammals are present in zones ensonified above the thresholds for Level B harassment, identified above, while activities are underway.

Level A harassment is unlikely considering the small Level A harassment zones (tables 9 and 10) and

corresponding shutdown zones (tables 12 and 13) where activities would cease if animals were present in those zones. Also, pile driving and removal activities are of relatively short duration and an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours to incur PTS. This is highly unlikely given marine mammal movement throughout the area, especially for small, fast-moving species such as small cetaceans and pinnipeds. Therefore, NMFS is not proposing to authorize take by Level A harassment during any portion of the Navy’s activities.

The nature of activities included in the Navy’s pile driving Project precludes the likelihood of serious injury or mortality. For all species and stocks, take will occur within a limited, confined area (*i.e.*, immediately surrounding NAVSTA Norfolk in the Chesapeake Bay area) of the stock’s range. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Furthermore, the number of individuals expected to be taken is extremely small relative to the stock abundance for all species.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, decreased foraging (if such activity were occurring), or avoidance (*e.g.*, Thorson and Reyff 2006; Hampton Roads Connector Partners 2023; W.F. Magann Corporation 2023). Individual animals, even if taken multiple times, will most likely move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted along both Atlantic and Pacific coasts, which have taken place with no known long-term adverse consequences from behavioral harassment. Furthermore, many Projects similar to this one are also believed to result in multiple takes of individual animals without any documented long-term adverse effects. Level B harassment will be minimized through use of mitigation measures described herein and, if take does occur the impacts would be expected to be minimal, particularly as the Project is located on a busy waterfront with high

amounts of vessel traffic and other ambient noise.

A UME has been declared for humpback whales in the U.S. Atlantic. However, we do not expect authorized takes to exacerbate or compound upon these ongoing UMEs. As noted previously, no injury, serious injury, or mortality is expected or authorized, and the impact of Level B harassment takes of humpback whale will be minimized through the incorporation of the mitigation measures. The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains healthy.

The Project is also not expected to have significant adverse effects on affected marine mammals' habitats. The Project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; however, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks;
- The specified activity and associated ensounded areas are very small relative to the overall habitat ranges of all species and do not include habitat areas of special significance, including any pinniped haulouts;
- The lack of anticipated significant or long-term negative effects to marine habitat;
- The presumed efficacy of the mitigation measures in reducing the effects of the taking incidental to the specified activity; and
- Monitoring reports from similar work in the Chesapeake Bay have documented little to no effect on individuals of the same species impacted by similar activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the maximum number of individuals taken in any year to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted maximum annual number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The maximum annual take NMFS proposes to authorize for the four marine mammal stocks is below one-third of the estimated stock abundance for all species except for the western north Atlantic (WNA) southern coastal migratory stock and the WNA northern coastal migratory stock of bottlenose dolphins (see table 11).

There are three bottlenose dolphin stocks that could occur in the Project Area. Therefore, the largest estimated annual take by Level B harassment of 6,712 bottlenose dolphin would likely be split among the northern migratory coastal stock, the southern migratory coastal stock, and the northern North Carolina estuarine stock (NNCES). Based on the stocks' respective occurrence in the area, NMFS estimates that there would be no more than 200 takes from the NNCEs stock during each phase of construction, representing 24 percent of that population, with the remaining takes split evenly between the northern and southern coastal migratory stocks. Based on the consideration of various factors as described below, we have preliminarily determined that the number of individuals taken will comprise less than one-third of the best available

population abundance estimate of either coastal migratory stock. Detailed descriptions of the stocks' ranges have been provided in the Description of Marine Mammals in the Area of Specified Activities section.

Both the WNA northern migratory stock and the WNA southern migratory stock have expansive ranges and they are the only dolphin stocks thought to make broad scale, seasonal migrations in coastal waters of the WNA. Given the large ranges associated with these two stocks, it is unlikely that large segments of either stock would approach the Project Area and enter into the Chesapeake Bay. The majority of both stocks are likely to be found widely dispersed across their respective habitat ranges and unlikely to be concentrated in or near the Chesapeake Bay.

Furthermore, the Chesapeake Bay and nearby offshore waters represent the boundaries of the ranges of each of the two coastal stocks during migration. The WNA northern migratory stock is found during warm water months from coastal Virginia, including the Chesapeake Bay and Long Island, New York. The stock migrates south in the late summer and fall. During cold water months, dolphins may be found in coastal waters from Cape Lookout, North Carolina, to the North Carolina/Virginia border. During January-March, the WNA southern migratory stock appears to move as far south as northern Florida. From April-June, the stock moves back north to North Carolina. During the warm water months of July-August, the stock is presumed to occupy the coastal waters north of Cape Lookout, North Carolina, to Assateague, Virginia, including the Chesapeake Bay. There is likely some overlap between the stocks during spring and fall migrations, but the extent of overlap is unknown.

In summary and as described above, the following factors primarily support our determination regarding the incidental take of small numbers of the affected stocks of a species or stock:

- The maximum annual take of marine mammal stocks proposed for authorization comprises less than three percent of any stock abundance (with the exception of the three bottlenose dolphin stocks);
- Potential bottlenose dolphin takes in the Project Area are likely to be allocated among three distinct stocks;
- Bottlenose dolphin stocks in the Project Area have extensive ranges and it would be unlikely to find a high percentage of the individuals of any one stock concentrated in a relatively small area such as the Project Area or the Chesapeake Bay;

- The Chesapeake Bay represents the migratory boundary for each of the specified dolphin stocks and it would be unlikely to find a high percentage of any stock concentrated at such boundaries; and

- Many of the takes would likely be repeats of the same animals, including from a resident population of the Chesapeake Bay.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Request for Information

NMFS requests that interested persons submit comments, information, and suggestions concerning the Navy's request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This proposed rule and supporting documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. The U.S. Navy is the sole entity that would be subject to the requirements in these proposed regulations, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a Federal agency.

List of Subjects in 50 CFR Part 217

Acoustics, Administrative practice and procedure, Construction, Endangered and threatened species, Marine mammals, Mitigation and monitoring requirements, Reporting requirements, Wildlife.

Dated: June 24, 2024.

Samuel D. Rauch III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

For reasons set forth in the preamble, NOAA proposes to amend 50 CFR part 217 as follows:

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Add subpart X to read as follows

Subpart X—Taking and Importing Marine Mammals Incidental to Navy Construction of the Q8 Bulkhead Repair and Replacement Project at Naval Station Norfolk at Norfolk, Virginia

Sec.

217.230 Specified activity and geographical region.

217.231 Effective dates.

217.232 Permissible methods of taking.
217.233 Prohibitions.
217.234 Mitigation requirements.
217.235 Requirements for monitoring and reporting.
217.236 Letters of Authorization.
217.237 Renewals and modifications of Letters of Authorization.

§ 217.230 Specified activity and geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy (Navy) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to construction activities related to the repair and replacement of the Q8 bulkhead at Naval Station Norfolk at Norfolk, Virginia.

(b) The taking of marine mammals by the Navy may be authorized in a Letter of Authorization (LOA) only if it occurs at Naval Station Norfolk, Norfolk, Virginia.

§ 217.231 Effective Dates

Regulations under this subpart are effective from January 1, 2025, through December 31, 2029.

§ 217.232 Permissible methods of taking.

Under an LOA issued pursuant to §§ 216.106 and 217.236 of this chapter, the Holder of the LOA (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in § 217.230(b) by harassment associated with construction activities related to the repair and replacement of the Q8 bulkhead, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

§ 217.233 Prohibitions

(a) Except for the takings contemplated in § 217.232 and authorized by a LOA issued under §§ 216.106 and 217.236 of this chapter, it is unlawful for any person to do any of the following in connection with the activities described in § 217.230:

(1) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 and 217.236 of this chapter;

(2) Take any marine mammal not specified in such LOA;

(3) Take any marine mammal specified in such LOA in any manner other than as specified;

(4) Take a marine mammal specified in such LOA after NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(5) Take a marine mammal specified in such LOA after NMFS determined such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.234 Mitigation requirements.

(a) When conducting the activities identified in § 217.230(a), the mitigation measures contained in this subpart and any LOA issued under §§ 216.106 and 217.236 of this chapter must be implemented by the Navy. These mitigation measures include:

(1) A copy of any issued LOA must be in the possession of the Navy, supervisory construction personnel, lead protected species observers (PSOs), and any other relevant designees of the Navy operating under the authority of the LOA at all times that activities subject to the LOA are being conducted;

(2) The Navy must ensure that construction supervisors and crews, the monitoring team, and relevant Navy staff are trained prior to the start of activities subject to any issued LOA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the Project must be trained prior to commencing work;

(3) The Navy, construction supervisors and crews, and relevant Navy staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction;

(4) The Navy must employ PSOs and establish monitoring locations as described in the NMFS-approved Marine Mammal Monitoring Plan. The Navy must monitor the Project Area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions;

(5) For all pile driving activities, the Navy shall implement shutdown zones with radial distances as identified in a LOA issued under § 217.236. If a marine mammal is observed entering or within the shutdown zone, such operations must be delayed or halted.

(6) Monitoring must take place from 30 minutes prior to initiation of a pile driving activity (*i.e.*, pre-start clearance monitoring) through 30 minutes post-completion of a pile driving activity.

(7) Pre-start clearance monitoring must be conducted during periods of

visibility sufficient for the lead PSO to determine that the shutdown zones are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals.

(8) If a marine mammal is observed entering or within the shutdown zones, pile driving activity must be delayed or halted.

(9) If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

(10) Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone.

(11) The Navy must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

§ 217.235 Requirements for monitoring and reporting.

(a) The Navy shall submit a Marine Mammal Monitoring Plan to NMFS for approval in advance of construction. Marine mammal monitoring must be conducted in accordance with the conditions in this section and the NMFS-approved Marine Mammal Monitoring Plan.

(b) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:

(1) PSOs must be independent of the activity contractor (*e.g.*, employed by a subcontractor) and have no other assigned tasks during monitoring periods;

(2) At least one PSO must have prior experience performing the duties of an observer during construction activity pursuant to a NMFS-issued incidental take authorization;

(3) Other observers may substitute other relevant experience, education (*i.e.*, degree in biological science or related field), or training for prior

experience performing the duties of an observer during construction activity pursuant to a NMFS-issued incidental take authorization;

(4) One observer must be designated as lead observer or monitoring coordinator. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

(5) Observers must be approved by NMFS prior to beginning any activity subject to any issued LOA;

(6) For all pile driving activities, a minimum of two observers shall be stationed at the best vantage points practicable. One of these observers must be positioned to monitor for marine mammals and implement shutdown/delay procedures.

(7) The Navy shall monitor the harassment zones to the maximum extent practicable and the entire shutdown zones. The Navy shall monitor at least a portion of the Level B harassment zone on all pile driving days.

(8) The Navy shall conduct hydroacoustic data collection in accordance with an Acoustic Monitoring Plan that must be approved by NMFS in advance of construction.

(9) The shutdown/monitoring zones may be modified with NMFS' approval following NMFS' acceptance of an acoustic monitoring report.

(10) The Navy must submit a draft monitoring report to NMFS within 90 calendar days of the completion of each construction year. A draft comprehensive five-year summary report must also be submitted to NMFS within 90 days of the end of the Project. The reports must detail the monitoring protocol and summarize the data recorded during monitoring. Final annual reports and the final comprehensive report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report must be considered final. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments. The reports must at minimum contain the informational elements described below (as well as any additional information described in the Marine Mammal Monitoring Plan), including:

(i) Dates and times (begin and end) of all marine mammal monitoring;

(ii) Construction activities occurring during each daily observation period, including the number and type of piles

that were driven or removed and by what method (*i.e.*, impact or vibratory), total duration of driving time for each pile (vibratory) and number of strikes for each pile (impact);

(iii) PSO locations during marine mammal monitoring;

(iv) Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

(v) Upon observation of a marine mammal, the following information:

(A) Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;

(B) Time of sighting;

(C) Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

(D) Distance and location of each observed marine mammal relative to the pile being driven for each sighting;

(E) Estimated number of animals (min/max/best estimate);

(F) Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);

(G) Animal's closest point of approach and estimated time spent within the harassment zone;

(H) Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

(vii) Number of marine mammals detected within the harassment zones, by species; and

(viii) Detailed information about implementation of any mitigation (*e.g.*, shutdown and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

(11) The Holder must submit all PSO data electronically in a format that can be queried such as a spreadsheet or database (*i.e.*, digital images of data sheets are not sufficient).

(12) The Navy must report hydroacoustic data collected as required by a LOA issued under §§ 216.106 of this chapter and 217.236 and as discussed in the Navy's Acoustic Monitoring Plan approved by NMFS.

(13) In the event that personnel involved in the construction activities

discover an injured or dead marine mammal, the Navy shall report the incident to the Office of Protected Resources (OPR), NMFS, and to the Greater Atlantic Region New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the authorization. The Navy must not resume their activities until notified by NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

§ 217.236 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the Navy must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, the Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the Navy must apply for and obtain a modification of the LOA as described in § 217.236.

(e) The LOA must set forth the following information:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA must be based on a determination that the level of taking must be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

§ 217.237 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.236 for the activity identified in § 217.230(a) may be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations; and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) A LOA issued under §§ 216.106 of this chapter and 217.236 for the activity identified in § 217.230(a) may be modified by NMFS under the following circumstances:

(1) NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in a LOA:

(A) Results from Navy's monitoring from previous years;

(B) Results from other marine mammal and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs; and

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS must publish a

notice of proposed LOA in the **Federal Register** and solicit public comment;

(2) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in

a LOA issued pursuant to § 216.106 of this chapter and § 217.236, a LOA may be modified without prior notice or opportunity for public comment.

Notification would be published in the

Federal Register within 30 days of the action.

§§ 217.238–217.239 [Reserved]

[FR Doc. 2024–14162 Filed 7–2–24; 8:45 am]

BILLING CODE 3510–22–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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–24–0037]

Fruit and Vegetable Industry Advisory Committee Call for Nominations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; call for nominations.

SUMMARY: The Fruit and Vegetable Industry Advisory Committee (FVIAC or Committee) was established to develop recommendations for submission to the Secretary of Agriculture (Secretary) on issues affecting the U.S. produce industry. Through this notice, the USDA is requesting nominations to fill up to 25 upcoming vacancies on the FVIAC. The Secretary will appoint industry representative to serve a two-year term of office that would commence in 2024. The Secretary invites those individuals, organizations, and groups affiliated with the categories listed in the

SUPPLEMENTARY INFORMATION section to nominate individuals or themselves for membership on the FVIAC.

DATES: Nomination packages, including a cover letter to the Secretary, the nominee's typed resume or curriculum vitae, and a completed USDA Advisory Committee Membership Background Information Form AD-755, must be postmarked on or before September 3, 2024.

ADDRESSES: Nomination packages may be submitted electronically by Email to SCPFVIAC@usda.gov, or mailed to: Jennie M. Varela, U.S. Department of Agriculture, 1124 1st Street South, Winter Haven, FL, 33880; Attn: Fruit and Vegetable Industry Advisory Committee. Electronic submittals are preferred.

FOR FURTHER INFORMATION CONTACT: Miss Jennie Varela, Designated Federal Officer, Telephone at (202) 658–8616 or by Email SCPFVIAC@ams.usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the FVIAC is to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary on how USDA can tailor its programs to better meet the fruit and vegetable industry's needs.

The USDA is seeking members who represent the fruit and vegetable industry including fruit and vegetable growers/shippers; fruit and vegetable wholesalers/receivers; brokers; retailers; fruit and vegetable processors and fresh-cut processors; foodservice suppliers; organic and non-organic farmers; farmers markets and community-supported agricultural organizations; state agriculture departments; and trade associations. Industry members are appointed by the Secretary and serve 2-year terms, with a maximum of three 2-year terms.

Please note that individuals who are registered as Federal lobbyists are not eligible to serve on Federal advisory committees in an individual capacity. See "Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions," 79 FR 47482 (Aug. 13, 2014). Members can only serve on one USDA advisory committee at a time. All nominees will undergo a USDA background check.

The following must be submitted to nominate yourself or someone else to the FVIAC: a resume or curriculum vitae, a USDA Advisory Committee Membership Background Information Form AD-755—available online at <https://www.usda.gov/sites/default/files/documents/ad-755.pdf>, and a cover letter to the Secretary. A list of endorsements or letters of recommendation, and a biography may also be submitted. The resume or curriculum vitae must be limited to five one-sided pages and should include a summary of the following information: current and past organization affiliations; areas of expertise; education; career positions held; and any other notable positions held. For submissions received that are more than five one-sided pages in length, only the first five pages will be reviewed.

The Secretary appointed 25 members in 2022. Two (2) members have served two terms and twenty-three (23) members have served one term, which all expire October 28, 2024. The

Secretary will appoint members for the upcoming vacancies to serve a 2-year term of office beginning in 2024 and ending in 2026. Nominations received that could fill future unexpected vacancies in any of the position categories will be held as a pool of candidates that the Secretary can draw upon as replacement appointees if unexpected vacancies occur. A person appointed to fill a vacancy will serve for the remainder of the 2-year term of the vacant position.

The Deputy Administrator of the AMS Specialty Crops Program serves as the FVIAC Executive Secretary. Representatives from USDA mission areas and agencies affecting the fruit and vegetable industry could be called upon to participate in the FVIAC's meetings as determined by the FVIAC Executive Secretary and the FVIAC.

The full Committee expects to meet at least twice a year in-person (or by computer-based conferencing), and the meetings will be announced in the **Federal Register**. Committee workgroups or subcommittees will meet as deemed necessary by the chairperson and may meet through teleconference or by computer-based conferencing. Subcommittees may invite technical experts to present information for consideration by the subcommittee. The subcommittee meetings will not be announced in the **Federal Register**. All data and records available to the full Committee are expected to be available to the public when the full Committee reviews and approves the work of the subcommittee(s). Members must be prepared to work outside of scheduled Committee and subcommittee meetings and may be required to assist in document preparation. Committee members serve on a voluntary basis; however, travel expenses and per diem reimbursement are available.

The Secretary seeks a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. Equal opportunity practices will be followed in all appointments to the FVIAC in accordance with USDA policies. To ensure that the recommendations of the FVIAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable,

individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Dated: June 27, 2024.

Cikena Reid,

Committee Management Officer.

[FR Doc. 2024–14598 Filed 7–2–24; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

WTO Agricultural Quantity-Based Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, Department of Agriculture.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the World Trade Organization (WTO) Agreement on Agriculture.

SUMMARY: This notice lists the updated quantity-based trigger levels for products which may be subject to additional import duties under the safeguard provisions of the WTO Agreement on Agriculture. This notice also includes the relevant period applicable for the trigger levels on each of the listed products.

DATES: This notice is applicable on [Enter date of publication in **Federal Register**].

ADDRESSES: Multilateral Affairs Division, Trade Policy and Geographic Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1070, 1400 Independence Avenue SW, Washington, DC 20250–1070.

FOR FURTHER INFORMATION CONTACT: Sonya Wahi-Miller, sonya.wahi-miller@usda.gov, 202–649–3870.

SUPPLEMENTARY INFORMATION: Article 5 of the WTO Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication as a result of the Uruguay Round, if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties when the volume of imports of that product exceeds the sum of (1) a base trigger level multiplied by the average of the last three years of available import data and (2) the change in yearly consumption in the most recent year for which data are available (provided that the final trigger level is not less than 105 percent of the three-year import average). The base trigger level is set at 105, 110, or 125 percent of the three-year import average, depending on the percentage of domestic consumption that is represented by imports. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent 3 years. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994, 60 FR 1007 (Jan. 4, 1995). The Secretary of Agriculture further delegated this duty, which lies with the Administrator of the Foreign Agricultural Service (7 CFR 2.601(a)(42)). The Annex to this notice contains the updated quantity trigger levels, consistent with the provisions of Article 5.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of Chapter 99 of the Harmonized Tariff Schedule of the United States (2024) and in the Secretary of Agriculture's Notice of Uruguay Round Agricultural Safeguard Trigger Levels, published in the **Federal Register** at 60 FR 427 (Jan. 4, 1995).

Notice: As provided in Section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the WTO Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superseded by the levels indicated in the Annex to this notice. The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, at 60 FR 427 (Jan. 4, 1995).

Elaine Trevino,

Acting Administrator, Foreign Agricultural Service.

ANNEX—QUANTITY-BASED SAFEGUARD TRIGGERS

Product	2024 Quantity-based safeguard triggers		
	Trigger level	Unit	Period
Beef	372,197	MT	Jan 1, 2024–Dec 31, 2024.
Mutton	4,684,007	MT	Jan 1, 2024–Dec 31, 2024.
Cream	7,086,865	Liters	Jan 1, 2024–Dec 31, 2024.
Evaporated or Condensed Milk	7,112,159	Kilograms	Jan 1, 2024–Dec 31, 2024.
Nonfat Dry Milk	2,348,461	Kilograms	Jan 1, 2024–Dec 31, 2024.
Dried Whole Milk	4,073,804	Kilograms	Jan 1, 2024–Dec 31, 2024.
Dried Cream	33,373	Kilograms	Jan 1, 2024–Dec 31, 2024.
Dried Whey/Buttermilk	217,643	Kilograms	Jan 1, 2024–Dec 31, 2024.
Butter ¹	143,993,327	Kilograms	Jan 1, 2024–Dec 31, 2024.
Butteroil	23,654,977	Kilograms	Jan 1, 2024–Dec 31, 2024.
Chocolate Crumb	13,743,686	Kilograms	Jan 1, 2024–Dec 31, 2024.
Lowfat Chocolate Crumb	934,573	Kilograms	Jan 1, 2024–Dec 31, 2024.
Animal Feed Containing Milk	145,324	Kilograms	Jan 1, 2024–Dec 31, 2024.
Ice Cream	17,305,958	Liters	Jan 1, 2024–Dec 31, 2024.
Dairy Mixtures	32,277,853	Kilograms	Jan 1, 2024–Dec 31, 2024.
Infant Formula Containing Oligosaccharides	15,376,570	Kilograms	Jan 1, 2024–Dec 31, 2024.
Blue Cheese	3,811,994	Kilograms	Jan 1, 2024–Dec 31, 2024.
Cheddar Cheese	13,341,643	Kilograms	Jan 1, 2024–Dec 31, 2024.
American-Type Cheese	107,494	Kilograms	Jan 1, 2024–Dec 31, 2024.

ANNEX—QUANTITY-BASED SAFEGUARD TRIGGERS—Continued

Product	2024 Quantity-based safeguard triggers		
	Trigger level	Unit	Period
Edam/Gouda Cheese	11,890,220	Kilograms	Jan 1, 2024–Dec 31, 2024.
Italian-Type Cheese	24,695,010	Kilograms	Jan 1, 2024–Dec 31, 2024.
Swiss or Emmentaler Cheese with Eye Formation	21,694,163	Kilograms	Jan 1, 2024–Dec 31, 2024.
Gruyere Process Cheese	4,253,517	Kilograms	Jan 1, 2024–Dec 31, 2024.
Cheese and Substitutes for Cheese	47,626,850	Kilograms	Jan 1, 2024–Dec 31, 2024.
Lowfat Cheese	75,681	Kilograms	Jan 1, 2024–Dec 31, 2024.
Peanut Butter/Paste	4,532	MT	Jan 1, 2024–Dec 31, 2024.
Peanuts ¹	5,525	MT	April 1, 2023–Mar 31, 2024.
	9,514	MT	April 1, 2024–Mar 31, 2025.
Raw Cane Sugar ¹	828,297	MT	Oct 1, 2023–Sep 30, 2024.
	754,409	MT	Oct 1, 2024–Sep 30, 2025.
Refined Sugars and Syrups ¹	619,938	MT	Oct 1, 2023–Sep 30, 2024.
	312,628	MT	Oct 1, 2024–Sep 30, 2025.
Articles over 65% Sugar	964	MT	Oct 1, 2023–Sep 30, 2024.
	1,252	MT	Oct 1, 2024–Sep 30, 2025.
Articles over 10% Sugar	18,624	MT	Oct 1, 2023–Sep 30, 2024.
	25,719	MT	Oct 1, 2024–Sep 30, 2025.
Blended Syrups	572	MT	Oct 1, 2023–Sep 30, 2024.
	758	MT	Oct 1, 2024–Sep 30, 2025.
Sweetened Cocoa Powder	671	MT	Oct 1, 2023–Sep 30, 2024.
	578	MT	Oct 1, 2024–Sep 30, 2025.
Mixes and Doughs	4,340	MT	Oct 1, 2023–Sep 30, 2024.
	3,943	MT	Oct 1, 2024–Sep 30, 2025.
Mixed Condiments and Seasonings	798	MT	Oct 1, 2023–Sep 30, 2024.
	786	MT	Oct 1, 2024–Sep 30, 2025.
Short Staple Cotton ²	13,415	Kilograms	Sep 20, 2023–Sep 19, 2024.
	9,964	Kilograms	Sep 20, 2024–Sep 19, 2025.
Harsh or Rough Cotton	0	Kilograms	Aug 1, 2023–July 31, 2024.
	6	Kilograms	Aug 1, 2024–July 31, 2025.
Extra Long Staple Cotton	747,139	Kilograms	Aug 1, 2023–July 31, 2024.
	621,260	Kilograms	Aug 1, 2024–July 31, 2025.
Medium Staple Cotton	163	Kilograms	Aug 1, 2023–July 31, 2024.
	741	Kilograms	Aug 1, 2024–July 31, 2025.
Cotton Waste ²	1,385,381	Kilograms	Sep 20, 2023–Sep 19, 2024.
	788,489	Kilograms	Sep 20, 2024–Sep 19, 2025.
Cotton Processed but not Spun ²	18,752	Kilograms	Sep 11, 2023–Sep 10, 2024.
	18,803	Kilograms	Sep 11, 2024–Sep 10, 2025.

¹ Includes change in consumption² Data used for the 12-month period from September to September

[FR Doc. 2024–14604 Filed 7–2–24; 8:45 am]

BILLING CODE 3410–10–P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the Colorado Advisory Committee to the U.S. Commission on Civil Rights****AGENCY:** U.S. Commission on Civil Rights.**ACTION:** Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Colorado Advisory Committee (Committee) to the U.S. Commission on Civil Rights will convene a monthly virtual business meeting on Wednesday, July 17, 2024, at 3:00 p.m. Mountain Time. The purpose of the meetings is to continue working on and review a draft

report for its project on public school attendance zones in Colorado.

DATES: Wednesday, July 17, 2024, at 3:00 p.m. Mountain Time.

ADDRESSES: The meeting will be held via Zoom.

Meeting Link (Audio/Visual): <https://tinyurl.com/279fjudv>; password: USCCR–CO

Join by Phone (Audio Only): 1–833–435–1820; Meeting ID: 160 614 2807#

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, Designated Federal Official at bdelaviez@usccr.gov or (312) 353–8311.

SUPPLEMENTARY INFORMATION: These committee meeting is available to the public through the meeting link above. Any interested member of the public may listen to the meeting. At the meeting, an open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the

meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email ebohor@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meetings. Written comments may be emailed to Barbara Delaviez at bdelaviez@usccr.gov. Persons who desire additional information may

contact the Regional Programs Coordination Unit at 1–312–353–8311.

Records generated from these meetings may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meetings. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Colorado Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at eborhor@usccr.gov.

Agenda

- I. Welcome and Roll Call
- II. Report Stage: Public School Attendance Zones
- III. Discuss Next Steps
- IV. Public Comment
- V. Adjournment

Dated: June 28, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–14655 Filed 7–2–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Florida Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Florida Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 2:00 p.m. ET on Thursday, August 8, 2024. The purpose of the meeting is to discuss the Committee's project proposal on voting rights in the state.

DATES: Thursday, August 8, 2024, from 2:00 p.m.–3:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual):
https://www.zoomgov.com/webinar/register/WN_HdMZOTY3R66whdHvq_KP3Q

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 724 0392

FOR FURTHER INFORMATION CONTACT:
Melissa Wojnaroski, Designated Federal

Officer, at mwojnaroski@usccr.gov or (202) 618–4158.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available. Individuals with disabilities who would like to request additional accommodations should email lschiller@usccr.gov at least 10 business days prior to the meeting to make their request.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at lschiller@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, Florida Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at lschiller@usccr.gov.

Agenda

- I. Welcome & Roll Call
- II. Committee Discussion
- III. Public Comment
- IV. Next Steps
- V. Adjournment

Dated: June 28, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–14657 Filed 7–2–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number: 240620–0168]

X–RIN 0607–XC077

American Community Survey Agricultural Sales and Farm Indicator Data

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of request for comments.

SUMMARY: The American Community Survey (ACS) is a continuous survey conducted by the U.S. Census Bureau, gathering detailed housing and socioeconomic data from around 3.54 million addresses in the U.S. and about 36,000 addresses in Puerto Rico annually. It replaces the long-form census previously done once a decade, providing crucial statistics for governmental, non-profit, business, and public decision-making at various levels. To enhance efficiency and reduce respondent burden, the ACS is increasingly utilizing administrative and third-party data sources. The Census Bureau is considering using such data to replace the agricultural sales question, which has implications for federal programs and economic analysis. The proposal explores several data sources to classify properties as farms or non-farms. The Department of Commerce invites the public to comment on the proposed research to determine whether data other than survey responses can be used effectively to replace agricultural sales data currently provided by the Census Bureau that has been obtained from responses to the ACS.

DATES: To ensure consideration, comments must be received on or before August 19, 2024.

ADDRESSES: Interested persons are invited to submit written comments by email to acso.pra@census.gov. Please reference ACS Agricultural Sales in the subject line of your comments. All comments received are part of the public record. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection

activities should be directed to Elizabeth Poehler, ADC for Survey Methods, U.S. Census Bureau, 301–763–9305, elizabeth.poehler@census.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The American Community Survey (ACS) is an ongoing monthly survey that collects detailed housing and socioeconomic data from a sample of about 3.54 million addresses in the 50 states and the District of Columbia and about 36,000 addresses in Puerto Rico each year, where it is known as the Puerto Rico Community Survey (PRCS). The ACS also collects detailed socioeconomic data from about 170,900 residents living in group quarters (GQ) facilities in the United States and Puerto Rico. Resulting tabulations from this data collection are provided every year. The ACS allows the U.S. Census Bureau to provide timely and relevant housing and socioeconomic statistics, even for small geographic areas.

The Census Bureau developed the ACS to collect and update demographic, social, economic, and housing data every year that are essentially the same as the “long-form” data that the Census Bureau formerly collected once a decade as part of the decennial census. Federal and state government agencies use such data to evaluate and manage federal programs and to distribute funding for various programs that include food stamp benefits, transportation dollars, and housing grants. State, county, tribal, and community governments, nonprofit organizations, businesses, and the general public use information such as housing quality, income distribution, journey-to-work patterns, immigration data, and regional age distributions for decision-making and program evaluation. The ACS is now the only source of comparable data about social, economic, housing, and demographic characteristics for small areas and small subpopulations across the nation and in Puerto Rico.

The ACS program provides estimates annually for all states and all medium and large cities, counties, and metropolitan areas. For smaller areas and population groups, it takes five years to accumulate enough data to provide reliable estimates. Every community in the nation continues to receive a detailed, statistical portrait of its social, economic, housing, and demographic characteristics each year through one-year and five-year ACS products.

The ACS collects detailed socioeconomic data on over 40 topics. The list of topics and questions can be found here: <https://www.census.gov/>

[library/publications/2018/dec/planned-questions-2020-acs.html](https://www.census.gov/library/publications/2018/dec/planned-questions-2020-acs.html).

The Census Bureau collects these data under the authority of Title 13, United States Code, Sections 141, 193, 221, and 223. By that same law, the Census Bureau is obligated to use existing information that has already been collected by other government agencies, whenever possible, instead of asking for such information directly from the public.

Following the Census Bureau’s strategic plan and transformation initiative to change our focus from being a survey-centric data provider to a data product-focused provider of information, the ACS program has made it a priority to use alternative data sources and expand the use of administrative and third-party data to meet customer needs and reduce the dependency on traditional methods of data collection. The expanded use of administrative and third-party data in the ACS is expected to reduce data collection costs, improve operational efficiency, reduce respondent burden, and improve the quality of ACS data products. The Census Bureau has begun to explore the use of administrative and third-party data in a variety of ways for various topics on the ACS.

Beginning in January 2024, we implemented an adaptive approach for collecting data on property lot size (acreage) that uses administrative property tax data purchased from a third-party vendor. We analyzed the quality of the property tax data for acreage and developed business rules for using the data. The acreage question is skipped when administrative data are available.

Research is underway to determine how administrative and third-party data can be used for other topics on the ACS. This program announcement is specifically related to using administrative and third-party data for the agricultural sales question.

The agricultural sales question was introduced in 1960 on the Decennial Census housing questionnaire. The question was transferred to the ACS when the ACS replaced the Decennial Census long-form in 2005. The question is asked of people living in single-family attached and detached housing units and mobile homes built on at least one acre of land.

In the past 12 months, what were the actual sales of all agricultural products from this property?

None
\$1 to \$999
\$1,000 to \$2,499
\$2,500 to \$4,999
\$5,000 to \$9,999

\$10,000 or more

The U.S. Bureau of Economic Analysis (BEA) uses data from this question to aid in calculations for its data release on National Income and Product Accounts (NIPAs). The BEA uses the data to create a distinction between farm and non-farm properties. They define farms as properties reporting agricultural product sales of \$1,000 or more in the past 12 months; the remaining properties are classified as non-farms.

Data from this question are also used in editing and imputation procedures by the Census Bureau for employment and income.

The Census Bureau releases data on agricultural sales on the ACS Public Use Microdata Sample (PUMS) file; data on agricultural sales are not included in any ACS tabulations on data.census.gov.

II. Proposal

For a question to be included in the ACS, there must be a legally cited federal need for the data. Currently, BEA’s use of these data is the only known federally required use. The Census Bureau proposes exploring using administrative and third-party data to satisfy BEA’s data need instead of asking the public the agricultural sales question. This project proposes using administrative and third-party data from multiple sources to create a variable that classifies ACS sample addresses as farms or non-farms. The data sources under consideration include tax assessment records on property and land use, parcel boundary data from property tax records, survey data, Internal Revenue Service (IRS) Form 1040 Schedule F data on profit or loss from farming, and land cover data based on satellite imagery. Data will be assessed for quality and a farm indicator will be formulated through statistical modeling and business rules. The resulting indicator will be evaluated at the microdata level and against current tabulated estimates.

The proposed farm indicator could also replace the current agricultural sales data used in the Census Bureau’s editing and imputation procedures for employment and income data.

After research is conducted, a report will be made public on the Census Bureau’s website. The ACS is not expected to be changed before 2026. In accordance with the Paperwork Reduction Act, additional **Federal Register** notices with the opportunity for public comment will be published in the **Federal Register** before a change is implemented.

III. Request for Comments

We are soliciting public comments to identify additional stakeholders that use the current Agricultural Sales data on the ACS PUMS file. We are also interested in feedback about the proposed research.

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

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: June 26, 2024.

Shannon Wink,

*Program Analyst, Policy Coordination Office,
U.S. Census Bureau.*

[FR Doc. 2024–14633 Filed 7–2–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2165]

Expansion of Subzone; Hyster-Yale Group, Inc.; Sulligent, Alabama

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for “. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board’s regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the City of Birmingham, grantee of Foreign-Trade Zone 98, has made application to the Board for the expansion of Subzone 98D on behalf of Hyster-Yale Group, Inc. in Sulligent, Alabama, (FTZ Docket B–9–2024, docketed March 1, 2024);

Whereas, notice inviting public comment has been given in the **Federal Register** (89 FR 15970, March 6, 2024) and the application has been processed pursuant to the FTZ Act and the Board’s regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners’ memorandum, and finds that the requirements of the FTZ Act and the Board’s regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 98D on behalf of Hyster-Yale Group, Inc. in Sulligent, Alabama, as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board’s regulations, including section 400.13.

Dated: June 28, 2024.

Dawn Shackelford,

*Executive Director of Trade Agreements
Policy & Negotiations, Alternate Chairman,
Foreign-Trade Zones Board.*

[FR Doc. 2024–14662 Filed 7–2–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–37–2024]

Foreign-Trade Zone (FTZ) 80, Notification of Proposed Production Activity; Senior Operation LLC; (Expansion Joints and Clamshell Bellows); New Braunfels, Texas

Senior Operation LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in New Braunfels, Texas within FTZ 80. The notification conforming to the requirements of the Board’s regulations (15 CFR 400.22) was received on June 28, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board’s website—accessible via www.trade.gov/ftz.

The proposed finished products include: metal expansion joints (stainless and carbon steel) and clamshell bellows (stainless and alloy steel) (duty rate ranges from duty-free to 5.5%).

The proposed foreign-status materials/components include: flat rolled stainless steel (width of 6.35 mm to 50.8 mm) and cold-rolled stainless-

steel coils (width of 1.62 mm to 4.554 mm) (duty-free). The request indicates that the materials/components are subject to duties under section 232 of the Trade Expansion Act of 1962 (section 232) and section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 232 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41). The Board’s regulations (15 CFR 400.13(c)(2)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board’s Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is August 12, 2024.

A copy of the notification will be available for public inspection in the “Online FTZ Information System” section of the Board’s website.

For further information, contact Christopher Wedderburn at Chris.Wedderburn@trade.gov.

Dated: June 28, 2024.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2024–14663 Filed 7–2–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2164]

Reorganization and Expansion of Foreign-Trade Zone 96 Under Alternative Site Framework; Eagle Pass, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for “. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15

CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the City of Eagle Pass, grantee of Foreign-Trade Zone 96, submitted an application to the Board (FTZ Docket B-4-2024, docketed January 16, 2024) for authority to reorganize and expand under the ASF with a service area of Maverick County, Texas, in and adjacent to the Eagle Pass Customs and Border Protection port of entry, FTZ 96's existing Sites 1, 2 and 4 would be removed from the zone and modified Site 3 would be categorized as a magnet site;

Whereas, notice inviting public comment was given in the **Federal Register** (89 FR 3909-3910, January 22, 2024) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 96 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Dated: June 28, 2024.

Dawn Shackleford,

Executive Director of Trade Agreements Policy & Negotiations, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2024-14661 Filed 7-2-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Innovative Technologies for Urban Infrastructure Development Trade Mission to the Philippines and Indonesia—November 12–November 20, 2024. A summary of the mission is found below. Application information and more detailed mission information, including the commercial

setting and sector information, can be found at the trade mission website: <https://www.trade.gov/trade-missions>. For this mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<https://www.trade.gov/trade-missions-schedule>) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Odum, Trade Events Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482-6397 or email Jeffrey.Odum@trade.gov.

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be canceled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least 51 percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content by value.

A trade association/organization applicant must certify to the above for

all of the companies it seeks to represent on the mission.

In cases where applicants cannot certify 51 percent U.S. content, especially where the applicant intends to pursue investment in major project opportunities, the following factors may be considered in determining whether the applicant's participation in the mission is in the U.S. national interest:

- U.S. materials and equipment content;
- U.S. labor content;
- Contribution to the U.S. technology base, including conduct of research and development in the United States;
- Repatriation of profits to the U.S. economy; and
- Potential for follow-on business that would benefit the U.S. economy.

In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers, and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets,

including the likelihood of exports resulting from the mission; and

- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of company size and location may also be considered during the review process. Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a "small business" under the Small Business Administration's (SBA) size standards (<https://www.sba.gov/document/support-table-size-standards>), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (<https://www.sba.gov/size-standards>) can help you determine the qualifications that apply to your company.

Mission List: (additional information about trade missions can be found at <https://www.trade.gov/trade-missions>).

Innovative Technologies for Urban Infrastructure Development Trade Mission to the Philippines and Indonesia—November 12–November 20

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing an

Innovative Technologies for Urban Infrastructure Development Trade Mission to the Philippines and Indonesia from November 12 through November 20, 2024 with stops in Manila and New Clark City in the Philippines, and Jakarta and Denpasar in Indonesia. In addition to these stops, mission participants can join an optional additional stop in Nusantara, Indonesia's future capital city.

The objective of this mission is to advance U.S. national interests by supporting the implementation of ambitious digital transformation agendas that the Philippines and Indonesia are pursuing to develop urban technology infrastructure for the benefit of their communities. The business development mission to Indonesia was jointly announced as a digital transformation deliverable to promote increased trade and investment relations with the United States by Presidents Biden and Jokowi at the White House on November 13, 2023, when the two leaders elevated the U.S.-Indonesia relationship to a Comprehensive Strategic Partnership. Commerce's trade mission team subsequently added stops in the Philippines, to expand opportunities for U.S. companies to contribute to digital transformation and infrastructure development projects in two dynamic Southeast Asian maritime markets.

Mission participants will have the opportunity to discuss their smart cities technology and service solutions with government officials, prospective business partners, and smart city experts. Participants will learn about the many smart city business opportunities in the Philippines and Indonesia and gain first-hand market exposure. Mission participants already doing business in the Philippines and Indonesia can further advance business

relationships and explore new priorities.

Best Prospects

The below list, while not exhaustive, identifies key products, services, and technologies that would be an appropriate fit for the trade mission. ITA is committed to assembling a trade mission delegation that is representative of a broad range of information and communication technology sectors, with an emphasis on sectors that advance digital and urban infrastructure development.

- Artificial Intelligence
- Cybersecurity
- Digital Economy
- Energy and Environmental Technologies for Sustainability and Climate Resilience
- Green Buildings
- Information and Communication Technologies (ICT)
- Smart City Technologies and Services
- Standards
- Telecommunications
- Transportation and Urban Mobility
- Urban Infrastructure Development

Other Products and Services

Applications from companies selling products or services within the scope of this mission, but not specifically identified in the categories above will be considered and evaluated by the U.S. Department of Commerce. Companies whose products or services do not fit the scope of the mission may contact their local U.S. Commercial Service Domestic Office to learn about other business development missions and services that may provide more targeted export opportunities. Companies may go to <http://trade.gov> to obtain such information.

PROPOSED TIMETABLE

[* **Note:** The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.]

November 12, 2024, Manila, Philippines	• All Trade Mission Participants Arrive in Manila. • <i>Official Trade Mission Program Commences.</i> • MANILA (Full Day Sessions). • Networking Reception.
November 13, 2024, Manila, Philippines	
November 14, 2024, New Clark City, Philippines—Denpasar, Indonesia	• Travel to NEW CLARK CITY. • Visit NEW CLARK CITY (Half-Day Sessions). • Travel to DENPASAR, Indonesia (Evening). • DENPASAR (Full Day Sessions). • DENPASAR (Full Day Sessions). • DENPASAR (Off Day). • Travel to JAKARTA. • JAKARTA (Full Day Sessions). • Networking Lunch. • Networking Reception in Jakarta.
November 15, 2024, Denpasar, Indonesia	
November 16, 2024, Denpasar, Indonesia	
November 17, 2024, Denpasar, Indonesia—Jakarta, Indonesia	
November 18, 2024, Jakarta, Indonesia	• Companies participating in Spinoffs travel to the next stop. • SPINOFF: BALIKPAPAN (Full Day Sessions).
November 19, 2024, Jakarta, Indonesia—Balikpapan, Indonesia	

PROPOSED TIMETABLE—Continued

[* **Note:** The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.]

November 20, 2024, Nusantara, Indonesia—Jakarta, Indonesia	• SPINOFF: NUSANTARA (Full Day Sessions). • Travel to JAKARTA (Evening). • <i>Official Trade Mission Concludes.</i>

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined above. A minimum of 12 and a maximum of 15 firms and/or trade associations will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Business Development Mission will be \$4,750 for small or medium-sized enterprises (SME);¹ and \$5,000 for large firms or trade associations. For any participant who wants to travel to Nusantara, there will be an additional fee of \$500. The fee for each additional firm representative (large firm or SME/trade organization) is \$800. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

If and when an applicant is selected to participate in a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee above is required. Upon notification of acceptance to participate, those selected have five business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel,

lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is canceled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a canceled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at <https://travel.state.gov/content/passports/en/alertswarnings.html>. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public, and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees, accordingly, prepare an agenda for virtual activities, and notify the previously selected applicants with the option to opt-in to the new virtual program.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission

calendar (<http://export.gov/trademissions>) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than September 6, 2024. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after September 6, 2024, will be considered only if space and scheduling constraints permit.

Contacts

Christopher Feather, Commercial Officer, U.S. Embassy in Indonesia—Jakarta, +62-21-5083-2272, Christopher.Feather@trade.gov
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Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2024-14638 Filed 7-2-24; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE**International Trade Administration****Announcement of Approved International Trade Administration Trade Mission**

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing

¹ For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards (<https://www.sba.gov/document/support-table-size-standards>), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (<https://www.sba.gov/size-standards/>) can help you determine the qualifications that apply to your company.

one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Global Diversity Export Initiative (GDEI) Trade Mission to the Caribbean Region, November 17–22, 2024. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website:

<https://www.trade.gov/trade-missions>. For this mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<https://www.trade.gov/trade-missions-schedule>) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Odum, Trade Events Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6397 or email Jeffrey.Odum@trade.gov.

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department of Commerce may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the

products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content by value.

A trade association/organization applicant must certify to the above for every company it seeks to represent on the mission. In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination markets. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of company size and location may also be considered during the review process.

Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The applicant will be notified of these exclusions.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a "small business" under the Small Business Administration's (SBA) size standards (<https://www.sba.gov/document/support-table-size-standards>), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (<https://www.sba.gov/size-standards>) can help you determine the qualifications that apply to your company.

Mission List: (additional information about trade missions can be found at <https://www.trade.gov/trade-missions>).

Global Diversity Export Initiative (GDEI) Trade Mission to the Caribbean Region—November 17–22, 2024

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing a Global Diversity Export Initiative (GDEI) Trade Mission to the Caribbean region on November 17–22, 2024, that will include the "Opportunities for Minority-Led Businesses in the Caribbean Region Conference" in Santo Domingo, Dominican Republic on November 17–18, 2024.

Recruitment and consideration will be extended to all export-ready U.S. companies, including small businesses, trade associations, and other exporting organizations that meet the established criteria for participation in the mission. ITA is seeking to improve outreach and representation of businesses with owners and/or leaders from underserved communities, including through the GDEI. This mission is focused on expanding export opportunities to U.S. small and medium-sized businesses with owners and/or leaders from underserved communities from industries with growing potential in the Caribbean region. The mission is horizontal, with various sectors represented, based on best prospects for U.S. companies, such as automotive parts and services, consumer goods, construction equipment/road building

machinery/building products/ infrastructure projects, medical equipment and pharmaceuticals, ICT, energy equipment and services, safety and security equipment, hotel and restaurant equipment, franchising, manufacturing equipment, yachting/ maritime services/sailing equipment, marine ports, aviation/airports, tourism and related construction, waste management, and water treatment and supply.

This mission will also support the Department's GDEI, providing export promotion resources to businesses from underserved communities. U.S. small and medium-sized businesses with owners and/or leaders from underserved communities face unique obstacles in accessing overseas markets, including difficulty obtaining financing and lack knowledge about export opportunities. This mission will assist U.S. small and medium-sized businesses with owners and/or leaders from underserved communities to find partners and begin or expand their exports in seven markets. With almost 272,000 U.S. small and medium-sized businesses exporting, the limited number of companies from underserved communities participating in international trade is in stark contrast with the total universe of exporters. According to the most recent Census data (2021), from a sample of approximately 146,000 firms that export, 15% are women-owned; 6% are Hispanic-owned; 6% are veteran-owned; and 1% are Black or African American-owned firms. Additionally, based on the 2020–2021 Census Bureau Profile of U.S. Importing and Exporting Companies and the 2022 Annual Business Survey, Caribbean countries were not in the top 15 markets ranked for women-owned small and medium-sized businesses and veteran-owned small and medium-sized businesses, while the Dominican Republic ranked as the 4th top export market for Hispanic American and Native American-owned small and medium-sized businesses and Jamaica ranked as the 8th top export market for Black or African American-owned small and medium sized businesses, indicating room for export growth to the Caribbean region among . Through these events, the Department of Commerce seeks to continue to scale the next generation of innovation, maintain global competitiveness, and ensure that more diverse businesses benefit from harnessing the potential of exports.

Trade mission participants will arrive in Santo Domingo, Dominican Republic on November 17 to attend the opening reception for the “Opportunities for Minority-Led Businesses in the

Caribbean Region Conference”, which is also open to U.S. companies not participating in the trade mission. The Business Conference will focus on regional and industry-specific sessions and will gather experts on market entry strategies, logistics, procurement, trade financing, access to capital, and other important topics to assist minorities business exporters. The registration fee for the business conference is included in the trade mission costs.

On Sunday November 17, trade mission participants will participate in a networking lunch with a trade mission markets briefing, one-on-one meetings (U.S. diplomats and/or industry specialists from nine U.S. Embassies across the Caribbean region will be available), and a networking reception. On Monday November 18, participants will engage in the business conference that will include a morning plenary session, a networking lunch, afternoon workshops and one-on-one meetings with key service providers and U.S. diplomats and/or industry specialists, information and material on trade-related resources, and an evening networking reception. On Tuesday November 19, selected participants will either engage in business-to-business (B2B) meetings in Santo Domingo if approved for the Dominican Republic Trade Mission stop, or travel to other markets in the region to engage in B2B appointments in those markets. B2B meetings will be conducted with pre-screened potential buyers, agents, distributors or joint-venture partners, in the selected city/market in the Dominican Republic, and/or Barbados/ Eastern Caribbean, and/or Guyana, and/or Jamaica, and/or Suriname, and/or The Bahamas and/or Trinidad and Tobago.

The combination of the Opportunities for Minority-Led Businesses in the Caribbean Region Conference and B2B matchmaking opportunities in seven markets will provide participants with substantive information on strategies for entering or expanding their business in the Caribbean region, key contacts with Commercial Service and State Department officers and local staff, and networking opportunities to build vital business relationships.

This mission is in alignment with Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 25, 2021) (E.O. 13985), Executive Order 14091 on Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (February 22, 2022) (E.O. 14091), and the Global Diversity Export Initiative of

the U.S. Commercial Service. For the purposes of the trade mission, ITA adopts the definition of “underserved communities” ITA adopts the definition of “underserved communities” in E.O. 13985: “populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of ‘equity.’” “Equity” is defined by E.O. 13985 as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” This trade mission is also designed to be responsive to the priorities stated by Secretary of Commerce Gina Raimondo and outlined in the Equity Action Plan released in April 2022 which aspires to “harness the talents and strengths of all parts of the country, including women, people of color, and others who are too often left behind” including by “[s]trengthen[ing] small businesses in underserved communities by helping them be successful exporters”.

Website: Please visit our official mission website for more information: <https://events.trade.gov/TradeGov/GDEITradeMissionCaribbeanRegion>.

Proposed Timetable

This timetable allows for clients to take part in business matchmaking across the Caribbean region marketplace by offering scheduled business-to-business meetings in the Dominican Republic, and/or Barbados/Eastern Caribbean, and/or Guyana, and/or Jamaica, and/or Suriname, and/or The Bahamas and/or Trinidad and Tobago. This structure ensures that each post has set days for meetings that allow the clients to explore at least two of their best prospects for business. The final schedule will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

November 16, 2024	Travel Day/Arrival in Santo Domingo, Dominican Republic.
November 17, 2024	Dominican Republic. Business Conference. Afternoon: Registration, U.S. Embassy Officer Meetings and Market Briefings. Evening: Networking Reception.
November 18, 2024	Dominican Republic. Business Conference. Morning: Registration. Plenary Session. Afternoon: U.S. Embassy Officer Meetings and Workshops. Evening: Networking Reception.
B2BMeeting Options: November 19–22, 2024	Travel to Business-to-Business Meetings in (up to two markets): Option (A) Dominican Republic. Option (B) Barbados/Eastern Caribbean. Option (C) Guyana. Option (D) Jamaica. Option (E) Suriname. Option (F) The Bahamas. Option (G) Trinidad and Tobago.

Participation Requirements

All parties interested in participating in the U.S. Department of Commerce GDEI Trade Mission to the Caribbean region must complete and submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below.

A minimum of 20 and a maximum of 30 firms and/or trade associations will be selected to participate in the mission on a first come, first served basis. During the registration process, applicants will be able to select the countries for which they would like to receive a brief market assessment. Upon receipt of market assessment reports, they will be able to select up to two stops for B2B meetings.

All selected Trade Mission participants will attend the business conference in Santo Domingo and will have the opportunity for B2B meetings in up to two countries from the Dominican Republic, Barbados/Eastern Caribbean, Guyana, Jamaica, Suriname, The Bahamas, and Trinidad and Tobago.

The number of firms that may be selected for B2B meetings in each country is as follows: 15 for the Dominican Republic, 5 for Barbados/Eastern Caribbean, 5 for Guyana, 5 for Jamaica, 5 for Suriname, 3 for The Bahamas, and 5 for Trinidad and Tobago.

The trade mission is open to U.S. firms already doing business in The Caribbean region who are seeking to expand their market share and to those U.S. firms new to these markets.

Fees and Expenses

After a firm or trade association is selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. Up to two cities can be selected for business-to-business meetings.

The fees are as follow:

If only one stop is selected for business-to-business meetings, the participation fee will be \$2,500 for a small or medium-sized enterprises (SME) [1] and \$4,000 for large firms.

If two stops are selected for business-to-business meetings, the participation fee will be \$3,500 for a small or medium-sized enterprises (SME) [1] and \$5,000 for large firms.

The mission participation fees above include the Opportunities for Minority-Led Businesses in the Caribbean Region Conference registration fee of \$500 for one participant per firm.

If and when an applicant is selected to participate in a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee above is required. Upon notification of acceptance, those selected have five business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event the mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed.

However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the U.S. Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in any given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts

and warnings for U.S. citizens available at <https://travel.state.gov/content/passports/en/alertswarnings.html>.

Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public, and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees, accordingly, prepare an agenda for virtual activities, and notify the previous selected applicants with the option to opt-in to the new virtual program.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar on www.trade.gov, the Trade Americas web page at <https://www.trade.gov/trade-americas-events>, and other internet websites, press releases to the general and trade media, direct mail and broadcast fax, notices by industry trade associations and other multiplier groups and announcements at industry meetings, symposia, conferences, and trade shows. The Commerce Department may also work with the U.S. Small Business Administration and the Organization of Minorities in International Trade to promote the mission.

Recruitment for the mission will begin immediately and conclude no later than Friday, September 27, 2024. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis until the minimum or 20 or maximum of 30

participants are selected. After Friday, September 27, 2024, companies will be considered only if space and scheduling constraints permit.

Contacts

U.S. Trade Americas Team Contact Information

Diego Gattesco, Director/Trade Americas Team Leader—U.S. Commercial Service Wheeling, WV; *Diego.Gattesco@trade.gov*; Tel: 304–243–5493

CS Dominican Republic Contact Information

Jennifer Kane, Senior Commercial Officer—U.S. Embassy Santo Domingo, Dominican Republic, *Jennifer.Kane@trade.gov*.

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2024–14648 Filed 7–2–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Changed Circumstances Review

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

SUMMARY: On May 13, 2024, the U.S. Department of Commerce (Commerce) published the preliminary results of the changed circumstances review (CCR) of the antidumping duty (AD) order on certain frozen warmwater shrimp from India. For these final results, Commerce continues to find that Varma Marine Private Limited (Varma) is the successor-in-interest to Varma Marine.

DATES: Applicable July 3, 2024.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6274.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 2024, Commerce published the preliminary results of this expedited CCR, determining that Varma is the successor-in-interest to Varma Marine for purposes of determining AD cash deposits and liabilities, and provided all interested parties with an

opportunity to comment.¹ No interested party submitted comments on the *Preliminary Results*. Accordingly, the final results remain unchanged from the *Preliminary Results*.

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) numbers: 0306.17.00.04, 0306.17.00.05, 0306.17.00.07, 0306.17.00.08, 0306.17.00.10, 0306.17.00.11, 0306.17.00.13, 0306.17.00.14, 0306.17.00.16, 0306.17.00.17, 0306.17.00.19, 0306.17.00.20, 0306.17.00.22, 0306.17.00.23, 0306.17.00.25, 0306.17.00.26, 0306.17.00.28, 0306.17.00.29, 0306.17.00.41, 0306.17.00.42, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. For a complete description of the scope of the order, see the *Preliminary Results*.

Final Results of CCR

For the reasons stated in the *Preliminary Results*, and because we received no comments from interested parties challenging our preliminary finding, Commerce continues to find that Varma is the successor-in-interest to Varma Marine. As a result of this determination and consistent with our established practice, we find that Varma should receive the AD cash deposit rate previously assigned to Varma Marine. Because there are no changes from the *Preliminary Results* and because we received no comments from interested parties, there is no decision memorandum accompanying this notice and we are adopting the *Preliminary Results* as the final results of this CCR.

Consequently, Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced and/or exported by Varma and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at 3.88 percent, which is the current AD cash deposit rate for Varma Marine.² This cash deposit requirement

shall remain in effect until further notice.

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). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(e), 351.221(b), and 351.221(c)(3).

Dated: June 27, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–14660 Filed 7–2–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–878]

Glycine From Japan: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2022–2023

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that producers or exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review June 1, 2022, through May 31, 2023. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 3, 2024.

FOR FURTHER INFORMATION CONTACT: John K. Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195.

SUPPLEMENTARY INFORMATION:

¹ See *Certain Frozen Warmwater Shrimp from India: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 89 FR 41376 (May 13, 2024) (*Preliminary Results*).

² See *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2021–2022*, 88 FR 60431 (September 1, 2023).

Background

On June 21, 2019, Commerce published the antidumping duty order on glycine from Japan.¹ On June 1, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² On August 3, 2023, Commerce published the notice of initiation of the administrative review of the *Order*.³ On February 27, 2024, Commerce extended the time limit for these preliminary results to June 27, 2024, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).⁴

Scope of the Order

The merchandise subject to the *Order* is glycine. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.⁵

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Act. Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public 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 found at <https://access.trade.gov/public/FRNoticesListLayout.aspx>. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

¹ See *Glycine from India and Japan: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders*, 84 FR 29170 (June 21, 2019) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 88 FR 35835, 35836 (June 1, 2023).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 51271, 51276 (August 3, 2023) (*Initiation Notice*).

⁴ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated February 27, 2024.

⁵ See Memorandum, "Decision Memorandum for Preliminary Results of the Administrative Review of the Antidumping Duty on Glycine from Japan; 2022–2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Chattem Chemicals, Inc. withdrew its request for review of Showa Denko K.K.⁶ Because the request for review was timely withdrawn and no other parties requested a review of this company, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review with respect to Showa Denko K.K.

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margin exists for the period June 1, 2022, through May 31, 2023.

Producer/exporter	Weighted-average dumping margin (percent)
Yuki Gosei Kogyo Co., Ltd./Nagase & Co., Ltd. ⁷	0.99

Disclosure and Public Comment

Commerce intends to disclose to interested parties its calculations and analysis performed in these preliminary results, 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).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs or other written comments to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.⁸ Interested parties who

⁶ See Chattem Chemicals, Inc.'s Letter, "Partial Withdrawal of Request for Administrative Review," dated October 23, 2023.

⁷ Commerce previously determined that Nagase & Co., Ltd. and Yuki Gosei Kogyo Co., Ltd. are affiliated within the meaning of section 771(33)(E) of the Act and should be treated as a single entity pursuant to 19 CFR 351.401(f). See *Glycine from Japan: Final Results of Antidumping Duty Administrative Review; 2021–2022*, 88 FR 88052, 88053 (December 20, 2023) at footnote 5. We have received no information in this administrative review that would change our finding for the purposes of these preliminary results of review.

⁸ 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) (*APO and Service Procedures*).

submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.⁹

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 administrative review, we instead request that interested parties provide, at the beginning of their briefs, a public executive summary for each issue raised in their briefs.¹⁰ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public 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 public 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).¹¹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed via ACCESS.¹² An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

⁹ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁰ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹¹ See *APO and Service Procedures*.

¹² See 19 CFR 351.303.

Final Results of Review

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.¹³ If the weighted-average dumping margin for Yuki Gosei Kogyo Co., Ltd./Nagase & Co., Ltd. is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we will calculate an importer-specific assessment rate. Where the respondent reported reliable entered values, Commerce intends to calculate importer/customer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1).¹⁴ Where the respondent did not report entered values, in accordance with 19 CFR 351.212(b)(1), Commerce will calculate importer/customer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer/customer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer/customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis*; however, Commerce will use the per-unit assessment rate where entered values were not reported. Where an importer/customer-specific *ad valorem* assessment rate is not zero or *de minimis*, Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. If Yuki Gosei Kogyo Co., Ltd./Nagase & Co., Ltd.'s weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate for one of these companies is zero or *de minimis*, Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.¹⁵ For entries of

subject merchandise during the period of review produced by any of these companies for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries.¹⁶

For Showa Denko K.K., for which we are rescinding this administrative review, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period of review, in accordance with 19 CFR 351.212(c)(1)(i). For Showa Denko K.K., Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these preliminary results in the **Federal Register**.

Consistent with its recent notice,¹⁷ 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). The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of glycine from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of the review; (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 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 investigation but the producer is, the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will be 53.66 percent, the all-others rate established in the less-than-fair-value investigation.¹⁸ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary 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 the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and

777(i)(1) of the Act and 19 CFR 351.221.

Dated: June 27, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Affiliation
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

[FR Doc. 2024-14659 Filed 7-2-24; 8:45 am]

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¹³ See 19 CFR 351.212(b)(1).

¹⁴ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

¹⁵ *Id.* at 8102-03; see also 19 CFR 351.106(c)(2).

¹⁶ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁷ See *Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings*, 86 FR 3995 (January 15, 2021).

¹⁸ See *Glycine from India and Japan: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders*, 84 FR 29170, 29171 (June 21, 2019).

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-555-004, C-557-831, C-549-852, C-552-842]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.**DATES:** Applicable July 3, 2024.**FOR FURTHER INFORMATION CONTACT:**

Dusten Hom or Garry Kasparov (Cambodia), Preston Cox or Scarlet Jaldin (Malaysia), Shane Subler or Henry Wolfe (Thailand), and Frank Schmitt (the Socialist Republic of Vietnam (Vietnam)), AD/CVD Operations, Offices I, VI, and VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5075, (202) 482-1397, (202) 482-5041, (202) 482-4275, (202) 482-6241, (202) 482-0574, and (202) 482-4880, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On May 14, 2024, the U.S. Department of Commerce (Commerce) initiated countervailing duty (CVD) investigations of imports of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from Cambodia, Malaysia, Thailand, and Vietnam.¹ Currently, the preliminary determinations are due no later than July 18, 2024.

Postponement of Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if:

(A) the petitioner² makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On June 18, 2024, the petitioner submitted timely requests that Commerce postpone the preliminary CVD determinations.³ The petitioner stated that it requests postponement for Commerce to receive and analyze initial responses, to allow petitioner's counsel and other interested parties to analyze responses, and for Commerce to issue supplemental questionnaires and receive responses prior to making its preliminary CVD determinations.⁴

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determinations, and Commerce finds no compelling reason to deny the requests. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determinations to no later than 130 days after the date on which these investigations were initiated, *i.e.*, September 23, 2024.⁵ Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations

² The petitioner is the American Alliance for Solar Manufacturing Trade Committee.

³ See Petitioner's Letters, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from Cambodia: Request to Postpone Preliminary Determination," "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from Malaysia: Request to Postpone Preliminary Determination," "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from Thailand: Request to Postpone Preliminary Determination," and "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the Socialist Republic of Vietnam: Request to Postpone Preliminary Determination," all dated June 18, 2024.

⁴ *Id.*

⁵ Postponing the preliminary determinations to 130 days after the date of initiation would place the deadlines on Saturday, September 21, 2024. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

will continue to be 75 days after the date of the preliminary determinations.

Notification to Interested Parties

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 27, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024-14614 Filed 7-2-24; 8:45 am]

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CONSUMER FINANCIAL PROTECTION BUREAU**Publication of FY 2021 Service Contract Inventory**

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice of public availability of FY 2021 service contract inventory.

In accordance with section 734 of Division C of the Consolidated Appropriations Act of 2010, the Consumer Financial Protection Bureau (CFPB or Bureau) is publishing this notice to advise the public of the availability of the FY 2021 service contract inventory. This inventory provides information on service contract actions over \$25,000, which the CFPB funded during FY 2021. The information is organized by function to show how contracted resources were used by the agency to support its mission. The inventory has been developed in accordance with the guidance issued by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). The CFPB has posted its inventory on the Bureau's Open Government homepage at the following link: <https://www.consumerfinance.gov/open>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

FOR FURTHER INFORMATION CONTACT:

Nikki Burley, Senior Procurement Analyst, Office of Procurement, at 202-435-0329, or Nikki.Burley@cfpb.gov.

Jocelyn Sutton,

Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2024-14585 Filed 7-2-24; 8:45 am]

BILLING CODE 4810-AM-P

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 89 FR 43816 (May 20, 2024).

DEPARTMENT OF DEFENSE**Department of the Air Force****Notice of Intent To Prepare an Environmental Impact Statement for T-7a Recapitalization at Sheppard Air Force Base, Texas**

AGENCY: Department of Defense, Department of the Air Force.

ACTION: Notice of intent.

SUMMARY: The Department of the Air Force (DAF) is issuing this Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) to assess the potential social, economic, and environmental impacts associated with T-7A Recapitalization at Sheppard Air Force Base (AFB), Texas (DAF Unique Identification Number 00099). The EIS will analyze the potential impacts from introduction of T-7A aircraft and flight operations at Sheppard AFB and associated airspace; temporary changes to the number of personnel and dependents in the Sheppard AFB region; and the construction and upgrade of operations, support, and maintenance facilities.

DATES: A public scoping period of 30 days will take place starting from the date of publication of this NOI in the **Federal Register**. Comments will be accepted at any time during the environmental impact analysis process; however, to ensure DAF has sufficient time to consider public scoping comments during preparation of the Draft EIS, please submit comments within the 30-day scoping period. The Draft EIS is anticipated in mid-2025. The Final EIS and a decision on which alternative to implement is expected in late 2025.

DAF invites the public, stakeholders, and other interested parties to attend a public scoping meeting. Two, in-person public scoping meetings will be held from 4:00 to 7:00 p.m. on July 30th and 31st, 2024. Both meetings will be held in Cannedy Hall at the Wichita Falls Museum of Art at Midwestern State University (MSU) located on Eureka Circle on the MSU Campus, Wichita Falls, TX. The address is 2 Eureka Circle, Wichita Falls, TX 76308. Information provided at the meetings will be available on the project website (<https://sheppard.t7anepadocuments.com/>). Attendees of the public scoping meeting will have the opportunity to submit written comments.

ADDRESSES: Scoping comments can be submitted via the project website (<https://sheppard.t7anepadocuments.com/>), or via email to

chinling.chen@us.af.mil or via postal mail to Ms. Chinling Chen, AFCEC/CIE; Attn: Sheppard AFB T-7A Recapitalization EIS; Headquarters AETC Public Affairs; 100 H. East Street, Suite 4; Randolph AFB, TX 78150. Please submit inquiries or requests for printed or digital copies of the scoping materials via the email or postal address above or contact the AETC Public Affairs office by phone at 210-652-4400. Scoping materials are also available in print at the Wichita Falls Public Library at 600 11th Street, Wichita Falls, Texas.

SUPPLEMENTARY INFORMATION: The purpose of the Proposed Action is to continue the T-7A recapitalization program to prepare pilots to operate modern fourth and fifth generation aircraft. The need for the Proposed Action is to provide infrastructure and training systems to support the newer T-7A aircraft, allow for enhanced and improved flight and simulator training, and ensure DAF pilot training requirements are met.

Recapitalization entails introduction of T-7A aircraft and flight operations at Sheppard AFB to replace all T-38C aircraft assigned to the installation; nighttime (between 10 p.m. and 7 a.m.) flight operations; temporary changes to the number of personnel and dependents in the Sheppard AFB region; and construction and upgrade of support and maintenance facilities. DAF is considering three alternatives to implement the Proposed Action and the No Action Alternative. For Alternative 1, Sheppard AFB would receive up to 108 T-7A aircraft and phase in T-7A operations at a level sustaining pilot training while simultaneously phasing out the T-38C. A temporary increase of approximately 100 personnel is projected. Several construction and renovation projects would potentially occur at Sheppard AFB to provide modern facilities and infrastructure to support T-7A aircraft maintenance, training, and operational requirements.

For Alternative 2, Sheppard AFB would receive up to 108 T-7A aircraft and perform T-7A operations at a level that is approximately 25 percent greater than Alternative 1. Alternative 2 is intended to cover a scenario in which, for either broad strategic or tactical operational reasons, DAF requires a surge or increase in pilot training operations above current plan. The number of T-7A aircraft arriving at Sheppard AFB and timeline of increased aircraft operations, new and renovated facilities, and personnel changes would be the same as described for Alternative 1. For Alternative 3,

Sheppard AFB would receive up to 131 T-7A aircraft. Total T-7A annual operations would be approximately 22 percent greater than Alternative 1 once the aircraft transition is complete. Alternative 3 is intended to provide DAF with operational flexibility, and inclusion of this alternative in this EIS provides analysis to evaluate future capacity needs. The number of personnel and anticipated facility requirements would be the same for Alternatives 1, 2, and 3.

For the No Action Alternative, DAF would not implement T-7A recapitalization at Sheppard AFB. If the No Action Alternative were implemented, the T-7A aircraft disposition would be determined separately. Sheppard AFB's existing fleet of T-38C aircraft would continue to be used in their current capacity even though they will reach the end of their service lives within the next decade. Routine maintenance of facilities to support the continued use of T-38C aircraft under the No Action Alternative would continue to occur. No additional facility renovations or improvements supporting T-38C operations have been identified under the No Action Alternative.

DAF anticipates potential for increased air emissions, particularly nitrogen oxides, and changes in aircraft noise levels from the Proposed Action. Increased noise could have a disproportionate impact on environmental justice populations and impact off-installation land use compatibility. In addition, facilities and supporting structures improvement associated with the Proposed Action may impact floodplains. DAF will also consult with the United States Fish and Wildlife Service, the Texas Historical Commission, and Native American tribes to determine the potential for significant impacts. Consultation will be incorporated into the preparation of the EIS and will include, but not be limited to, consultation under Section 7 of the Endangered Species Act and consultation under Section 106 of the National Historic Preservation Act. At this time, the requirement for any permits or other authorizations has not been determined but will be addressed in the impact assessment as appropriate.

Scoping and Agency Coordination: To identify important environmental issues deserving of study and to deemphasize unimportant issues, narrowing the scope of the environmental impact statement process, DAF is soliciting comments from interested Federal, State, Tribal, and local, officials and agencies, as well as likely affected or interested members of the public.

Comments are requested on alternatives and effects, as well as on relevant information, studies, or analyses with respect to the proposed action.

It is DoD Policy that DoD Components will to the maximum extent practicable avoid development, siting, or leasing of facilities or infrastructure within flood hazard areas. Consistent with the requirements and objectives of Executive Order (E.O.) 11988, "Floodplain Management," as amended by E.O. 13690, "Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input," state and federal regulatory agencies with special expertise in floodplains will be contacted to request comment. Consistent with E.O. 11988 and E.O. 13690, this Notice of Intent initiates public review of the proposed action and alternatives, which have the potential to be located in a floodplain.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2024-14605 Filed 7-2-24; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the DoD Medicare-Eligible Retiree Health Care Board of Actuaries will take place.

DATES: Open to the public Friday, August 2, 2024, from 10:00 a.m. to 1:00 p.m. Eastern Standard time (EST).

ADDRESSES: ***THIS MEETING WILL BE HELD VIRTUALLY*** If you need any assistance, please contact Inger Pettygrove (703) 225-8803 or [Inger.m.pettygrove.civ@mail.mil](mailto:inger.m.pettygrove.civ@mail.mil) as soon as possible.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove, (703) 225-8803 (Voice), inger.m.pettygrove.civ@mail.mil (Email). Mailing address is Defense Human Resources Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 03E25, Alexandria, VA 22350-

8000. Website: <https://actuary.defense.gov/>. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5 United States Code (U.S.C.) (commonly known as the "Federal Advisory Committee Act" or "FACA"), 5 U.S.C. 552b (commonly known as the "Government in the Sunshine Act"), and 41 CFR 102-3.140 and 102-3.150).

Purpose of the Meeting: The purpose of the meeting is for the DoD Medicare-Eligible Retiree Health Care Board of Actuaries to review DoD actuarial methods and assumptions to be used in the valuation of the Medicare-Eligible Retiree Health Care Fund in accordance with the provisions of section 1114, chapter 56 (10 U.S.C. chapter 56 (10 U.S.C. 1114 et. seq)).

Agenda:

1. Approve actuarial assumptions and methods needed for calculating*: (10:00 a.m.)
—September 30, 2023, unfunded liability (UFL)
—FY 2026 per capita full-time and part-time normal cost amounts
—October 1, 2024, Treasury UFL amortization payment
2. Approve per capita full-time and part-time normal cost amounts for the October 1, 2024 (FY 2025) normal cost payments* (10:30 a.m.)
3. Medicare-Eligible Retiree Health Care Fund Update (11:00 a.m.)
4. September 30, 2022, Actuarial Valuation Results (11:30 a.m.)
5. September 30, 2023, Actuarial Valuation Proposals (12:00 p.m.)

* Board approval required

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, this meeting is open to the public. All members of the public who wish to attend virtually must register by contacting Inger Pettygrove, (703) 225-8803 (Voice), inger.m.pettygrove.civ@mail.mil (Email) no later than Wednesday, July 31, 2024. Once registered, the web address and/or audio number will be provided.

Written Statements: Pursuant to 41 CFR 102-3.140 and 10(a)(3) of the FACA, the public or interested organizations may submit written comments to the DoD Medicare-Eligible Retiree Health Care Board of Actuaries about its mission and topics pertaining to this public session. Persons desiring to attend the DoD Medicare-Eligible Retiree Health Care Board of Actuaries meeting to make an oral presentation or submit a written statement for consideration at the meeting must notify

Inger Pettygrove at (703) 225-8803, or inger.m.pettygrove.civ@mail.mil, by Friday, July 19, 2024.

Written comments need to be submitted in the following formats: Adobe Acrobat or Microsoft Word. Written comments may also be mailed to the address listed in **FOR FURTHER INFORMATION CONTACT**. Written comments not received by the DoD Medicare-Eligible Retiree Health Care Board of Actuaries at least five (5) business days prior to the meeting date, or after, will be provided to the Chair of the DoD Medicare-Eligible Retiree Health Care Board of Actuaries for consideration.

Advance copy of oral public comments must be sent via email at inger.m.pettygrove.civ@mail.mil with the subject line "DoD Medicare-Eligible Retiree Health Care Board of Actuaries: Request to Speak (insert the issue and question)" no later than 11:59 p.m. EST on Friday, July 19, 2024. Submissions received after the deadline will not be considered for oral public comment but will be provided to the Chair of the DoD Medicare-Eligible Retiree Health Care Board of Actuaries for consideration. All submitted oral comments become government property and may be published as part of the meeting record.

Registration for oral public comment is on a first-come, first-served basis. Comments are limited to two (2) minutes or less per person. After the maximum number of speakers is exceeded, individuals registered to provide oral comment will be placed on a wait list and notified should an opening become available. Should time expire for oral public comments those not presented will be provided to the Chair of the DoD Medicare-Eligible Retiree Health Care Board of Actuaries for consideration. You will be notified via email no later than Wednesday, July 31, 2024, if you have been identified to provide in-person public comment.

Please note that since the DoD Medicare-Eligible Retiree Health Care Board of Actuaries operates under the provisions of the FACA, all written comments received will be treated as public documents and will be made available for public inspection.

Dated: June 27, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-14647 Filed 7-2-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0061]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Perkins/NDSL Loan Assignment Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 2, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting “Department of Education” under “Currently Under Review,” then check the “Only Show ICR for Public Comment” checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the “View Information Collection (IC) List” link. Supporting statements and other supporting documentation may be found by clicking on the “View Supporting Statement and Other Documents” link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 570–8414.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Perkins/NDSL Loan Assignment Form.

OMB Control Number: 1845–0048.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 144,114.

Total Estimated Number of Annual Burden Hours: 72,058.

Abstract: The U.S. Department of Education (the Department) is authorized to accept Federal Perkins Loan (Perkins Loan) Program assignments under section 463(a)(5) of the Higher Education Act of 1965, as amended. Institutions participating in the Perkins Loan program, including loans made under the National Direct/Defense Student Loan Program (NDSL), use the form (OMB Control Number 1845–0048) to assign loans to the Department for collection without recompense. This request is for approval of the assignment form which allows for assignment of Perkins Loans either individually or in a batch format, utilizing either the paper based or electronic filing format.

An institution may use the form to assign one or more loans to the Department at any time throughout the year. Some conditions under which an institution could utilize the assignment form include defaulted loans, total permanent disability discharges, voluntary withdrawal from the program, termination from the program, closure of the institution and liquidation of its Perkins Loan portfolio.

The Department is requesting an extension of the currently approved collection. There has been no change to the form. There has been a change in the number of respondents, responses, and burden hours.

Dated: June 27, 2024.

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. 2024–14600 Filed 7–2–24; 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: RP24–834–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing; Housekeeping, Clarifications, and Updates Following GasQuest Implementation to be effective 7/22/2024.

Filed Date: 6/20/24.

Accession Number: 20240620–5243.

Comment Date: 5 p.m. ET 7/2/24.

Docket Numbers: RP24–845–000.

Applicants: Cove Point LNG, LP.

Description: Compliance filing: Cove Point—2024 Penalty Revenue Distribution to be effective N/A.

Filed Date: 6/26/24.

Accession Number: 20240626–5110.

Comment Date: 5 p.m. ET 7/8/24.

Docket Numbers: RP24–846–000.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: Compliance filing: EGTS—2024 Overrun and Penalty Revenue Distribution to be effective N/A.

Filed Date: 6/26/24.

Accession Number: 20240626–5114.

Comment Date: 5 p.m. ET 7/8/24.

Docket Numbers: RP24–847–000.

Applicants: Big Sandy Pipeline, LLC.

Description: § 4(d) Rate Filing; Big Sandy EPC 2024 to be effective 8/1/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5124.

Comment Date: 5 p.m. ET 7/8/24.

Docket Numbers: RP24–848–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing; Negotiated Rate Agreement Update (Conoco July 2024) to be effective 7/1/2024.

Filed Date: 6/27/24.

Accession Number: 20240627–5059.

Comment Date: 5 p.m. ET 7/9/24.

Docket Numbers: RP24–849–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: TETLP EPC AUG 2024 FILING to be effective 8/1/2024.

Filed Date: 6/27/24.

Accession Number: 20240627–5066.

Comment Date: 5 p.m. ET 7/9/24.

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: RP19–78–014.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Compliance filing: RP19–78–000 Revised Refund Report to be effective N/A.

Filed Date: 6/27/24.

Accession Number: 20240627–5040.

Comment Date: 5 p.m. ET 7/9/24.

Any person desiring to protest in any 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: June 27, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–14673 Filed 7–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. IC24–22–000]

Commission Information Collection Activities (FERC–537); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork

Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–537 (Gas Pipeline Certificates: Construction, Acquisition, and Abandonment).

DATES: Comments on the collection of information are due September 3, 2024.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC24–22–000) by one of the following methods:

Electronic filing through <http://www.ferc.gov> is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be submitted to FERC as follows:

- *Mail via U.S. Postal Service Only:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- *All other services (including courier):* Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov>.

FOR FURTHER INFORMATION CONTACT: Jean Sonneman may be reached by email at DataClearance@FERC.gov, telephone at (202) 502–6362.

SUPPLEMENTARY INFORMATION:

Title: FERC–537: *Gas Pipeline Certificates: Construction, Acquisition, and Abandonment.*

OMB Control No.: 1902–0060.

Type of Request: Three-year extension of the FERC–537 information collection requirements with no changes to the reporting requirements.

Abstract: The FERC–537 information collection is in place for the Commission to carry out its responsibilities under section 7 of the Natural Gas Act (NGA). Section 7 of the NGA¹ requires natural gas companies to obtain Commission approval before constructing, extending, or abandoning facilities or service. The Commission

reviews and analyses the information filed under the FERC–537 to determine whether to approve or deny the requested authorization. After reviewing the supplied information, the Commission may grant a request to construct or extend pipeline facilities or service by issuing a certificate of public convenience and necessity. If the Commission failed to collect these data, it would lose its ability to review relevant information to determine whether the requested certificate should be authorized.

The Commission implements section 7 of the NGA under regulations at 18 CFR part 157.

The data generally required to be submitted in a certificate filing consists of identification of the company and responsible officials, factors considered in the location of the facilities, and the impact on the area for environmental considerations. As applicable to the specific request, applicants may provide:

- Flow diagrams showing the design capacity for engineering design verification and safety determination;
- Cost of proposed facilities, plans for financing, and estimated revenues and expenses related to the proposed facility for accounting and financial evaluation; or

- Existing and proposed storage capacity and pressures and reservoir engineering studies for requests to increase storage capacity.

Applications for an order authorizing abandonment of facilities or service must contain a statement providing in detail the reasons for the requested abandonment and must contain exhibits listed at 18 CFR 157.18, as well as an affidavit showing the consent of existing customers. With some exceptions, such applications also must include an environmental report.

Applicants filing in accordance with 18 CFR part 157, subpart A (either for a certificate or for abandonment) generally must make a good-faith effort to provide notice of the application to all affected landowners, towns, communities, and government agencies.

Certain self-implementing construction and abandonment programs do not require the filing of applications. However, those types of programs do require the filing of annual reports, so many less significant actions can be reported in a single filing/response and less detail would be required. Additionally, requests for an increase of pipeline capacity must include a statement that demonstrates compliance with the Commission's Certificate Policy Statement by making a showing that the cost of the expansion

¹ 15 U.S.C. 717f.

will not be subsidized by existing customers and that there will not be adverse economic impacts to existing customers, competing pipelines or their

customers, nor to landowners and to surrounding communities.
Type of Respondents: Jurisdictional natural gas companies.

*Estimate of Annual Burden:*² The Commission estimates the annual public reporting burden for the information collection as:

FERC-537 (GAS PIPELINE CERTIFICATES: CONSTRUCTION, ACQUISITION, AND ABANDONMENT)³

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ⁴	Total annual burden hours & total annual cost	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) ⁵
18 CFR 157.5-.11 (Interstate Certificate and Abandonment Applications).	31	1.39	43 (rounded)	500 hrs.; \$50,000	21,500 hrs.; \$2,150,000	\$69,355
18 CFR 157.53 (Pipeline Purging/Testing Exemptions).	1	1	1	50 hrs.; \$5,000	50 hrs.; \$5,000	5,000
18 CFR 157.201-.209; 157.211; 157.214-.218 (Blanket Certificates Prior to Notice Filings).	30	2.125	63.75	200 hrs.; \$20,000	12,750 hrs.; \$1,275,000	42,500
18 CFR 157.201-.209; 157.211; 157.214-.218 (Blanket Certificates—Annual Reports).	176	1	176	50 hrs.; \$5,000	8,800hrs.; \$880,000	5,000
18 CFR 284.11 (NGPA Section 311 Construction—Annual Reports).	75	1	75	50 hrs.; \$5,000	3,750 hrs.; \$375,000	5,000
18 CFR 284.8 ⁶ (Request for Waiver of Capacity Release Regulations).	31	1.39	43 (rounded)	10 hrs.; \$1,000	430 hrs.; \$43,000	1,390
18 CFR 284.13(e) and 284.126(a) (Interstate and Intrastate Bypass Notice).	2	1	2	30 hrs.; \$3,000	60 hrs.; \$6,000	3,000
18 CFR 284.221 (Blanket Certificates).	1	1	1	100 hrs.; \$10,000	100 hrs.; \$10,000	10,000
18 CFR 284.224 (Hinshaw Blanket Certificates).	2	1	2	75 hrs.; \$7,500	150 hrs.; \$15,000	7,500
18 CFR 157.5-.11; 157.13-.20 (Non-facility Certificate or Abandonment Applications).	11	1.36	15	75 hrs.; \$7,500	1,125 hrs.; \$112,500	10,227
Project based Labor wages.	22	1	22	15 hrs. \$1,500	330 hrs. \$33,000	1,500
Total			444 (rounded)		49,045 hrs.; \$4,539,000	

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use

of automated collection techniques or other forms of information technology.

Dated: June 27, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-14672 Filed 7-2-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10522-024]

Malones Next Gen, LLC; Notice of Proposed Termination of License by Implied Surrender and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric proceeding has been initiated by the Commission and is available for public inspection:

² Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. Refer to 5 CFR 1320.3 for additional information.

³ Changes to estimated number of respondents were based on average number of respondents over the past three years.

⁴ The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * \$100.00/hour = Average cost/response. The figure is the 2024 FERC average hourly cost (for wages and benefits) of 100.00 (and an average annual salary of \$207,786/year). Commission staff is using the FERC average salary because we consider any reporting requirements completed in response to the FERC-537 to be

compensated at rates similar to the work of FERC employees.

⁵ Each of the figures in this column are rounded to the nearest dollar.

⁶ A Certificate Abandonment Application would require waiver of the Commission's capacity release regulations in 18 CFR 284.8; therefore this activity is associated with Interstate Certificate and Abandonment Applications.

a. *Type of Proceeding*: Proposed Termination of License by Implied Surrender.

b. *Project No*: 10522–024.

c. *Date Initiated*: April 11, 2024.

d. *Applicant*: Malones Next Gen, LLC.

e. *Name of Projects*: Whittelsey Dam.

f. *Location*: The project is located on the Salmon River, Franklin County, New York. The project does not occupy federal lands.

g. *Filed Pursuant to*: 18 CFR 6.4.

h. *Applicant Contact*: Tim Carter, 52 Factory Street, PO Box 466, Malone, NY, 12953, (518) 483–2220.

i. *FERC Contact*: Rebecca Martin, (202) 502–6012, Rebecca.martin@ferc.gov.

j. *Resource Agency Comments*: Federal, state, local and Tribal agencies are invited to file comments on the described proceeding. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

k. *Deadline for filing comments, motions to intervene, and protests*: August 12, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–10522–024. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a

particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project Facilities*: (1) a 19-foot-high, 12-foot-wide concrete gravity dam owned by the Village of Malone; (2) an impoundment with a surface area of 1.9 acres at elevation 668.4 mean sea level and a storage capacity of 25 acre-feet; (3) a 645-foot-long, 7-foot-diameter penstock; (4) a powerhouse containing a generating unit with a rated capacity of 420 kW; (5) a concrete tailrace; (6) a 60-foot-long transmission line; and (7) appurtenant facilities. The project has not operated since 2008.

m. *Description of Proceeding*: The licensee has not complied with Standard Article 16 of the license which was issued on December 24, 1991 (57 FERC 62,236). Article 16 states that if the licensee abandons or discontinues good faith operation of the project or refuses or neglects to comply with the terms of the license and the lawful orders of the Commission, the Commission will deem it to be the intent of the licensee to surrender the license.

In addition, Article 5 of the project license requires the licensee to acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. During the license period, the licensee must retain the possession of all project property covered by the license, including the project area, the project works, and all franchises, easements, water rights, and rights or occupancy and use. On November 21, 2017, the licensee forfeited the rights to the powerhouse and all of the property associated with the Whittelsey Dam Project in a tax sale.

Commission staff issued a letter, on February 12, 2021, requesting a plan and schedule to resume project operation or surrender of the license. On May 3, 2021, the licensee stated the project would return to operation by September 1, 2021. On May 11, 2022, staff issued a second request for documentation that the project had returned to operation. On June 1, 2022, staff issued a third letter requesting documentation of compliance with Article 5. Another letter was sent on July 19, 2022. On August 29, 2022, the licensee stated the project was in the process of being sold. On June 29, 2023, a final letter was sent requesting a transfer application or that the Commission would terminate the license through implied surrender. On

April 23, 2024, the licensee agreed to implied surrender of the license.

n. *Location of the license for the project* may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number (P–10522) excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502–8659.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

p. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Documents*: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

r. 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: June 26, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-14586 Filed 7-2-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD24-9-000]

Innovations and Efficiencies in Generator Interconnection; Supplemental Notice of Staff-Led Workshop

As first announced in the Notice of Staff-Led Workshop issued in this proceeding on May 13, 2024, pursuant to 18 CFR 2.1(a), the Federal Energy Regulatory Commission (Commission) will convene a staff-led workshop in the above-referenced proceeding at Commission headquarters, 888 First Street NE, Washington, DC 20426 on Tuesday, September 10, 2024 and Wednesday, September 11, 2024 from approximately 9:00 a.m. to 5:00 p.m. Eastern time. This supplemental notice provides additional detail as to the planned content of the workshop and the self-nomination process for interested panelists.

The conference will be held in-person. The tentative topics and panels for the workshop appear below. A detailed agenda with the final list of topics and panels, selected speakers, presentation dates, and times for the selected speakers will be published on the Commission's website¹ and in eLibrary at a later date.

This conference will bring together experts from diverse backgrounds including project developers, transmission owners and providers, government, research centers, and academia. The conference will bring these experts together for the purposes of identifying and discussing potential innovations and efficiencies related to generator interconnection.

Broadly, such topics fall into the following categories, which may be subject to change:

The Day 1 Innovations Panels will discuss enhancements to current

generator interconnection processes that may build upon the reforms in Order No. 2023.²

(Inn.1) Innovations Panel 1, integrated transmission planning and generator interconnection, will explore the extent to which transmission planning and generator interconnection processes may be further integrated beyond the reforms adopted in Order No. 1920.³ This panel will explore ideas to more efficiently and proactively plan for and interconnect new generation with increased cost certainty.

(Inn.2) Innovations Panel 2, further changes, will examine the viability and utility of different approaches to organizing, processing, and studying generator interconnection requests, such as an ERIS-focused (or "connect and manage") process, the use of competitive mechanisms (e.g., an auction process to allocate scarce capacity or to resolve competition for the same point of interconnection), or other potential approaches.

(Inn.3) Innovations Panel 3, prioritizing generator interconnection requests, will examine whether proposed generating facilities may be prioritized in the interconnection queue beyond the use of first-ready, first-served cluster window deadlines and readiness milestones as adopted by Order No. 2023 without undue discrimination.

The Day 2 Efficiencies Panels will discuss incremental changes to current generator interconnection processes that may build upon the reforms in Order No. 2023.

(Eff.1) Efficiencies Panel 1, the generator interconnection process, will evaluate the potential for increased efficiency throughout the generator interconnection process (excluding topics covered in Efficiencies Panels 2 and 3), such as, for example, providing additional pre-application data to interconnection customers or establishing fast-tracking processes for interconnection requests at points of interconnection with fewer system constraints.

(Eff.2) Efficiencies Panel 2, automation, will assess opportunities for greater efficiency in the processing and study of interconnection requests by automating different steps in the process and using advanced computing

technologies such as artificial intelligence to shorten the timeline from interconnection request to interconnection agreement.⁴

(Eff.3) Efficiencies Panel 3, post-generator interconnection agreement construction phase, will discuss opportunities for greater efficiency, transparency, and accountability in the design, construction, and operation of interconnection facilities and network upgrades.

Individuals interested in participating as panelists should submit a self-nomination email no later than 5:00 p.m. Eastern time on July 12, 2024, to *Panelist_InterconnectionWorkshop@ferc.gov*. The self-nominations should have "Panelist Self-Nomination" in the subject line and include the panelist's name, contact information, organizational affiliation, one-paragraph biography, the panel the self-nominated panelist proposes to speak on, and a description of what they would like to discuss. Speakers are encouraged to build on existing developments in generator interconnection. Presentations that center on pending contested proceedings or pending requests for variations submitted in compliance with Order No. 2023 are discouraged.

The workshop will be open to the public to attend virtually or in person and there is no fee for attendance. A supplemental notice will be issued with further details regarding the workshop agenda, as well as any changes in timing or logistics. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov*, prior to the event. To stay apprised of issuances in this docket, there is an "eSubscription" link on the Commission's website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The workshop will be transcribed and webcast. Transcripts will be available for a fee from Ace Reporting (202-347-3700). A link to the webcast of this event will be available in the Commission Calendar of Events at *www.ferc.gov*. The Commission provides technical support for the free webcasts. Please call 202-502-8680 or email *customer@ferc.gov* if you have any questions.

⁴ Artificial intelligence (AI) is a broad term for a spectrum of tools ranging from data validation on the simple side, to machine learning and statistical modeling in the middle, to deep learning and generative AI on the complex side of the spectrum.

² *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 184 FERC ¶ 61,054, order on reh'g, 185 FERC ¶ 61,063 (2023), order on reh'g, Order No. 2023-A, 186 FERC ¶ 61,199 (2024).

³ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068 (2024).

¹ <https://www.ferc.gov/news-events/events/innovations-and-efficiencies-generator-interconnection-workshop-docket-no-ad24-9>.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to accessibility@ferc.gov or call toll free (866) 208-3372 (voice) or (202) 502-8659 (TTY), or send a fax to (202) 208-2106 with the required accommodations.

For further information about this workshop, please contact:

Michael G. Henry (Technical Information). Office of Energy Policy and Innovation, 202-502-8583, Michael.Henry@ferc.gov
Lewis Taylor (Legal Information), Office of General Counsel, 202-502-8624, Lewis.Taylor@ferc.gov

Dated: June 27, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-14675 Filed 7-2-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RD24-5-000; RD24-1-000]

North American Electric Reliability Corporation; Order Approving Extreme Cold Weather Reliability Standard EOP-012-2 and Directing Modification

1. On February 16, 2024, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted a petition seeking approval of proposed Reliability Standard EOP-012-2 (Extreme Cold Weather Preparedness and Operations). As discussed in this order, we approve proposed Reliability Standard EOP-012-2, its associated violation risk factors and violation severity levels, NERC's proposed implementation plan, the newly defined terms Fixed Fuel Supply Component and Generator Cold Weather Constraint, the revised defined terms Generator Cold Weather Critical Component and Generator Cold Weather Reliability Event, and the retirement of Reliability Standard EOP-012-1 immediately prior to the effective date of proposed Reliability Standard EOP-012-2.¹ We also approve NERC's proposed implementation date for Reliability Standard EOP-011-4 and the proposed retirement of Reliability Standards EOP-011-2 and EOP-011-3 immediately prior to the effective date

of proposed Reliability Standard EOP-012-2.²

2. It is essential to the reliable operation of the Bulk-Power System to "ensure enough generating units will be available during the next cold weather event."³ When extreme cold weather events such as Winter Storms Uri or Elliott occur, the Bulk-Power System cannot operate reliably without adequate generation. Proposed Reliability Standard EOP-012-2 improves upon the approved, but not yet effective, Reliability Standard EOP-012-1 by clarifying the requirements for generator cold weather preparedness and by making other improvements consistent with the Commission's directives in its February 2023 Order to help ensure that more generation is available during extreme cold weather.⁴ Accordingly, we find that proposed Reliability Standard EOP-012-2 is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

3. Nevertheless, we find that proposed Reliability Standard EOP-012-2 requires improvement to address certain concerns, as discussed further below. Therefore, pursuant to section 215(d)(5) of the Federal Power Act (FPA),⁵ we direct NERC to:

(1) develop and submit modifications to proposed Reliability Standard EOP-012-2 to address concerns related to the ambiguity of the newly defined term Generator Cold Weather Constraint to ensure that the Generator Cold Weather Constraint declaration criteria included within the proposed Standard are objective and sufficiently detailed so that applicable entities understand what is required of them and to remove all references to "reasonable cost," "unreasonable cost," "cost," and "good business practices" and replace them with objective, unambiguous, and auditable terms;

(2) develop and submit modifications to proposed Reliability Standard EOP-012-2 for NERC to receive, review, evaluate, and confirm the validity of each Generator Cold Weather Constraint invoked by a generator owner, in a timely fashion, to ensure that such declaration cannot be used to avoid

mandatory compliance with the proposed Reliability Standard or obligations in a corrective action plan; (3) develop and submit modifications to proposed Reliability Standard EOP-012-2 to shorten and clarify the corrective action plan implementation timelines and deadlines in Requirement R7, as further directed below;

(4) develop and submit modifications to Requirement R7 of proposed Reliability Standard EOP-012-2 to ensure that any extension of a corrective action plan implementation deadline beyond the maximum implementation timeframe required by the Standard is pre-approved by NERC and to ensure that the generator owner informs relevant registered entities of operating limitations in extreme cold weather during the period of the extension; and (5) develop and submit modifications to Requirement R8, part 8.1 of proposed Reliability Standard EOP-012-2 to implement more frequent reviews of Generator Cold Weather Constraint declarations to verify that the constraint declaration remains valid.

4. The Commission has repeatedly expressed an urgency in completing cold weather Reliability Standards and having them implemented in a timely manner to address the risks presented by cold weather events on the reliability of the Bulk-Power System.⁶ Further, we note that NERC submitted the current filing in response to Commission directives to improve the cold weather Reliability Standards, and the five core directives to NERC in this order are not new issues, but rather targeted modifications necessary to fully address issues identified in the Commission's prior February 2023 Order. Accordingly, we direct NERC to make the above modifications and submit the revised Reliability Standard within nine months of the date of issuance of this order.⁷

I. Background

A. Section 215 and Mandatory Reliability Standards

5. Section 215 of the FPA provides that the Commission may certify an ERO, the purpose of which is to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.⁸ Reliability

² *Id.*

³ FERC, NERC, and Regional Entity Staff, *The February 2021 Cold Weather Outages in Texas and the South Central United States*, at 189 (Nov. 16, 2021), <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and> (November 2021 Report).

⁴ See, e.g., *N. Am. Elec. Reliability Corp.*, 182 FERC ¶ 61,094, PP 3-11 (2023) (February 2023 Order); *reh'g denied*, 183 FERC ¶ 62,034, *order on reh'g*, 183 FERC ¶ 61,222 (2023).

⁵ 16 U.S.C. 824o(d)(5).

⁶ See e.g., *N. Am. Elec. Reliability Corp.*, 183 FERC ¶ 62,034 at P 10 (emphasizing that industry has been aware of and alerted to the need to prepare generating units for cold weather since at least 2011 and that in considering an appropriate implementation period for Reliability Standard EOP-012-1, NERC should consider how much time industry has already had to implement freeze protection measures).

⁷ 18 CFR 39.6(g) (2023).

⁸ 16 U.S.C. 824o(c).

¹ 16 U.S.C. 824o(d)(2).

Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.⁹ Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,¹⁰ and subsequently certified NERC.¹¹

B. The February 2021 Cold Weather Reliability Event

6. On February 16, 2021, Commission, NERC, and Regional Entity staff initiated a joint inquiry into the circumstances surrounding a February 2021 cold weather reliability event then affecting Texas and the South-Central United States. In November 2021, Commission staff issued a report regarding the event, which found that the event was the largest controlled firm load shed event in U.S. history; over 4.5 million people lost power and at least 210 people lost their lives during the event.¹² The November 2021 Report made 28 recommendations including, *inter alia*, enhancements to the Reliability Standards to improve extreme cold weather operations, preparedness, and coordination.¹³

7. After the February 2021 cold weather reliability event, but before the November 2021 Report was issued, NERC filed a petition for approval of cold weather Reliability Standards addressing recommendations from a report regarding a 2018 cold weather event.¹⁴ In August 2021, the Commission approved NERC's modifications to Reliability Standards EOP-011-2 (Emergency Preparedness and Operations), IRO-010-4 (Reliability Coordinator Data Specification and Collection), and TOP-003-5 (Operational Reliability Data).¹⁵ Reliability Standards IRO-010-4 and TOP-003-5 require that reliability coordinators, transmission operators, and balancing authorities develop, maintain, and share generator cold

weather data.¹⁶ Reliability Standard EOP-011-2 requires generator owners to have generating unit cold weather preparedness plans.¹⁷

8. On October 28, 2022, NERC filed a petition seeking approval of Reliability Standards EOP-011-3 (Emergency Operations) and EOP-012-1 (Extreme Cold Weather Preparedness and Operations), their associated violation risk factors and violation severity levels, three newly-defined terms (Extreme Cold Weather Temperature, Generator Cold Weather Critical Component, and Generator Cold Weather Reliability Event), NERC's proposed implementation plan, and the retirement of Reliability Standard EOP-011-2.¹⁸ On February 16, 2023, the Commission approved Reliability Standards EOP-011-3 and EOP-012-1, directed NERC to develop and submit modifications to Reliability Standard EOP-012-1 and to submit a plan on how NERC will collect and assess data surrounding the implementation of Reliability Standard EOP-012-1, and deferred the retirement of Reliability Standard EOP-011-2.¹⁹

9. On October 30, 2023, NERC filed a petition seeking approval of Reliability Standards EOP-011-4 (Emergency Operations) and TOP-002-5 (Operations Planning), their associated violation risk factors and violation severity levels, NERC's proposed implementation plan, and the retirement of Reliability Standards EOP-011-2 and TOP-002-4. On February 15, 2024, the Commission approved Reliability Standards EOP-011-3 and TOP-002-5 and again deferred the retirement of Reliability Standard EOP-011-2.²⁰

C. NERC's Petition and Proposed Reliability Standard EOP-012-2

10. On February 16, 2024, in response to the Commission's February 2023 Order, NERC filed a petition seeking approval of proposed Reliability Standard EOP-012-2,²¹ its associated violation risk factors and violation severity levels, two newly defined terms (Fixed Fuel Supply Component and Generator Cold Weather Constraint), two revised terms (Generator Cold Weather Critical Component and

Generator Cold Weather Reliability Event), NERC's proposed implementation plan, and the retirement of currently approved Reliability Standard EOP-012-1.²² NERC explains that proposed Reliability Standard EOP-012-2 improves upon the approved, but not yet effective, generator cold weather preparation Reliability Standard EOP-012-1 and is consistent with the Commission's directives from the February 2023 Order.²³ NERC states that proposed Reliability Standard EOP-012-2 clarifies applicability of the Standard's requirements for generator cold weather preparedness, would further define the circumstances under which a generator owner may declare that constraints preclude it from implementing one or more corrective actions to address freezing issues, and shortens the implementation timeline so that cold weather reliability risks would be addressed sooner.²⁴

11. NERC states that the purpose of proposed Reliability Standard EOP-012-2 is unchanged from that of approved Reliability Standard EOP-012-1, which is to ensure that each generator owner develops and implements plans to alleviate the reliability impacts of extreme cold weather on its generating units.²⁵ NERC also notes that proposed Reliability Standard EOP-012-2 completes NERC's two-part plan to address recommendations from the November 2021 Report by including revisions to address parts of Key Recommendations 1a, 1b, 1c, and 1d.²⁶ NERC states that the proposed Reliability Standard contains new and revised requirements to advance the reliability of the Bulk-Power System by requiring generator owners to (1) review their generator cold weather data periodically, (2) include any identified start up issues in their generator cold weather data provided to reliability entities, and (3) consider the impacts of freezing precipitation and wind speed in identifying generator cold weather data.²⁷

12. Proposed Reliability Standard EOP-012-2 has eight requirements, seven of which have been carried over and modified from approved Reliability Standard EOP-012-1 (Requirements R1-R7) and one of which is new (Requirement R8). Proposed Reliability Standard EOP-012-2 applies to

⁹ *Id.* sec. 824o(e).

¹⁰ *Rules Concerning Certification of the Elec. Reliability Org.; & Procs. for the Establishment, Approval, & Enforcement of Elec. Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104, *order on reh'g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006); *see also* 18 CFR 39.4(b) (2023).

¹¹ *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

¹² *See* November 2021 Report at 9.

¹³ *Id.* at 184–212 (sub-recommendations 1a through 1j).

¹⁴ FERC and NERC Staff, *The South Central United States Cold Weather Bulk Electric System Event of January 17, 2018*, at 89 (Jul. 2019), <https://www.ferc.gov/sites/default/files/2020-07/SouthCentralUnitedStatesColdWeatherBulkElectricSystemEventofJanuary17-2018.pdf>.

¹⁵ *See generally* *N. Am. Elec. Reliability Corp.*, 176 FERC ¶ 61,119 (2021).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ NERC 2022 Petition at 1–2.

¹⁹ *See* February 2023 Order, 182 FERC ¶ 61,094 at PP 3–11.

²⁰ *See id.* PP 1–2.

²¹ The proposed Reliability Standard EOP-012-2 is not attached to this order. The proposed Reliability Standard is available on the Commission's eLibrary document retrieval system in Docket No. RD24–5–000 and on the NERC website, www.nerc.com.

²² NERC Petition at 1–4.

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ *Id.* at 29.

²⁶ *See id.* at 25–26, 35, 49–50 (citing the November 2021 Report at 184–86).

²⁷ *Id.* at 23.

generator owners and generator operators that own or operate bulk electric system generating units.²⁸

13. Proposed Reliability Standard EOP-012-2, Requirement R1 modifies the Requirements for each generator owner to calculate the Extreme Cold Weather Temperature for each of its applicable generating units and to recalculate that temperature at least once every five calendar years.²⁹ Where a periodic re-calculation results in a lower Extreme Cold Weather Temperature for the generating unit, the generator owner must update its cold weather preparedness plan within six months and, if necessary, develop a corrective action plan to implement measures at the applicable unit to provide the capability to operate at that new, lower temperature. Proposed Reliability Standard EOP-012-2, Requirement R1, Part 1.2, also maintains Requirement R3.1 to identify generating unit cold weather data, including operating limitations in cold weather and minimum operating temperatures, from approved Reliability Standard EOP-012-1, Requirement R3, Part 3.5.³⁰

14. Proposed Reliability Standard EOP-012-2, Requirements R2 and R3 clarify the cold weather operational capability requirements for new and existing bulk electric system generating units.³¹ Under proposed Reliability Standard EOP-012-2, Requirement R2, generator owners would be required to implement freeze protection measures at applicable bulk electric system generating units to provide the capability to operate at the Extreme Cold Weather Temperature with sustained, concurrent 20 mph wind speed for the unit.³² Specifically, Requirement R2 requires generating units with a commercial operation date on or after October 1, 2027, to be capable of operating at the unit's Extreme Cold Weather Temperature for a continuous 12-hour period or at the maximum operational duration for intermittent energy resources if less than 12 continuous hours. If a generating unit is unable to do either then it must develop a corrective action plan to add new or modify existing or previously planned freeze protection

measures to provide the capability to operate at the unit's Extreme Cold Weather Temperature with a sustained, concurrent 20 mph wind speed.³³

15. Similar to Requirement R2, but without the wind and duration criteria, Requirement R3 requires either that existing generating units, (*i.e.*, those in commercial operation prior to October 1, 2027) be capable of operating at the unit's Extreme Cold Weather Temperature or that the generator owner develops a corrective action plan to address the unit's inability to continuously operate successfully.³⁴ Requirements R2 and R3 exempt generating units that do not self-commit or are not required to operate at or below a temperature of 32 degrees Fahrenheit, including those that may be called upon to operate to assist in mitigating emergencies during periods at or below 32 degrees Fahrenheit.³⁵

16. Proposed Reliability Standard EOP-012-2, Requirement R4,³⁶ modifies the requirement for generator owners to implement and maintain cold weather preparedness plans.³⁷ Under Requirement R4, generator owners would include in their cold weather preparedness plans the information determined in accordance with proposed Reliability Standard EOP-012-2, Requirement R1. Requirement R4 also clarifies that the cold weather preparedness plans shall reflect the lowest calculated Extreme Cold Weather Temperature for the unit, even if subsequent re-calculations indicate warming temperatures.³⁸

17. Proposed Reliability Standard EOP-012-2, Requirement R5 is substantively unchanged from the prior version of the Standard. Requirement R5 states that generator owners must train their personnel annually on the unit's cold weather preparedness plans.³⁹

18. Proposed Reliability Standard EOP-012-2, Requirement R6 modifies the requirement that generator owners that self-commit or are required to operate at or below a temperature of 32

degrees Fahrenheit and experience an outage, failure to start, or derate due to freezing at or above their Extreme Cold Weather Temperature must develop a corrective action plan to address the identified causes. Requirement R6 exempts generating units that do not self-commit or are not required to operate at or below a temperature of 32 degrees Fahrenheit, including those that may be called upon to operate to assist in mitigating emergencies during periods at or below 32 degrees Fahrenheit.⁴⁰

19. Proposed Reliability Standard EOP-012-2, Requirement R7 modifies the requirement for implementing corrective action plans. Requirement R7 includes new implementation deadlines for implementing corrective action plans and clarifies the types of constraints that may preclude the implementation of one or more corrective actions.⁴¹ Specifically, Requirement R7 requires that for each corrective action plan developed pursuant to Requirements R1, R2, R3, or R6, generator owners shall include a timetable for implementing the corrective actions and complete the corrective actions in accordance with the timetables outlined in the proposed Standard.⁴² Under Requirement R7, generator owners are permitted to update the corrective action plan timetables, with justifications, if corrective actions change or the timetable exceeds the timelines in Requirement R7, Part 7.1. This requirement also states that the generator owner must document, in a declaration with justification, any Generator Cold Weather Constraint that precludes the generator owner from implementing the selected actions contained within the corrective action plan.⁴³

20. Proposed Reliability Standard EOP-012-2, Requirement R8 is a new requirement that would apply to generator owners that have declared a Generator Cold Weather Constraint under Requirement R7. Specifically, this

²⁸ *Id.* at 38.

²⁹ *Id.* at 38–39.

³⁰ Proposed Reliability Standard EOP-012-2, Requirement R2, n.1 and Requirement R3, n.2; *see also* NERC Petition at 41–42.

³¹ Proposed Reliability Standard EOP-012-2, Requirement R4 was originally Requirement R3 in currently approved but not yet effective Reliability Standard EOP-012-1.

³² NERC Petition at 45.

³³ *Id.* at 46 (citing proposed Reliability Standard EOP-012-2, Requirement R4, n.3, which states that generator owners shall include the lowest calculated Extreme Cold Weather Temperature for the unit, even where subsequent periodic re-calculations under Requirement R1, Part 1.1 cause an increase in the Extreme Cold Weather Temperature).

³⁴ *Id.* at 47.

⁴⁰ *Id.* at 48 (citing Proposed Reliability Standard EOP-012-2, Requirement R6, n.4).

⁴¹ *Id.* at 50.

⁴² *Id.* at 50–51 (noting that generator owners must list the actions that address *existing* equipment or freeze protection measures to be completed within 24 calendar months of completing development of the corrective action plan, list the actions that require *new* equipment or freeze protection measures, if any, to be completed within 48 calendar months of completing development of the corrective action plan, and list the updates to the cold weather preparedness plan requirement under Requirement R4 to identify the updates or additions to the Generator Cold Weather Critical Components and their freeze protection measures) (emphasis added).

⁴³ NERC Petition at 51–60.

²⁸ NERC Petition at 22–23.

²⁹ Requirement R1 under proposed Reliability Standard EOP-012-2 modifies existing Requirement R3, Part 3.1 and Requirement R4 under currently approved but not yet effective Reliability Standard EOP-012-1.

³⁰ NERC Petition at 33–37.

³¹ Requirements R2 and R3 under proposed Reliability Standard EOP-012-2 were originally Requirements R1 and R2, respectively, under currently approved but not yet effective Reliability Standard EOP-012-1.

³² NERC Petition at 37.

requirement states that each generator owner that creates a Generator Cold Weather Constraint declaration shall review the Generator Cold Weather Constraint declaration at least every five calendar years or as needed when a change of status to the Generator Cold Weather Constraint occurs and update the operating limitations associated with capability and availability under Requirement R1, Part 1.2, if applicable.⁴⁴

21. NERC requests that the Commission approve the violation risk factors and violation severity levels for proposed Reliability Standard EOP-012-2.⁴⁵ Further, NERC proposes an effective date for Reliability Standard EOP-012-2 (with the exception of Requirement R3, which would become mandatory and enforceable 12-months following the proposed Standard's effective date) of October 1, 2024 or the first day of the first calendar quarter that is three months following regulatory approval, whichever is later.⁴⁶

22. Finally, NERC requests that the Commission approve proposed Reliability Standard EOP-012-2 in an expedited manner. NERC explains that, among other things, expedited approval would provide regulatory certainty to entities seeking to comply with the proposed Reliability Standard ahead of the mandatory and enforceable date.⁴⁷

II. Notice of Filing and Responsive Pleadings

23. Notice of NERC's February 16, 2024, Petition was published in the **Federal Register**, 89 FR 14,479 (2024), with comments, protests, and motions to intervene due on or before March 21, 2024.

24. The Commission received one protest, one set of comments, and five sets of out of time answers. The Electric Power Supply Association (EPSA); the New England Power Generators Association, Inc. (NEPGA); Dominion Energy Services, Inc. (Dominion), Constellation Energy Generation, LLC (Constellation), and the Independent System Operators and Regional Transmission Organizations Council (the ISO/RTO Council) filed timely motions to intervene. The Transmission Access Policy Study Group (TAPS); Avangrid Renewables, LLC; and the Pennsylvania Public Utility Commission filed out of time motions to intervene. NEPGA filed timely comments. The ISO/RTO Council filed a timely protest. EPSA, TAPS, NERC, and the ISO/RTO

Council filed motions for leave to answer along with answers.⁴⁸

25. Commenters and protesters raised concerns and requests for clarifications for proposed Reliability Standard EOP-012-2. The commenters range in their support for proposed Reliability Standard EOP-012-2 from requesting that the Commission approve the proposed Standard as filed⁴⁹ or approve the proposed Standard as filed with minor clarifications,⁵⁰ to requesting that the Commission remand the proposed Standard to NERC with directives.⁵¹ The comments on specific matters are summarized and addressed in the determinations below.

III. Determination

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2023), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2) (2023), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 CFR 385.214(d), we grant TAPS, Avangrid Renewables, LLC, and the Pennsylvania Public Utility Commission's motions for leave to file out of time motions to intervene given their interest in the proceeding and the absence of undue prejudice or delay.

B. Substantive Matters

28. Pursuant to section 215(d)(2) of the FPA, we approve proposed Reliability Standard EOP-012-2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. Absent the reforms adopted in proposed Reliability Standard EOP-012-2, the unexpected failure of generating units during extreme cold weather conditions could negatively impact the reliability of the Bulk-Power System.

29. We find that proposed Reliability Standard EOP-012-2 represents an improvement over approved Reliability Standard EOP-012-1 as the proposed Standard enhances the reliable operation of the Bulk-Power System. Specifically, the proposed Reliability Standard will improve reliability by

requiring generator owners to implement freeze protection measures, develop detailed cold weather preparedness plans, implement annual trainings, draft and implement corrective action plans to address freezing issues, and provide certain cold weather operating parameters to reliability coordinators, transmission operators, and balancing authorities for use in their analyses and planning. We believe that these measures will help address many of the issues identified as contributing to generating unit failures during extreme cold weather conditions, as noted in the November 2021 Report.⁵²

30. Nevertheless, while we find that NERC's petition is an improvement to the currently approved Reliability Standard, we also find that there are some elements of proposed Reliability Standard EOP-012-2 that are not fully responsive to the Commission's February 2023 Order.⁵³ Accordingly, as discussed further below, we direct NERC pursuant to section 215(d)(5) of the FPA to address these issues.

31. Although we find that the Reliability Standard needs additional improvement, we are not persuaded that there is sufficient cause to remand proposed Standard EOP-012-2, as requested by the ISO/RTO Council.⁵⁴ Proposed Reliability Standard EOP-012-2 represents an improvement over approved Reliability Standard EOP-012-1, and remanding the proposed Standard would allow currently approved Reliability Standard EOP-012-1 to go into effect on October 1, 2024, despite its ambiguities and other identified issues.⁵⁵

32. Below we address the following elements of proposed Reliability Standard EOP-012-2: (1) Generator Cold Weather Constraint declaration criteria; (2) the entity to receive, review, evaluate, and confirm for validity the Generator Cold Weather Constraint declarations; (3) the length of the corrective action plan implementation deadlines; (4) the corrective action plan

⁵² See November 2021 Report at 184–210.

⁵³ See NERC Petition at 27–28; see also February 2023 Order, 182 FERC ¶ 61,094 at PP 1, 3, 6, 9–10, 66, 77–79, 88.

⁵⁴ See ISO/RTO Council Protest at 4.

⁵⁵ See, e.g., *Mandatory Reliability Standards for the Bulk-Power Sys.*, Order No. 693, 118 FERC ¶ 61,218, at P 10; *order on reh'g*, Order No. 693–A, 120 FERC ¶ 61,053 (2007) (noting that “[w]here a Reliability Standard requires significant improvement, but is otherwise enforceable, the Commission approves the Reliability Standard” and “directs the ERO to modify” such Standards to address identified issues or concerns); *Version 5 Critical Infrastructure Prot. Reliability Standards*, Order No. 791, 145 FERC ¶ 61,160, at PP 1–4 (2013); *order on clarification and reh'g*, Order No. 791–A, 146 FERC ¶ 61,188 (2014).

⁴⁴ *Id.* at 62.

⁴⁵ *Id.* at 2–3.

⁴⁶ *Id.* at 66.

⁴⁷ *Id.* at 70–71.

⁴⁸ TAPS filed two answers.

⁴⁹ NERC Answer at 1–3; 29.

⁵⁰ See NEPGA Comments 1–5; EPSA Answer 1–5; TAPS Answer at 1–2.

⁵¹ See ISO/RTO Council Protest at 1–3.

implementation timelines for existing versus new generating units; (5) the generating unit freeze measure applicability exemptions within proposed Requirements R2, R3, and R6; (6) the winterization criteria for new versus existing generating units; (7) the annual inspections and maintenance of a generating unit's freeze protection measures; (8) the five-year review period for declared Generator Cold Weather Constraints; and (9) cost recovery mechanisms.

1. Generator Cold Weather Constraint Declaration Criteria

a. The Commission's Directive in the February 2023 Order

33. Under Reliability Standard EOP-012-1, a generator owner could explain in a declaration any "technical, commercial, or operational constraints" that preclude its ability to either implement freeze protection measures or implement corrective action plans. However, Reliability Standard EOP-012-1 does not define "technical, commercial, or operational constraints," leaving those terms open to interpretation by each generator owner. In the February 2023 Order, the Commission approved Reliability Standard EOP-012-1 but expressed concern with the uncertainties, ambiguities, and vagueness of the Standard's descriptions of constraints, noting that, without criteria to guide the generator owners or guardrails on what constitutes a legitimate constraint, generator owners may avoid the purpose of the Standard altogether or have declarations without auditable elements. Thus, the Commission directed NERC to address the ambiguity of generator owner-defined declarations by including auditable criteria to ensure that declarations cannot be used to avoid mandatory compliance with the Reliability Standard or obligations in a corrective action plan.⁵⁶

b. NERC's Petition

34. In proposed Reliability Standard EOP-012-2, NERC proposes to replace the undefined "technical, commercial, or operational constraints" with the newly defined Glossary term "Generator Cold Weather Constraint." The term explains that constraints are conditions precluding generator owners from implementing freeze protection measures based on one or more criteria. NERC states that:

Criteria used to determine a constraint includes practices, methods, or technologies which, given the exercise

of reasonable judgment in light of the facts known at the time the decision to declare the constraint was made:

- Were not broadly implemented at generating units for comparable unit types in regions that experience similar winter climate conditions to provide reasonable assurance of efficacy;
- Could not have been expected to accomplish the desired result; or
- Could not have been implemented at a reasonable cost consistent with good business practices, reliability, or safety. A cost may be deemed "unreasonable" when implementation of selected freeze protection measure(s) are uneconomical to the extent that they would require prohibitively expensive modifications or significant expenditures on equipment with minimal remaining life.⁵⁷

35. During the development of proposed Reliability Standard EOP-012-2, NERC's Standard Drafting Team explained that using a reasonableness standard as a benchmark for evaluating constraint declarations is appropriate given the wide range of facts and circumstances that will be relevant under the definition.⁵⁸ The Standard Drafting Team added that the "reasonableness standard is typically an objective test that looks at the average decision maker's conduct under the particular facts and circumstances present if they exercised average care, skill, and judgement."⁵⁹ NERC's Standard Drafting Team considered adding specific criteria but was of the opinion that the proposed Reliability Standard must be adaptable as facts and circumstances change and new solutions are identified and become commercially available.⁶⁰ NERC's petition states that the language used in the Generator Cold Weather Constraint definition is modeled after the concept of "good utility practice" and is intended to convey that the proposed Reliability Standard "would not require the *best* solutions, which would result in more constraints being declared, but rather *acceptable* solutions."⁶¹ NERC states that the term "unreasonable costs" is intended to refer to cost-prohibitive modifications or significant expenditures that could lead to premature retirement of equipment.⁶²

⁵⁷ NERC Petition at 28.

⁵⁸ *Id.*, Ex. F, at 50-51.

⁵⁹ *See id.*, Ex. F at 1,772.

⁶⁰ *See id.*

⁶¹ *See* NERC Petition at 57 (citing to the Commission's *pro forma* Open Access Transmission Tariff, section 1.15).

⁶² *Id.*

c. Comments

36. The ISO/RTO Council argues that the discussion of freeze protection measures in the newly defined Generator Cold Weather Constraint term creates ambiguity that provides far too much discretion to the entities required to comply with proposed Reliability Standard EOP-012-2.⁶³ The ISO/RTO Council believes that the proposed Standard provides insufficient guidance concerning a generator owner's exercise of discretion to interpret whether freeze protection measures are available for its equipment when determining whether a basis exists to declare a constraint. As such, the ISO/RTO Council recommends that the Commission direct NERC to revise the constraint declaration language so that it is clear that freeze protection measures are intended to include practices, methods, or technologies that would reasonably be expected to result in effective facility performance while operating at the Extreme Cold Weather Temperature.⁶⁴

37. NERC, in its answer, states that its Standard Drafting Team determined that proposed Reliability Standard EOP-012-2 should not require entities to implement technologies or solutions that had not been proven to be effective in similar climate conditions.⁶⁵ TAPS members, while initially expressing concern during the development of proposed Standard2, now believe that NERC guidance will help ensure consistent application of the Generator Cold Weather Constraint declaration criteria.⁶⁶ TAPS asserts that the new definition is auditable and greatly improves upon NERC's approach in approved Reliability Standard EOP-012-1.⁶⁷

38. The ISO/RTO Council also states that the inclusion of "reasonable cost" in the definition of what qualifies as a potential Generator Cold Weather Constraint is subjective, unclear, and un-auditable.⁶⁸ The ISO/RTO Council is concerned that this would allow generator owners to declare a constraint simply by asserting that implementing a given freeze protection measure would constitute a "prohibitively expensive modification[]" or a "significant expenditure[]" and that the affected facility has a "minimal remaining

⁶³ ISO/RTO Council Protest at 13.

⁶⁴ *Id.* at 15.

⁶⁵ NERC Answer at 14 (noting that the Commission is only required to find that the proposed Reliability Standard, as written, is just and reasonable rather than the "best" option and requesting that the Commission give due weight to the expertise of the Standard Drafting Team).

⁶⁶ TAPS Answer at 2-3.

⁶⁷ *Id.*

⁶⁸ ISO/RTO Council Protest at 6.

⁵⁶ February 2023 Order, 182 FERC ¶ 61,094 at PP 6, 66.

life.’ ”⁶⁹ They state that this exception effectively injects NERC and the Regional Entities into the process of judging the reasonableness of costs and a particular generator owner’s financial situation.⁷⁰ As such, the ISO/RTO Council recommends that the Commission direct NERC to remove the cost-based constraints from proposed Reliability Standard EOP–012–2.⁷¹ They state that the Commission faces a policy choice of whether to adopt exceptions to compliance based on generator owners’ assertions of excessive costs or whether to apply its FPA section 205 and 206 authority to provide avenues for generator owners to recover costs.⁷²

39. In contrast, TAPS argues that the definition of an economic constraint is quite narrow and does not permit a balancing of costs against benefits.⁷³ TAPS does not agree with the ISO/RTO Council that cost-based constraints should be removed from the Generator Cold Weather Constraint definition entirely since that would make the proposed Reliability Standard unreasonable and contrary to the requirements of FPA section 215(d)(2).⁷⁴ TAPS argues that such removal would mandate winterization at any cost, no matter how unjustifiable.⁷⁵

40. In its answer, NERC states that the proposed definition of Generator Cold Weather Constraint accounts for concerns that the requirements to operate in cold weather could “lead to fewer generators choosing to operate in cold weather due to prohibitive costs or technical inability to meet the operational capability requirements” of the proposed Reliability Standard.⁷⁶ NERC asserts that the ISO/RTO Council is not taking into account the reliability impacts that may occur if the cost of compliance is prohibitively high and generators choose not to operate.⁷⁷ On the auditability issue, NERC states that the proposed definition is auditable and that the ISO/RTO Council is conflating

“auditability” and “flexibility.” They state that NERC and the Regional Entities “understand that they will be assessing the reasonableness of the process entities use to declare constraints” and will continue to monitor implementation of the proposed Reliability Standard closely.⁷⁸

d. Commission Determination

41. Although NERC’s proposal to replace the existing “technical, commercial, and operational” constraints with the newly defined Generator Cold Weather Constraint term and associated criteria meets the Commission’s directive to develop criteria for constraint declarations, it does not meet the Commission’s directives to develop criteria that are objective, unambiguous, and auditable.⁷⁹ In Reliability Standard EOP–012–1, the use of “technical, commercial and operational constraints” was a stand-alone phrase, and did not include any definitions or further explanation of the conditions under which such declarations could be made, causing the ambiguity concerns raised in the February 2023 Order.⁸⁰ Moreover, Reliability Standard EOP–012–1 left it up to the *generator owner* to interpret what it meant to have a technical, commercial, or operational constraint. By adding some criteria for the constraint declarations, we find that NERC’s proposed Generator Cold Weather Constraint declaration criteria improves upon the status quo.

42. Nevertheless, we share the ISO/RTO Council’s concerns that the proposed Generator Cold Weather Constraint declaration criteria are also ambiguous, which may lead to inconsistent application and uncertainty. For example, the proposed definition does not provide sufficient guidance on how widely a freeze protection technology must be deployed before it will be considered a “generally implemented” technology. We agree with the ISO/RTO Council’s concern that this focus on general industry practice, without any way to ensure consistency in the application of that language, leaves the Commission without an objective standard that can be effectively audited.

43. In response to the ISO/RTO Council’s concern, NERC states that its Standard Drafting Team determined that proposed Reliability Standard EOP–012–2 should not require the implementation of unproven

technologies.⁸¹ We agree. However, in its effort to provide flexibility, the proposed Reliability Standard falls short of the Commission’s directive to develop criteria that are objective, unambiguous, and auditable, as discussed further below.⁸² The Commission has previously expressed similar concerns regarding the vagueness and enforceability of a Reliability Standard’s language. For example, in Order No. 693 the Commission approved Reliability Standards while also expressing concern that the term “sabotage” was too ambiguous.⁸³ Similarly, in Order No. 791 (approving Version 5 of the Critical Infrastructure Protection Reliability Standards), the Commission raised concerns with vague language that required entities to “identify, assess, and correct” deficiencies.⁸⁴ The Commission determined that the ambiguities resulted in an “unacceptable amount of uncertainty” and directed NERC to remove the ambiguous language and develop appropriate modifications.⁸⁵ In both Order Nos. 693 and 791, the Commission approved NERC’s proposed Reliability Standards as an improvement to reliability, while directing NERC to submit modifications to the Reliability Standards addressing the Commission’s concern regarding the vagueness of particular language. We conclude that a similar approach is appropriate in the instant proceeding, given the improvements offered by proposed Reliability Standard EOP–012–2 in addressing Bulk-Power System reliability during extreme cold weather events.

44. We also find that the inclusion of the clause “reasonable cost consistent with good business practices” in the third criterion of the Generator Cold Weather Constraint definition does not meet the Commission’s directive to create criteria that are objective, unambiguous, and auditable.⁸⁶ In its answer, NERC explains that its Standard Drafting Team was concerned about the reliability impacts that may follow from a mandate to retrofit a generating unit at any cost when many generator owners have significant discretion regarding whether and when they will participate

⁶⁹ *Id.* at 7 (quoting NERC’s proposed definition of the Generator Cold Weather Constraint); *see also* NERC Petition, Ex. A, at 3.

⁷⁰ ISO/RTO Council Protest at 7.

⁷¹ *Id.* at 7–8, 12 (stating that cost should be addressed by the Commission through its obligation to ensure just and reasonable rates and by the appropriate state, local, and regulatory authorities rather than being “shoehorned” into a Reliability Standard).

⁷² ISO/RTO Council Answer at 4–8.

⁷³ TAPS Answer at 4; TAPS Second Answer at 3.

⁷⁴ TAPS Answer at 5 (citing to 16 U.S.C. 824o(d)(2), which provides that “[t]he Commission may approve . . . a proposed reliability standard . . . if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest”).

⁷⁵ *Id.*

⁷⁶ NERC Answer at 8.

⁷⁷ *Id.* at 9.

⁷⁸ *Id.* at 10–11.

⁷⁹ February 2023 Order, 182 FERC ¶ 61,094 at PP 6, 66.

⁸⁰ *See id.* PP 6, 64–66.

⁸¹ NERC Answer at 13–14.

⁸² February 2023 Order, 182 FERC ¶ 61,094 at PP 6, 66.

⁸³ *See* Order No. 693, 118 FERC ¶ 61,218 at PP 1, 461.

⁸⁴ *See* Order No. 791, 145 FERC ¶ 61,160 at PP 49–53, 67, 69.

⁸⁵ *See id.*; *see also* Order No. 693, 118 FERC ¶ 61,218 at PP 1, 461.

⁸⁶ February 2023 Order, 182 FERC ¶ 61,094 at PP 6, 66.

in the market. While we agree there may be a need to account for certain cases in which the cost of retrofitting may be unnecessarily burdensome, the mechanism in proposed Reliability Standard EOP-012-2 to address such cases provides a recipe for inconsistent outcomes. Although NERC argues that the use of “reasonable cost consistent with good business practices” is akin to the Commission’s use of “good utility practice,” we find such comparisons unavailing. Neither the proposed Reliability Standard itself nor the NERC Glossary of Terms defines what constitutes a “reasonable cost” or “good business practices.” Even if it did, NERC, as the ERO, is not well positioned to assess the reasonableness of a registered entity’s economic choices. Additionally, while “good utility practice” has been widely used in Commission-jurisdictional contracts and tariffs,⁸⁷ it has not been used in the FPA section 215 context.⁸⁸

45. The Commission has previously rejected similar attempts to include vaguely defined cost considerations in Reliability Standards. Specifically, in Order No. 706, the Commission directed NERC to remove references to reasonable business judgment in its Reliability Standard.⁸⁹ The Commission largely based its finding on the fact that NERC’s Glossary of Terms did not define the term “reasonable business judgment” and the Reliability Standard itself did not suggest how the term should be interpreted.⁹⁰

46. We acknowledge that there may be certain instances in which the cost of retrofitting may be unduly burdensome. To address such instances, NERC should clearly define such exceptions and present them for Commission review. For example, one approach could be for NERC to provide a limited set of clearly defined circumstances that could serve as constraints, such as an attestation⁹¹ from a generator owner or generator operator that: (1) the generating unit is scheduled to retire within the next two years; (2) implementing freeze protection measures in accordance with the Reliability Standard would cause the generating unit to retire within two

years; or (3) they would cancel a newly scheduled generating unit that has not yet achieved commercial operation if required to comply with the freeze protection requirements of a Standard.⁹² Including discrete circumstances regarding what constitutes an acceptable economic constraint could provide clarity to generator owners considering constraint declarations and allow for an objective and straightforward evaluation of the constraint declaration criteria during compliance monitoring activities.

47. Accordingly, we direct NERC, pursuant to section 215(d)(5) of the FPA, to develop and submit to the Commission for approval modifications to proposed Reliability Standard EOP-012-2 that address concerns related to the ambiguity of the newly defined Generator Cold Weather Constraint term and criteria. Specifically, we direct NERC to ensure that the Generator Cold Weather Constraint declaration criteria included within the proposed Reliability Standard are objective and sufficiently detailed so that applicable entities understand what is required of them. One approach to satisfy this directive could be to incorporate into the proposed Reliability Standard a limited and discrete list of circumstances that would qualify as acceptable constraints. We note that NERC’s technical rationale document,⁹³ created by NERC’s Standard Drafting Team and included in NERC’s filing, includes a list of technical constraints that could serve as a starting point for a list of circumstances that would qualify as acceptable constraints. To the extent that NERC continues to believe that the extent of industry adoption for winterization technologies should be a criterion for declaring a constraint, NERC should clearly explain in its filing how it will assess the extent of such adoption in a way that provides for consistent compliance and enforcement outcomes. Alternatively, NERC could establish a pre-approval process for all Generator Cold Weather Constraint declarations. While a clearly defined list may be preferable, a pre-approval process could be established to ensure entities’ declared Generator Cold

Weather Constraints are appropriate and can be supported and defended.

Further, as part of the directive to develop and submit modifications to the Generator Cold Weather Constraint definition of proposed Reliability Standard EOP-012-2, we direct NERC, pursuant to section 215(d)(5) of the FPA, to remove the references to “cost,” “reasonable cost,” “unreasonable cost,” and “good business practices” and replace them with criteria that are objective, unambiguous, and auditable. NERC may propose to develop modifications that address the Commission’s concerns in an equally efficient and effective manner, however, NERC must explain how its proposal addresses the Commission’s concerns.⁹⁴

2. Entity To Receive, Review, Evaluate, and Confirm for Validity the Generator Cold Weather Constraint Declarations

a. The Commission’s Directive in the February 2023 Order

48. In the February 2023 Order, the Commission directed NERC to identify the entity that would receive and review the generator owners’ constraint declarations pursuant to Reliability Standard EOP-012-1, Requirements R1 and R7, and to describe how that entity would confirm that the generator owners complied with the objective criteria.⁹⁵

b. NERC Petition

49. In response to the Commission’s directive, NERC proposes new Requirement R8, Part 8.2. NERC proposes to require that any generating unit cold weather operating limitations due to declared constraints be provided to the balancing authority, transmission operator, or reliability coordinator via data specifications to the generator owners through other Reliability Standard requirements.⁹⁶ In its petition, NERC states that its Standard Drafting Team determined that having the generator owner communicate the practical impacts of declaring a constraint to the entities that are responsible for grid planning and

⁸⁷ See e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,016, P 49 (2018).

⁸⁸ 16 U.S.C. 824o.

⁸⁹ See *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 122 FERC ¶ 61,040, PP 137–38 (2008); *order on clarification*, 126 FERC ¶ 61,229; *order denying clarification*, 127 FERC ¶ 61,273 (2009).

⁹⁰ See *id.* P 109.

⁹¹ As noted below, NERC shall receive, review, evaluate, and confirm for validity any Generator Cold Weather Constraint declaration in a timely manner. *Infra* at P 54.

⁹² For this example, generator owners or generator operators should seek cost recovery through the available cost recovery mechanisms prior to making attestations about retirement.

⁹³ See NERC, *Drafting Team Reference Manual—Version 5*, at 8 (Jan. 2024), https://www.nerc.com/pa/Stand/Resources/Documents/Drafting%20Team%20Reference%20Manual%20clean_January%202024.pdf; see also NERC, *Technical Rationale for Reliability Standards FAQ*, at 1 (Mar. 2018), https://www.nerc.com/pa/Stand/TechnicalRationale/Technical%20Rationale%20FAQs_March2018.pdf.

⁹⁴ See Order No. 693, 118 FERC ¶ 61,218 at P 186.

⁹⁵ February 2023 Order, 182 FERC ¶ 61,094 at PP 6, 66.

⁹⁶ See NERC Petition at 63. The transmission operators and balancing authorities, in accordance with Reliability Standard TOP-003-5 (Operational Reliability Data), must obtain the generating unit(s) minimum design temperature, the historical operating temperature, or the current cold weather performance temperature determined by an engineering analysis. See Reliability Standard TOP-003-5, Requirement R1, Part 1.3.2. and Requirement R2, Parts 2.3.2.1, 2.3.2.2., and 2.3.2.3. Likewise, reliability coordinators must obtain this information per Reliability Standard IRO-010-4 (Reliability Coordinator Data Specification).

reliability would be the best way to address the reliability concerns contained in the Commission's directive.⁹⁷

50. NERC explains that it and the Regional Entities would be responsible for assessing entity compliance with the Generator Cold Weather Constraint declaration provisions via an audit or other compliance monitoring method.⁹⁸ NERC also states that it and the Regional Entities are preparing a "strategy for performing robust compliance monitoring and enforcement of the currently effective and approved generator cold weather Reliability Standards."⁹⁹ Further, NERC points to the annual data request and analysis that it asserts would allow the Commission to understand the efficacy of, and monitor the ongoing risk posed by, technical, commercial, or operational constraint provisions.¹⁰⁰

51. NERC states that it and the Regional Entities understand that they will be assessing the reasonableness of the process generator owners use to declare Generator Cold Weather Constraints.¹⁰¹ NERC notes that it will take steps to ensure that its reviews are "conducted in a consistent manner across the ERO Enterprise."¹⁰²

c. Commission Determination

52. We find that proposed Reliability Standard EOP-012-2 does not identify an entity to receive the Generator Cold Weather Constraint declarations, the entity responsible for timely review of the generator owners' constraint declarations, or the entity responsible for ensuring that the declarations meet the objective criteria of the proposed Standard. Although we agree with NERC that declared constraints can be provided to the balancing authority, transmission operator, or reliability coordinator via data specifications under existing Reliability Standards, this does not address the Commission's directive that an entity review and *confirm* that generator owners complied with the constraint criteria.

53. NERC states that a review of the Generator Cold Weather Constraint declarations will occur during compliance activities, and that it and the Regional Entities are developing a compliance monitoring strategy for the cold weather Reliability Standards.¹⁰³ We conclude, however, that NERC's

proposal is not an equally efficient and effective means to address the Commission's directive and underlying concern. First, the NERC Rules of Procedure contain no obligation to periodically audit generator owners. Only a handful of generator owners are audited each year, and those audits do not assess all Reliability Standards and all requirements. Moreover, given the significant reliability risk evidenced by the failure of generating units during recent extreme winter weather events, we continue to believe that an enhanced level of oversight remains necessary to ensure that Generator Cold Weather Constraints are only declared when warranted. While generator owners' responses to NERC's annual data request regarding the Generator Cold Weather Constraint declarations are useful for a wide-area event analysis or in forecasting future trends,¹⁰⁴ NERC's annual data request will only provide a limited insight into the specific facts and circumstances around a Generator Cold Weather Constraint declaration. For example, while the annual data request is expected to indicate whether the generator owner has declared a constraint for a generating unit along with the associated rationale(s) for each declaration, it does not collect any supporting documentation necessary to justify the generator owners' declared constraints. As a result, we are not persuaded that NERC's annual data request constitutes an adequate substitute for an appropriate entity contemporaneously reviewing and *confirming* whether a generator owner has complied with the objective constraint criteria set out in proposed Reliability Standard EOP-012-2.¹⁰⁵

54. Accordingly, we again direct NERC, pursuant to section 215(d)(5) of the FPA, to modify proposed Reliability Standard so that NERC receives, reviews, evaluates, and confirms for validity the Generator Cold Weather Constraint declarations in a timely manner. We also direct NERC to include in its compliance filing, a plan to timely review such declarations to verify compliance with proposed Reliability Standard EOP-012-2 and its successors or obligations in a corrective action plan and take corrective action where necessary. For example, modifying Standard to require the generator owners to provide declarations (or changes to the declarations) to NERC within 45 days. It is up to NERC

whether it would like to delegate this task to the relevant Regional Entities. NERC may propose to develop modifications that address the Commission's concerns in an equally efficient and effective manner, however, NERC must explain how its proposal addresses the Commission's concerns.¹⁰⁶

3. The Length of Corrective Action Plan Implementation Deadlines

a. The Commission's Directives in the February 2023 Order

55. The Commission directed NERC to develop three modifications pertaining to the corrective action plan deadlines set forth in Reliability Standard EOP-012-1. First, the Commission directed NERC to shorten the 60-month timeframe for developing corrective action plans for existing units.¹⁰⁷ While the Commission gave NERC discretion to determine what the effective date should be shortened to, it also emphasized that "industry has been aware of and alerted to the need to prepare their generating units for cold weather since at least 2011" and that NERC should consider the "amount of time that industry has already had to implement freeze protection measures."¹⁰⁸ Second, the Commission directed NERC to revise Reliability Standard EOP-012-1 to include deadlines for completing the corrective actions in the plans.¹⁰⁹ Specifically, the Commission was concerned that the lack of a deadline or maximum duration for completing the corrective actions could allow identified issues to remain unresolved for an indefinite period.¹¹⁰ Third, the Commission directed NERC to modify the Reliability Standard EOP-012-1, Requirement R2, implementation plan for generating units with a commercial operation date prior to October 1, 2027 to require a staggered implementation of freeze protection measures for existing units in a generator owner's fleet with an effective date of less than 60 months from regulatory approval.¹¹¹

b. NERC's Petition

56. Proposed Reliability Standard EOP-012-2 requires generator owners to

⁹⁷ See NERC Petition at 63 (citing February 2023 Order, 182 FERC ¶ 61,094 at P 66).

⁹⁸ *Id.* at 63-64.

⁹⁹ *Id.* at 69.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 10-11.

¹⁰² *Id.*

¹⁰³ See *id.* at 63-64.

¹⁰⁴ See generally *N. Am. Elec. Reliability Corp.*, Compliance Filing, Docket No. RD23-1-000 (Feb. 16, 2024).

¹⁰⁵ February 2023 Order, 182 FERC ¶ 61,094 at PP 6.

¹⁰⁶ See Order No. 693, 118 FERC ¶ 61,218 at P 186.

¹⁰⁷ See February 2023 Order, 182 FERC ¶ 61,094 at PP 10, 24. Sixty months was determined based on approved Reliability Standard EOP-012-1 becoming effective 18 months after the effective date of applicable regulatory approvals combined with the 42-month compliance date for Reliability Standard EOP-012-1 Requirement R2.

¹⁰⁸ *Id.* P 10.

¹⁰⁹ *Id.* PP 9-10, 79, 88.

¹¹⁰ *Id.* PP 9-10, 77-79.

¹¹¹ *Id.* PP 10, 38.

develop, within 12-months after the effective date of the Reliability Standard, a corrective action plan for their existing units to add new, or modify existing, freeze protection measures.¹¹²

57. NERC states that proposed Reliability Standard EOP-012-2 does not include the staggered timeline for the development of corrective action plans that are required for existing units.¹¹³ NERC shortened the timeline to *develop* the corrective action plan for all existing units to 12-months. According to NERC's proposal, the generator owners are then allowed an additional 24 months to *implement* the corrective actions to modify existing equipment or existing freeze protection measures (Requirement R7.1.1) and 48 months for implementing corrective actions requiring new equipment or new freeze protection measures (Requirement R7.1.2) listed in the developed corrective action plans under proposed Reliability Standard EOP-012-2.¹¹⁴

58. In its petition, NERC explains that it considered the Commission's directive to stagger implementation across a fleet of generating units, but determined that it would address reliability risks quicker by establishing a shorter period for full implementation of proposed Reliability Standard EOP-012-2 combined with "aggressive timeframes" for implementing corrective action plan measures.¹¹⁵ NERC also states that it is likely that some natural staggering would occur as entities seek to implement measures across a fleet of generating units. NERC's Standard Drafting Team determined that leaving entities with flexibility in meeting timetables for implementing corrective actions would be "appropriate in the interest of advancing cold weather reliability more quickly and more efficiently."¹¹⁶

59. NERC also added a provision permitting a generator owner to update a corrective action plan implementation timetable, with justification, if it exceeds the 24- and 48-month timeframes in Requirement R7 of the proposed Reliability Standard.

60. Proposed Reliability Standard EOP-012-2, Requirement R2 allows generator owners to have corrective action plans for new generating units that are similar to corrective actions plans allowed for existing generating

units. NERC's petition states that "[t]his revision would drive ongoing reliability improvements, through Corrective Action Plans, if a new generator does not have sufficient freeze protection measures" at the time of commercial operation, in accordance with proposed Requirement R2.¹¹⁷

61. Proposed Reliability Standard EOP-012-2, Requirement R7 would require generator owners to "include timetables for implementing corrective actions that are within specified timeframes and to implement corrective actions in accordance with those timetables."¹¹⁸ The timetables would require the completion of corrective actions within 48 months of the development of corrective action plans for new equipment or freeze protection measures.¹¹⁹ Proposed Reliability Standard EOP-012-2, Requirement R2 also establishes a compliance date of October 1, 2027.¹²⁰

c. Comments

62. The ISO/RTO Council is concerned that even NERC's shorter 24-month period of implementation is still too long and "do[es] not appropriately reflect the urgency of winterizing generating units."¹²¹ According to the ISO/RTO Council, this is especially true for those generating units that experience a Generator Cold Weather Reliability Event versus the like units that are identified for corresponding corrective action plans, which may be at different geographic locations with different weather/climate patterns and will have different levels of risk of experiencing future freeze related issues. The ISO/RTO Council also believes that proposed Reliability Standard EOP-012-2 does not sufficiently incentivize generator owners to use best efforts to promptly implement all immediate and near-term winterization actions before the upcoming winter season.¹²² The ISO/RTO Council recommends that the Commission direct NERC to revise proposed Reliability Standard EOP-012-2 to include a requirement that each generator owner document its best efforts to promptly implement all immediate and near-term actions prior to the next upcoming winter season to

winterize each generating unit to operate at its calculated Extreme Cold Weather Temperature.¹²³

63. NERC replied to the ISO/RTO Council's concern by stating that the Standard Drafting Team balanced the need for prompt implementation of freeze protection measures with "factors influencing the ability to implement those measures, particularly across a fleet of units."¹²⁴ In doing so, NERC notes that its Standard Drafting Team decided on an approach that would allow generator owners less time to implement protections with existing equipment or freeze protection measures and more time to implement protections requiring new equipment or freeze protection measures.¹²⁵

64. Additionally, the ISO/RTO Council objects to the extension provision, believing that NERC and the Regional Entities will only evaluate timeline exceedance for appropriateness and proper documentation after the fact, either as part of ongoing data collections or during compliance efforts.¹²⁶ The ISO/RTO Council recommends that the Commission direct NERC to revise Requirement R7, Part 7.3, to require generator owners to apply for and receive NERC or Regional Entity approval to extend corrective action plan implementation timeframes beyond the timeframes established by proposed Reliability Standard EOP-012-2.¹²⁷ In response, NERC disagrees and states that it "has identified no reliability need that would justify the administrative burdens of such a process in this case."¹²⁸

d. Commission Determination

65. The Commission directed NERC to shorten the 60-month deadline of Requirement R2 of approved Reliability Standard EOP-012-1 to develop corrective action plans for existing units.¹²⁹ By giving generator owners 12-months after the effective date of proposed Reliability Standard EOP-012-2 to develop corrective action plans to meet their Extreme Cold Weather Temperature to add new or modify existing freeze protection measures to their existing units, we find that NERC has met this directive through modified Requirements R3 and R7 of proposed Reliability Standard EOP-012-2.

¹¹² See NERC Petition at 38–39; see also *id.* at Ex. B at 3.

¹¹³ See *id.* at 67.

¹¹⁴ *Id.* at 50–51.

¹¹⁵ *Id.* at 67.

¹¹⁶ *Id.* at 68.

¹¹⁷ *Id.* at 43 (giving the example of a new generating unit being too far along in its design process to meet the more stringent requirements of proposed Requirement R3 [R2] when it begins commercial operation on or soon after October 1, 2027).

¹¹⁸ NERC Petition at 51.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 39–40.

¹²¹ ISO/RTO Council Protest at 19.

¹²² *Id.* at 25; see also ISO/RTO Council Answer at 9–10.

¹²³ ISO/RTO Council Protest at 26; see also ISO/RTO Council Answer at 10.

¹²⁴ NERC Answer at 19–20.

¹²⁵ *Id.* at 20.

¹²⁶ ISO/RTO Council Protest at 20–22.

¹²⁷ *Id.* at 22.

¹²⁸ NERC Answer at 20–21.

¹²⁹ February 2023 Order, 182 FERC ¶ 61,094 at P 88.

66. Additionally, we are persuaded that NERC's proposed deadlines for implementing corrective action plans under Requirement R7 of proposed Reliability Standard EOP-012-2 meet the Commission's directive aimed at establishing corrective action plan implementation deadlines and will provide a significant level of risk reduction compared to the status quo. NERC met the Commission's directive by incorporating different corrective action plan completion timelines for existing and new generating units (24- and 48-months following corrective action plan development, as noted in Requirement R7 of the proposed Reliability Standard) which will result in staggered corrective action plan implementation in stages. We find that this equates to a staggered or phased approach.

67. Nevertheless, we are concerned that the length of NERC's proposed 24- and 48-month deadlines for implementing corrective actions after a generating unit's failure is too long¹³⁰ and do not meet the Commission's directive, which sought to substantially accelerate reliability risk mitigation. Specifically, under NERC's proposal, resources that are impacted by a Generator Cold Weather Reliability Event (e.g., freezing issue resulting in a forced outage or derate) are allowed approximately 30 or 54 months to mitigate the cause of the cold weather failure, depending on whether existing or new equipment or freeze protection measures are needed to remedy the freezing issue. Both Winter Storms Uri and Elliott demonstrated that unplanned cold weather-related generation outages jeopardize Bulk-Power System reliability. As was seen during those events, a generating unit forced outage or derate caused by a freezing issue is a known reliability risk. For those generating units that fail to operate during an extreme cold weather reliability event, their risks must be mitigated quicker than NERC proposes regardless of whether existing or new freeze protection measures are needed on the units that experience failure.

68. Accordingly, we direct NERC, pursuant to section 215(d)(5) of the FPA, to develop and submit modifications to Requirement R7 of proposed Reliability Standard EOP-012-2 to require shorter deadlines to implement corrective actions for existing or new equipment or the freeze protection measures for those generating units that experience a Generator Cold Weather Reliability Event. Based on

compliance with Requirements R2 and R3, those generating units should have already had appropriate freeze protection measures implemented to be capable of operating at the generating units' respective Extreme Cold Weather Temperature. Therefore, we find that a shorter timeframe to implement corrective actions that address existing or new equipment or freeze protection measures is appropriate. For example, to satisfy this directive, NERC could require generator owners to implement corrective actions prior to the next winter season for generating units that experience a Cold Weather Reliability Event and to complete freeze protection measures on similar equipment on all of its fleet within 24 months of becoming aware of the freeze issue. For corrective action plans that involve larger and more complicated implementations, NERC could incorporate a staggered 48-month corrective action plan implementation deadline.¹³¹

69. In addition, we agree with the ISO/RTO Council that without the appropriate oversight of generator owner's proposed updates to the corrective action plan implementation deadlines, the established maximum implementation deadlines in proposed Reliability Standard EOP-012-2, Requirement R7 have less meaning and allow a known reliability risk to remain on the Bulk-Power System for a longer time. In light of this reliability risk, we find that any updates to corrective action plan timeframes beyond the maximum implementation timeframes under Requirement R7 must be reviewed and approved by NERC.

70. Therefore, we direct NERC, pursuant to section 215(d)(5) of the FPA, to develop and submit modifications to Requirement R7 of proposed Reliability Standard EOP-012-2 to ensure that any extension of a corrective action plan implementation deadline beyond the maximum implementation timeframe required by the proposed Reliability Standard is pre-approved by NERC. This approach is consistent with prior Commission action in Order No. 851 where the Commission directed NERC to require pre-approval for extensions beyond the timelines required in the Reliability Standard.¹³² In Order No. 851, the

¹³¹ NERC may propose modifications that address the Commission's concerns in an equally efficient and effective manner; however, NERC must explain how its proposal addresses the Commission's concerns. See Order No. 693, 118 FERC ¶ 61,218 at P 186.

¹³² See, e.g., *Geomagnetic Disturbance Reliability Standard; Reliability Standard for Transmission Sys., Planned Performance for Geomagnetic Disturbance Events*, Order No. 851, 165 FERC

Commission explained that although case-by-case extension determinations may be more uncertain or have associated burdens, the more compelling imperative is that automatic extensions have the potential for abuse by unduly delaying mitigation, and would lead to delayed visibility for NERC.¹³³

71. NERC asserts that, during the first three years that proposed Reliability Standard EOP-012-2 is mandatory and effective, generator owners that are well into their construction phase should have additional time (compared to a project at a lesser stage of construction) to complete corrective action plans for elements already designed.¹³⁴ NERC explains that extra time is needed because NERC, in its technical rational, states that "there needs to be allowances made for units that are in the development process, and for which the design phase may have already commenced."¹³⁵ We are persuaded by NERC's rationale that in this scenario the generator owner may need additional time. However, we are concerned that the proposed Reliability Standard, as currently written, does not make a clear demarcation between projects well into their construction phase and those at a lesser phase of construction; therefore, it could inadvertently be interpreted to allow a generator owner to have 48-months beyond its commercial operation date to implement Requirement R2 corrective action plans, even if the generator owner has *not yet* begun to construct its generating unit.

72. We thus find that generators that are commercially operational after October 1, 2027, should have freeze protection measures either designed into their generating systems, or, if a corrective action plan is needed, then it should be completed by the time that such generating units go into commercial operation. Accordingly, we direct NERC, pursuant to section 215(d)(5) of the FPA, to develop and submit modifications to Requirement R7 of proposed Reliability Standard EOP-

¶ 61,124, at P 54 (2018) (directing NERC to revise Reliability Standard TPL-007-2 (Transmission System Planned Performance for Geomagnetic Disturbance Events) to include a process through which corrective action plan extensions are considered on a case-by-case basis. NERC later revised Reliability Standard TPL-007-2, Requirement R7.4; *N. Am. Elec. Reliability Corp.*, Docket No. RD20-3-000, at 1 (Mar. 19, 2020) (a delegated order approving Reliability Standard TPL-007-4, which requires entities to seek approval from the ERO of any extensions of time for the completion of corrective action plan items).

¹³³ Order No. 851, 165 FERC ¶ 61,124 at P 55.

¹³⁴ NERC Petition, Ex. C, at 9.

¹³⁵ *Id.*

¹³⁰ Requirement R7 of proposed Reliability Standard EOP-012-2.

012–2 to clarify that any Requirement R2 corrective action plans must be completed prior to the generating unit's commercial operation date.

4. Corrective Action Plan Implementation Timeline Ambiguities

a. NERC Petition

73. Proposed Reliability Standard EOP–012–2, Requirement R7 states that a 24-month timeline applies to corrective actions that address *existing* equipment or freeze protection measures and a 48-month timeline applies to corrective actions that require *new* equipment or freeze protection measures.¹³⁶ NERC's Standard Drafting Team stated that generator owners would be able to use "appropriate judgment" to determine the appropriate timeline for corrective action in accordance with Requirement R7 of proposed Reliability Standard EOP–012–2.¹³⁷

b. Comments

74. The ISO/RTO Council requests clarification on which corrective action implementation timeline applies to which corrective actions under Requirement R7 of proposed Reliability Standard EOP–012–2.¹³⁸ The ISO/RTO Council argues that some corrective actions might involve the application of new freeze protection measures on existing equipment or the extension of existing freeze protection measures to newly installed equipment, thereby implicating both timelines. Thus, it is unclear to them which timeline applies in such situations.¹³⁹ The ISO/RTO Council recommends that the Commission direct NERC to revise proposed Reliability Standard EOP–012–2 to apply the shorter of the two timelines to corrective actions that do not require the installation of new equipment.¹⁴⁰

75. The ISO/RTO Council states that while the use of professional judgment is a common method for navigating ambiguities, the fact that professional judgment exists is not a valid basis for approving an ambiguous Reliability Standard.¹⁴¹ In response, NERC states that the Commission should not direct NERC to clarify the periods allotted for the implementation of freeze protection measures because its strategy is consistent with Order No. 672.¹⁴²

c. Commission Determination

76. We believe that proposed Reliability Standard EOP–012–2, Requirement R7's corrective action plan implementation deadlines have remaining ambiguities that need to be addressed. As noted above, the Commission has previously expressed similar concerns regarding the vagueness and enforceability of Reliability Standards language.¹⁴³ Specifically, we agree with the concerns raised by the ISO/RTO Council that Requirement R7 of proposed Reliability Standard EOP–012–2 does not provide clear direction as to the required corrective action plan implementation timeline that applies to certain generator owners. For example, it is unclear how the corrective action plan implementation timeline would apply if a generator owner had combinations of both existing and new equipment for freeze protection measures. Accordingly, we direct NERC, pursuant to section 215(d)(5) of the FPA, to develop and submit modifications to Requirement R7 of proposed Reliability Standard EOP–012–2 to address these ambiguities by expanding on Requirement R7.1.1 and 7.1.2 to make it clear which corrective action plan implementation deadline applies to which generator owner.

5. Proposed Reliability Standard EOP–012–2, Requirements R2, R3, and R6, Footnotes 1, 2, and 4

a. NERC's Petition

77. Proposed Reliability Standard EOP–012–2, Requirements R2, R3, and R6 contain new and identical footnotes 1, 2, and 4, respectively.¹⁴⁴ These footnotes indicate that generating units that do not self-commit or are not required to operate at or below a temperature of 32 degrees Fahrenheit but "may be called upon to operate in order to assist in the mitigation of [bulk electric system] Emergencies, Capacity Emergencies, or Energy Emergencies

determining whether a proposed Standard is just and reasonable, to consider the timetable for the implementation of new requirements, including the urgency of the need for implementation with the reasonableness of time for entities that must comply); Order No. 672, 114 FERC ¶ 61,104 at P 328.

¹⁴³ As further discussed above, in both Order No. 693 and Order No. 791, the Commission approved NERC's proposed Reliability Standards as an improvement to the reliable operation of the Bulk-Power System, while also directing NERC to submit modifications to the Reliability Standards to address the Commission's concern regarding the ambiguities contained in particular language. See Order No. 693, 118 FERC ¶ 61,218 at PP 1, 461; see also Order No. 791, 145 FERC ¶ 61,160 at PP 49–53, 67, 69.

¹⁴⁴ See NERC Petition at 38–39, 48.

during periods at or below a temperature of 32 degrees Fahrenheit (zero degrees Celsius) are exempt" from Requirements R2, R3, and R6.¹⁴⁵

b. Comments

78. The ISO/RTO Council raises concerns regarding the limitations on applicability created by footnotes 1, 2, and 4 in Requirements R2, R3, and R6 of proposed Reliability Standard EOP–012–2.¹⁴⁶ The ISO/RTO Council believes that this exemption should be limited to truly seasonal generating units that will not be called upon to operate during freezing conditions, even during bulk electric system emergencies.¹⁴⁷ Thus, the ISO/RTO Council recommends that the Commission direct NERC to either remove the footnotes 1, 2, and 4 or revise Requirements R2, R3, and R6 by replacing the phrase "self-commits or is required to operate" with "that may be committed to operate."¹⁴⁸

79. In response, NERC states that "the appropriateness of this limited exemption is a settled matter."¹⁴⁹ NERC notes that this exemption was included in Reliability Standard EOP–012–1 and the Commission already approved that Reliability Standard with this delineation.¹⁵⁰ NERC reiterates that the exemptions, as written, are intended to incentivize generating units that do not normally operate in freezing conditions to participate in mitigating a bulk electric system emergency.¹⁵¹

80. TAPS agrees with NERC and states that these exemptions are appropriate and that NERC's applicability section modifications are in line with the Commission's February 2023 Order.¹⁵² TAPS states that, under NERC's proposed modifications to Reliability Standard EOP–012–2, the system operator should have already requested and received operational limitation data from each bulk electric system generating unit in its footprint; thus, there is no additional step for an ISO or RTO to take to identify which

¹⁴⁵ *Id.*

¹⁴⁶ ISO/RTO Council Protest at 15–17.

¹⁴⁷ *Id.* at 16–17.

¹⁴⁸ *Id.* at 18 (stating that this would allow truly seasonal generating units that are ineligible to be committed to operate during freezing conditions to be exempt from Requirements R2, R3, and R6 of proposed Reliability Standard EOP–012–2).

¹⁴⁹ NERC Answer at 16–17 (stating that the ISO/RTO Council's concern is an "untimely attack on an issue that was previously decided by the Commission" when it approved EOP–012–1); see also February 2023 Order, 182 FERC ¶ 61,094 at P 60.

¹⁵⁰ NERC Answer at 16.

¹⁵¹ *Id.*

¹⁵² TAPS Answer at 9–12 (citing to the February 2023 Order, 182 FERC ¶ 61,094 at P 58).

¹³⁶ *Id.*, Ex. A at 8 (emphasis added).

¹³⁷ *Id.*, Ex. F at 190.

¹³⁸ ISO/RTO Council Protest at 23.

¹³⁹ *Id.* at 22–23.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 24.

¹⁴² NERC Answer at 5 (citing to discussion in Order No. 672 that requires the Commission, when

generating units can operate under particular conditions.¹⁵³

c. Commission Determination

81. While we appreciate the ISO/RTO Council's concern, we agree with NERC and TAPS that the exemptions set forth in Requirements R2, R3, and R6, footnotes 1, 2, and 4, respectively, are appropriate and that NERC's applicability section modifications are in line with the Commission's February 2023 Order. We agree with NERC's aim of exempting generating units that do not self-commit or are not required to operate at or below a temperature of 32 degrees Fahrenheit and are not persuaded that a directive is warranted at this time to further narrow this exemption. We expect that, as part of its compliance monitoring activities, NERC will continue to monitor the application of the exemption to ensure its application is consistent with the generating units' actual obligations pursuant to relevant tariffs, contracts, regulations, or other binding requirements.

6. Different Winterization Criteria for New and Existing Generating Units

a. NERC's Petition

82. Proposed Reliability Standard EOP-012-2, Requirements R2 and R3 carry forward the cold weather operational capability requirements for new and existing bulk electric system units from approved Reliability Standard EOP-012-1, Requirements R1 and R2, respectively.¹⁵⁴ Proposed Requirement R2 applies to generating units that are in commercial operation on or after October 1, 2027, and requires them to implement freeze protection measures to protect Generator Cold Weather Critical Components that provide the capability to operate at the unit's Extreme Cold Weather Temperature with sustained concurrent 20 mph wind speed for a period of not less than 12 continuous hours or the maximum operational duration for intermittent energy resources if less than 12 continuous hours.¹⁵⁵ Proposed Requirement R3 applies to generating units that are in commercial operation prior to October 1, 2027, and requires them to implement freeze protection

measures to protect Generator Cold Weather Critical Components that provide the capability to operate at the unit's Extreme Cold Weather Temperature.¹⁵⁶ During the drafting process, NERC's Standard Drafting Team responded to comments by stating that having separate requirements for new and existing units is appropriate given that some generating units would be difficult to retrofit and that existing units can provide reliable performance at temperatures above their Extreme Cold Weather Temperature.¹⁵⁷

b. Comments

83. The ISO/RTO Council objects to having different winterization criteria for new and existing generating units, noting that new units have to meet more stringent requirements. The ISO/RTO Council states that, while some older generating units may not be able to perform at Requirement R2's more stringent standard, many generating units that enter commercial operation before October 1, 2027, should be able to do so.¹⁵⁸

84. The ISO/RTO Council believes that while some generating units would be difficult to retrofit in some cases, the Winter Storms Uri and Elliott Inquiry reports cautioned against setting a lower winterization standard for an entire category of generating units.¹⁵⁹ The ISO/RTO Council recommends that the Commission direct NERC to remove Requirement R3 and revise Requirement R2 to apply to all generating units, regardless of when they achieved commercial operation.¹⁶⁰

85. In its answer, NERC asserts that the ISO/RTO Council's argument on grandfathering provisions is an untimely attack on a Commission-approved issue.¹⁶¹

c. Commission's Determination

86. We agree with NERC that it is appropriate to have separate requirements for new and existing generating units within proposed Reliability Standard EOP-012-2, Requirements R2 and R3, respectively.¹⁶² NERC's Standard Drafting Team discussed applying the same requirements to existing units and new units but determined that these

requirements would be difficult to retrofit and may not be justified "provided that existing units can prove reliable performance at temperatures above their" Extreme Cold Weather Temperature.¹⁶³ We also note that the Commission approved NERC's proposal to have different winterization criteria for new and existing generating units in the February 2023 Order and no concerns with having different winterization criteria were raised in that proceeding.¹⁶⁴ Nevertheless, we strongly encourage existing generating units that are capable of implementing the more detailed freeze protection measures and corrective actions in line with proposed Reliability Standard EOP-012-2, Requirement R2 to do so.

7. Annual Inspection and Maintenance of Generating Units Freeze Protection Measures

a. NERC's Petition

87. Proposed Reliability Standard EOP-012-2, Requirement R4, Part 4.5 requires the annual inspection and maintenance of generating unit freeze protection measures.¹⁶⁵

b. Comments

88. The ISO/RTO Council expresses concern that without any reference to timing other than a requirement for "annual" inspections and maintenance, this provision will not result in timely preparations for upcoming cold weather operations.¹⁶⁶ The ISO/RTO Council recommends that the Commission direct NERC to revise proposed Reliability Standard EOP-012-2 to require inspections and maintenance of all generating units to occur on at least an annual basis and always within three months of the upcoming winter season.¹⁶⁷

89. NERC agrees that it is a good practice to inspect and maintain freeze protection measures before an upcoming winter season.¹⁶⁸ NERC disagrees, however, that the proposed Reliability Standard needs to require "in detail the timing of the required annual inspections for it to be a just and reasonable standard." Moreover, NERC states, the Commission approved

¹⁵³ *Id.* at 11–12.

¹⁵⁴ NERC Petition at 37.

¹⁵⁵ *Id.* at 38 (noting that if they are unable to do so, then the generator owner must develop a corrective action plan to add new or modify existing or previously planned freeze protection measures to provide the capability to operate at the unit's Extreme Cold Weather Temperature with sustained concurrent 20 mph wind speed for a period of not less than 12 continuous hours or the maximum operational duration for intermittent energy resources if less than 12 continuous hours).

¹⁵⁶ *Id.* at 39 (stating that if they are unable to do so, then the generator owner must develop a corrective action plan to add new or modify existing freeze protection measures to provide the capability to operate at the unit's Extreme Cold Weather Temperature).

¹⁵⁷ *Id.*, Ex. F at 103, 291.

¹⁵⁸ ISO/RTO Council Protest at 26–27.

¹⁵⁹ *Id.* at 27–28.

¹⁶⁰ *Id.* at 28.

¹⁶¹ See NERC Answer at 23.

¹⁶² See NERC Petition, Ex. F at 450, 452.

¹⁶³ *Id.*

¹⁶⁴ See February 2023 Order, 182 FERC ¶ 61,094 at PP 1–2, 47.

¹⁶⁵ See NERC Petition at 45; see also NERC Petition, Ex. A at 7.

¹⁶⁶ ISO/RTO Council Protest at 31; see also ISO/RTO Council Answer at 11.

¹⁶⁷ ISO/RTO Council Protest at 31–32; see also ISO/RTO Council Answer at 11.

¹⁶⁸ NERC Answer at 26.

Reliability Standard EOP–012–1 without such specificity.¹⁶⁹

c. Commission Determination

90. We find that it is premature to address the ISO/RTO Council's recommendation that the Commission direct NERC to revise the proposed Reliability Standard to require inspections and maintenance of all generating units to occur on at least an annual basis and always within three months of the upcoming winter season.¹⁷⁰ We believe that requiring the annual inspection and maintenance of generating unit freeze protection measures is adequate at this time. By requiring the annual inspection and maintenance of generator freeze protection measures, proposed Reliability Standard EOP–012–2 (and its predecessor, approved Reliability Standard EOP–012–1) represent a significant improvement upon the previously effective set of Reliability Standards, which did not include such requirements. Although we agree with both the ISO/RTO Council and NERC that it is a good practice to inspect and maintain freeze protection measures before an upcoming winter season, we are not persuaded that such additional specificity is necessary at this time. NERC has committed to monitoring the implementation of this new Standard and, in doing so, can determine whether there are outage patterns or other data that suggest the need for additional specificity.¹⁷¹

8. The Five-Year Review Period for Declared Generator Cold Weather Constraints

a. NERC's Petition

91. Proposed Reliability Standard EOP–012–2, Requirement R8.1 states that each generator owner that declares a Generator Cold Weather Constraint shall review the declaration at least every five calendar years or as needed when a change of status to the Generator Cold Weather Constraint occurs.¹⁷²

¹⁶⁹ *Id.* (stating that it could consider the ISO/RTO Council's proposal at a later date if the implementation of proposed Reliability Standard EOP–012–2, Requirement R4 suggests that more specificity would advance reliability).

¹⁷⁰ ISO/RTO Council Protest at 31–32; *see also* ISO/RTO Council Answer at 11.

¹⁷¹ *See, e.g.,* FERC, NERC, and Regional Entity Staff, *Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott*, at 132 (Oct. 2023), <https://www.ferc.gov/news-events/news/ferc-nerc-release-final-report-lessons-winter-storm-elliott> (October 2023 Report) (recommendation 1(b)).

¹⁷² NERC's Petition at 62.

b. Comments

92. The ISO/RTO Council expresses concern that once a generator owner declares a Generator Cold Weather Constraint, proposed Reliability Standard EOP–012–2 only requires the generator owner to review that constraint every five years,¹⁷³ which lowers the bar for bulk electric system winterization and reliability by delaying the identification and adoption of new freeze protection technologies.¹⁷⁴ The ISO/RTO Council states that a five-year review period tips the scales in favor of slow installation and application of new technologies and “would result in years elapsing” between a new freeze protection technology becoming viable and a generator owner evaluating that technology as part of its routine review of a constraint.¹⁷⁵ As such, the ISO/RTO Council recommends that the Commission direct NERC to revise proposed Reliability Standard EOP–012–2 to require that constraint declaration reviews be performed annually instead of every five years.

93. NERC disagrees with the ISO/RTO Council's arguments and states that many commenters in the standard development process expressed concern that annual reviews would be “an administrative burden [with] no reliability benefit.”¹⁷⁶ NERC also states that five-year reviews were selected because the technology and price of freeze protections are unlikely to change significantly over the course of a year.¹⁷⁷

c. Commission Determination

94. We agree with the ISO/RTO Council that the proposed five-year review period for the declared Generator Cold Weather Constraints in Requirement R8.1 could delay the identification and adoption of new freeze protection measures and does not represent the current pace of technological advancements. We acknowledge that a more frequent review does impose some additional administrative burden to the generator owner to review the technological advancements that hindered its ability to winterize; nonetheless, a lengthy period between a Generator Cold Weather Constraint declaration review by the generator owner offers little incentive to timely adopt new freeze

¹⁷³ *See* ISO/RTO Council Protest at 29; *see also* NERC Petition, Ex. A at 9.

¹⁷⁴ ISO/RTO Council Protest at 29.

¹⁷⁵ *Id.* at 30.

¹⁷⁶ NERC Answer at 25 (referencing the development history of the proposed Standard and citing commenter concerns).

¹⁷⁷ *Id.*

protection technologies. Accordingly, we direct NERC, pursuant to section 215(d)(5) of the FPA, to develop and submit modifications to Requirement R8, Part 8.1 of proposed Reliability Standard EOP–012–2 to implement more frequent reviews of Generator Cold Weather Constraint declarations to verify that the declaration remains valid. NERC may propose to develop modifications that address the Commission's concerns in an equally efficient and effective manner, however, NERC must explain how its proposal addresses the Commission's concerns.¹⁷⁸

9. Cost Recovery Mechanisms

a. Comments

95. While NEPGA recognizes that the Commission found cost recovery to be outside the scope in connection with its February 2023 Order, it asks the Commission to recognize the near-term need for ISO–NE, generator owners, and other stakeholders to work together to ensure that cost recovery opportunities exist under the ISO–NE tariff.¹⁷⁹ NEPGA argues that the ISO–NE tariff provisions do not appear to allow an existing capacity resource to reflect capital costs, such as those that may be incurred to modify or add freeze protection equipment.¹⁸⁰ EPSA's Answer supports NEPGA's comments about cost recovery and asks the Commission to assess all markets within its jurisdiction to determine whether there are sufficient vehicles for recovery of winterization costs.¹⁸¹

96. The ISO/RTO Council acknowledges that cost recovery is “critically important” but argues that costs should not be included as part of a Reliability Standard. Instead, the ISO/RTO Council contends that cost recovery should be addressed through a rate proceeding overseen by the Commission or another applicable regulatory authority (*e.g.*, state or provincial).¹⁸² The ISO/RTO Council requests that the Commission “indicate its intention to allow for cost recovery” for the extreme cold weather Reliability Standards and direct its Office of Energy Market Regulation to survey those markets within its jurisdiction to determine whether there are sufficient

¹⁷⁸ *See* Order No. 693, 118 FERC ¶ 61,218 at P 186.

¹⁷⁹ NEPGA Comments at 2 (citing February 2023 Order, 182 FERC ¶ 61,094 at P 83).

¹⁸⁰ *Id.* (citing *Cogentrix Energy Power Mgmt., LLC v. FERC*, 24 F.4th 677, 683–4 (D.C. Cir. 2022) to express concern that costs incurred prior to the effective date of an associated rate recovery mechanism would be unrecoverable).

¹⁸¹ EPSA Answer at 3–5.

¹⁸² ISO/RTO Council Answer at 4–7.

vehicles for cost recovery of winterization measures.¹⁸³

97. NERC asserts that while it would support market-related actions that advance the goal of generator reliability, it has no opinion with respect to the specific cost recovery declaration and survey proposed by the ISO/RTO Council.¹⁸⁴ NERC states that it defers to the Commission's expertise on cost recovery.

b. Commission Determination

98. We find the question of whether existing market mechanisms provide an opportunity to recover the prudently incurred costs of compliance with the proposed Reliability Standard to be outside the scope of the instant proceeding, consistent with our finding in the February 2023 Order.¹⁸⁵ To the extent that there are concerns about whether existing rates or tariffs allow for the recovery of all prudently incurred costs necessary to comply with mandatory Reliability Standards as required by FPA section 219,¹⁸⁶ such questions are more appropriately addressed in proceedings pursuant to FPA sections 205 or 206.¹⁸⁷

IV. Information Collection Statement

99. The information collection requirements contained in this Order are subject to review by the Office of Management and Budget (OMB) under

section 3507(d) of the Paperwork Reduction Act of 1995.¹⁸⁸ OMB's regulations require approval of certain information collection requirements imposed by agency rules.¹⁸⁹ Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Comments on the collection of information are due within 60 days of the date this order is published in the **Federal Register**. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

100. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

101. The EOP Standards are currently located in the FERC-725S (OMB Control No. 1902-0270) collection.¹⁹⁰ In Docket No. RD24-5-000, the Commission proposes to replace the current OMB approved Reliability Standard EOP-012-1 with proposed Reliability

Standard EOP-012-2 (Table 1). Proposed Reliability Standard EOP-012-2 has eight requirements, seven of which have been carried over and modified from the already approved Reliability Standard EOP-012-1 (Requirements R1-R7) and one of which is new (Requirement R8).

102. The estimates in the tables below are based, in combination, on one-time (years 1 and 2) and ongoing execution (year 3) obligations to follow the revised Reliability Standard EOP-012-2.

103. The number of respondents below are based on an estimate of the NERC compliance registry for generator owners and generator operators. Proposed Reliability Standard EOP-012-2 applies to generator owners and generator operators. The Commission based its paperwork burden estimates on the NERC compliance registry as of April 16, 2024. According to the registry for US unique entities, there are 1,210 generator owners. The estimates in the tables below are based on the change in burden from the Reliability Standards approved in this order.¹⁹¹ The Commission based the burden estimates in the tables below on staff experience, knowledge, and expertise.

Public Reporting Burden: The estimated costs and burden for the revisions in Docket No. RD24-5-000 are shown in the table below.

TABLE 1—PROPOSED CHANGES DUE TO FINAL RULE IN DOCKET NO. RD24-5-000 FOR EOP-012-2

Reliability standard & requirement	Type and number of entity	Number of annual responses per entity	Total number of responses	Average number of burden hours per response ¹⁹²	Total burden hours
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
FERC-725S					
One Time Estimate—Years 1 and 2 EOP-012-2					
EOP-012-2	1,210 (GO)	1	1,210	5 hrs., \$373.15	6,050 hrs., \$451,511.5.
Sub-Total for EOP-012-2 (one-time).	.....	.....	1,210	5 hrs., \$373.15	6,050 hrs., \$451,511.5.
Ongoing Estimate—Year 3 ongoing EOP-012-2					
EOP-012-2	1,210 (GO)	1	1,210	2 hrs., ¹⁹³ \$149.26	2,420 hrs., \$180,604.6.
Sub-Total for EOP-012-2 (ongoing).	.....	.....	1,210	2 hrs., \$149.26	2,420 hrs., \$180,604.6.
Sub-Total of ongoing burden averaged over three years.	.....	.....	404	.....	807 hrs., \$60,226.41.

¹⁸³ *Id.* at 4.

¹⁸⁴ NERC Answer at 12.

¹⁸⁵ See February 2023 Order, 182 FERC ¶ 61,094 at P 83.

¹⁸⁶ 16 U.S.C. 824s(b)(4)(A).

¹⁸⁷ *Id.* sec. 824d; see also *id.* sec. 824e.

¹⁸⁸ 44 U.S.C. 3507(d).

¹⁸⁹ 5 CFR 1320 (2023).

¹⁹⁰ The FERC-725S collection includes the EOP family of Reliability Standards: EOP-004-4, EOP-005-3, EOP-006-3, EOP-008-2, EOP-010-1, EOP-011-4, and EOP-012-2.

¹⁹¹ The overall burden associated with Reliability Standard EOP-012 will be the sum of the burden (responses) from Reliability Standard EOP-012-1 (under RD23-1-000) and Reliability Standard EOP-012-2 (under RD24-5-000).

TABLE 1—PROPOSED CHANGES DUE TO FINAL RULE IN DOCKET NO. RD24–5–000 FOR EOP–012–2—Continued

Reliability standard & requirement	Type and number of entity	Number of annual responses per entity	Total number of responses	Average number of burden hours per response ¹⁹²	Total burden hours
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
Proposed Total Burden Estimate of EOP–012–2.			1,614	.....	6,857 hrs., \$511,737.91.
Changes to FERC 725S by RD24–5–000					
FERC–725S modification	Current inventory (hours)	Current inventory (responses)	Total change due to RD24–5–000		
Addition of EOP–012–2			+6,857 hrs., +1,614 responses.		

Titles: FERC–725S, Mandatory Reliability Standards for the Bulk-Power System; EOP Reliability Standards.

Action: Revisions to Existing Collections of Information in FERC–725S.

OMB Control Nos: 1902–0270 (FERC–725S).

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: Annually.

Necessity of the Information: Reliability Standard EOP–012–2 (Extreme Cold Weather Preparedness and Operations) is part of the implementation of the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the revised Reliability Standard ensures that generating resources are prepared for local cold weather events and that entities will effectively communicate the information needed for operating the Bulk-Power System.

Internal Review: The Commission has reviewed the revised Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the

burden estimates associated with the information requirements.

a. *Description of the Revision to FERC–725S:* The FERC–725S (OMB Control No. 1902–0270) is an existing information collection that contains the requirements for the EOP–012–1 Reliability Standard. As described in the Docket No. RD24–1–000 above, the Reliability Standard (EOP–012–1) is proposed to be retired and replaced by EOP–012–2.

104. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE, Washington, DC 20426 [Attention: Jean Sonneman, email: DataClearance@ferc.gov, phone: (202) 502–6362].

105. Comments concerning the information collections and requirements approved for retirement in this order and the associated burden estimates, should be sent to the Commission (identified by Docket No. RD24–5–000), using the following methods: Electronic filing through <https://www.ferc.gov> is preferred. Electronic Filing should be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery: Mail via U.S. Postal Service Only: Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand (including courier) delivery: Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

V. Environmental Analysis

106. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement

for any action that may have a significant adverse effect on the human environment.¹⁹⁴ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.¹⁹⁵ The actions directed herein fall within this categorical exclusion in the Commission's regulations.

VI. Document Availability

107. 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>).

108. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

109. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission orders:

¹⁹⁴ *Reguls. Implementing the Nat'l Env't Pol'y Act*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

¹⁹⁵ 18 CFR 380.4(a)(2)(ii) (2023).

¹⁹² The estimated hourly cost (salary plus benefits) is a combination based on the Bureau of Labor Statistics (BLS), as of 2024, for seventy five percent of the average of an Electrical Engineer (17–2071)—\$79.31 and mechanical engineers (17–2141)—\$89.86. $(\$79.31 + \$89.86)/2 = 84.585 \times .75 = 63.439$ (\$63.44-rounded) (\$63.44/hour) and twenty-five percent of an Information and Record Clerk (43–4199) \$44.74 $\times .25\% = 11.185$ (\$11.19 rounded) (\$11.19/hour), for a total $(\$63.44 + \$11.19 = \$74.63/\text{hour})$.

¹⁹³ A fraction of generator owners would be required to perform the task on an ongoing basis, and the hours represent the whole body of generator owners.

(A) Proposed Reliability Standard EOP-012-2, the associated violation risk factors and violation severity levels, the implementation plan, the newly defined terms Fixed Fuel Supply Component and Generator Cold Weather Constraint, the revised defined terms Generator Cold Weather Critical Component and Generator Cold Weather Reliability Event, and the retirement of Reliability Standard EOP-012-1 immediately prior to the effective date of proposed Reliability Standard EOP-012-2, are hereby approved, as discussed in the body of this order.

(B) NERC's proposed implementation date for Reliability Standard EOP-011-4, as well as the proposed retirement of Reliability Standards EOP-011-2 and EOP-011-3 immediately prior to the effective date of proposed Reliability Standard EOP-012-2, are hereby approved, as discussed in the body of this order.

(C) NERC is hereby directed to develop and submit, within nine months of the date of issuance of this order, modifications to proposed Reliability Standard EOP-012-2 to address the Commission's concerns, including but not limited to, the Generator Cold Weather Constraint criteria definition, modifying the proposed Standard so that NERC reviews, receives, evaluates, and confirms for validity each generator owner's constraint declarations against the developed criteria, shortening and clarifying the corrective action plan implementation deadlines outlined in Requirement R7 of proposed Reliability Standard EOP-012-2, ensuring that the any extension of a corrective action plan implementation deadline beyond the maximum implementation timeframe required by the proposed Standard is pre-approved by NERC, and implementing a more frequent review of the Generator Cold Weather Constraint declarations in accordance with Requirement R8.1 of proposed Reliability Standard EOP-021-2, as discussed in the body of this order.

By the Commission. Commissioner Rosner is not participating.

Issued: June 27, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-14668 Filed 7-2-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1994-008]

Heber Light & Power Company; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process (TLP).

b. *Project No.:* 1994-008.

c. *Dated Filed:* April 30, 2024.

d. *Submitted By:* Heber Light & Power Company (Heber L&P).

e. *Name of Project:* Snake Creek Hydroelectric Project.

f. *Location:* On Snake Creek about 2 miles northwest of Midway City, in Wasatch County, Utah. The project occupies 8.15 acres of Forest Service land administered by the Uinta-Wasatch-Cache National Forest.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Jason Norlen, General Manager, Heber Light & Power Company, 31 S 100 W, Heber City, Utah 84032; (435) 654-2913; email: jnorlen@heberpower.com.

i. *FERC Contact:* Khatoon Melick at (202) 502-8433 or email at khatoon.melick@ferc.gov.

j. Heber L&P filed its request to use the TLP on April 30, 2024, and provided public notice of its request on May 22, 2024. In a letter dated June 27, 2024, the Acting Director of the Division of Hydropower Licensing approved Heber L&P's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Utah State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Heber L&P filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD may be viewed on the Commission's website (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

You may register online at <https://ferconline.ferc.gov/ferconline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. The applicant states its unequivocal intent to submit an application for a subsequent license for Project No. 1994. Pursuant to 18 CFR 16.20 each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2027.

o. 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: June 27, 2024.
Debbie-Anne A. Reese,
Acting Secretary.
[FR Doc. 2024-14670 Filed 7-2-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24-1869-000; ER24-1870-000; ER24-1871-000; ER24-1873-000; ER24-1874-000; ER24-1875-000; ER24-1876-000.

Applicants: ORNI 36 LLC, Heber Geothermal Company LLC, Mammoth Three LLC, Ormesa LLC, ORNI 18 LLC, USG Nevada LLC, VESI Pomona Energy Storage, Inc.

Description: Supplement to 04/30/2024, VESI Pomona Energy Storage, Inc.

submits tariff filing Revisions to Market-Based Rate Tariffs.

Filed Date: 6/21/24.

Accession Number: 20240621–5213.

Comment Date: 5 p.m. ET 7/12/24.

Docket Numbers: ER24–1942–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to Ministerial Clean-Up Filing in ER24–1942 to be effective 1/1/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5042.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2367–000.

Applicants: NorthWestern Corporation.

Description: 205(d) Rate Filing: RS 335—Certificate of Concurrence to NorthernGrid Funding to be effective 1/31/2024.

Filed Date: 6/25/24.

Accession Number: 20240625–5165.

Comment Date: 5 p.m. ET 7/16/24.

Docket Numbers: ER24–2368–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4272 AECL and NextEra Energy Transmission Southwest Int Agr to be effective 9/1/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5029.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2369–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 6464; AE2–319 re: withdrawal to be effective 8/26/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5033.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2370–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 1976R14 FreeState Electric Cooperative, Inc. NITSA and NOA to be effective 9/1/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5051.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2371–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 2881R18 City of Chanute, KS NITSA NOA to be effective 9/1/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5066.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2372–000.

Applicants: Southern California Edison Company.

Description: 205(d) Rate Filing: 1st Amend LGIA, Menifee Power Bank (TOT934–Q1625/SA278) + Remove eTariff Record to be effective 6/27/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5068.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2373–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5735; AF2–281 re: withdrawal to be effective 8/26/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5074.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2374–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 373 to be effective 7/1/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5077.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2375–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 295 to be effective 5/31/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5082.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2376–000.

Applicants: Alabama Power Company, Georgia Power Company, Power Company.

Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): TVA Conditional Long-Term Firm PTP Service Agreement Filing to be effective 6/1/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5095.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2377–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 2198R36 Kansas Power Pool NITSA NOA to be effective 9/1/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5112.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2378–000.

Applicants: Electric Energy, Inc.

Description: Tariff Amendment: Notice of Cancellation of MBR Tariff to be effective 6/30/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5113.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2379–000.

Applicants: Electric Energy, Inc.

Description: Tariff Amendment: Notice of Cancellation of Power Contract to be effective 6/30/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5115.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2380–000.

Applicants: Midwest Electric Power, Inc.

Description: Tariff Amendment: Notice of Cancellation of MBR Tariff to be effective 6/30/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5117.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2381–000.

Applicants: California Independent System Operator Corporation.

Description: 205(d) Rate Filing: 2024–06–26 E-Tag Submission Timeline Clarification to be effective 6/27/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5119.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2382–000.

Applicants: Public Service Company of Colorado.

Description: 205(d) Rate Filing: 2024–06–26–SS–GI–2020–10 Amnd 1–685–0.0.0 to be effective 6/27/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5129.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–2383–000.

Applicants: Huck Finn Solar, LLC.

Description: Market: 2024–06–26 Central Region Triennial Market Power Update for Huck Finn Solar to be effective 8/26/2024.

Filed Date: 6/26/24.

Accession Number: 20240626–5135.

Comment Date: 5 p.m. ET 8/26/24.

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: June 26, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-14588 Filed 7-2-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2535-129]

Dominion Energy South Carolina, Inc.; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* New License.
- b. *Project No.:* 2535-129.
- c. *Date Filed:* October 27, 2023.
- d. *Applicant:* Dominion Energy South Carolina, Inc.
- e. *Name of Project:* Stevens Creek Hydroelectric Project.
- f. *Location:* The project is located at the confluence of Stevens Creek and the Savannah River, in Edgefield and McCormick Counties, South Carolina, and Columbia County, Georgia. The project occupies approximately 104 acres of Federal land administered by the U.S. Forest Service.
- g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* Amy Bresnahan, Dominion Energy South Carolina, Inc., 220 Operation Way, Mail Code A221, Cayce, South Carolina 29033-3712; (803) 217-9965; email—*Amy.Bresnahan@dominionenergy.com*.
- i. *FERC Contact:* Jeanne Edwards at (202) 502-6181; or email at *jeanne.edwards@ferc.gov*.
- j. *Deadline for filing scoping comments:* July 27, 2024.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests and requests for cooperating status using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>. For assistance, please contact FERC

Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Stevens Creek Hydroelectric Project (P-2535-129).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The Stevens Creek Project consists of these existing facilities: (1) a 2,400-acre reservoir with a storage capacity of 23,699-acre-feet at a full pond elevation of 187.5 feet National Geodetic Vertical Datum 1929 (NGVD29); (2) a dam consisting of, from the southern (Georgia) shore to the northern (South Carolina) shore; (a) a 388-foot-long powerhouse intake, integral with the dam, protected by trashracks with 3.75-inch clear bar spacing; (b) a 102.5-foot-long non-overflow section with a top elevation of 198.54 feet NGVD29; (c) an 85-foot-wide, 165.5-foot-long inoperable concrete gravity navigation lock, with a lock chamber that is 30-feet-wide, 150-feet-long, and has a 29-foot-lift, located between the powerhouse intake and spillway section, (d) a 1,000-foot-long, 5-foot-high flashboard section from the lock to the center of the spillway with a top elevation of 188.5 feet with the flashboards installed, (e) a 1,000-foot-long, 4-foot-high flashboard section from the center of the spillway to the South Carolina abutment with a top elevation of 187.5 feet with the flashboards installed; and (f) a 97-foot-long non-overflow section; (3) a 388-foot-long, 52-foot-wide, 57-foot-high three-story brick powerhouse, integral with the dam, containing eight vertical Francis generating units, each rated at 3,125 horsepower, for a total generating capacity of 17.28 megawatts, and a total

hydraulic capacity of 8,300 cubic feet per second; (4) generator leads from the powerhouse to a switchyard located approximately 100 feet from the powerhouse; and (5) ancillary equipment.

The Stevens Creek Project operates as a re-regulating project, mitigating the downstream effects of the routinely wide-ranging discharges from the upstream U.S. Army Corps of Engineers J. Strom Thurmond hydroelectric project. The Stevens Creek reservoir normally fluctuates between an elevation of 183.0 feet NGVD29 and 187.5 feet NGVD29, using available storage capacity to re-regulate flows released from Thurmond Dam.

m. The application can be viewed on the Commission's website at <https://www.ferc.gov> using the "eLibrary" link. Enter the project's docket number, excluding the last three digits in the docket number field to access the document (P-2535). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or call (866) 208-3676 (toll-free) or (202) 502-8659 (TTY).

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. The 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*.

o. *Scoping Process:* Pursuant to the National Environmental Policy Act (NEPA), Commission staff intends to prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the "NEPA document") that describes and evaluates the probable effects, including an assessment of the site-specific and cumulative effects, if any, of the proposed action and alternatives. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission issues an EA or an EIS. At this time, we do not anticipate

holding an on-site scoping meeting. Instead, we are soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 1 (SD1), issued June 27, 2024.

Copies of SD1 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1-866-208-3676 or for TTY, (202) 502-8659.

Dated: June 27, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-14669 Filed 7-2-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 96-048]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following license application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* New Major License.
- b. *Project No.:* 96-048.
- c. *Date filed:* November 24, 2020.
- d. *Applicant:* Pacific Gas and Electric Company (PG&E).
- e. *Name of Project:* Kerckhoff Hydroelectric Project (Kerckhoff Project).
- f. *Location:* The existing project is located on the San Joaquin River, in Fresno and Madera Counties, California. The project occupies 328.1 acres of Federal land administered by the United States Forest Service and Bureau of Land Management.
- g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* Mr. Dave Gabbard, Vice President, Pacific Generation Pacific Gas and Electric Company, 300 Lakeside Drive, Oakland, CA 94612.

i. *FERC Contact:* Evan Williams, (202) 502-8462, evan.williams@ferc.gov.

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/FERCOOnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. For assistance, please contact FERC Online Support at FERCOOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Kerckhoff Hydroelectric Project (P-96-048).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. The existing Kerckhoff Project consists of: (1) a 175-acre, 3-mile-long impoundment at normal full pond elevation 985.0 feet; (2) a 114.5-foot-high, 507-foot-long concrete arch dam with a spillway crest of 91 feet that includes: (a) fourteen 14.3-foot-high by 20-foot-wide radial gates, and (b) three 72-inch-diameter low-level outlet pipes at an elevation of 897.0 feet, with a maximum combined discharge capacity of 3,900 cubic feet per second; (3) a 75-

foot-long, 18-inch-diameter instream flow pipe; (4) two powerhouse facilities (Kerckhoff 1 and Kerckhoff 2); and (5) appurtenant facilities.

The Project's Kerckhoff 1 (K1) powerhouse and associated facilities include: (1) a 73.3-foot-high, 29.5-foot by 26-foot-wide reinforced concrete intake structure located in Kerckhoff Reservoir; (2) a 16,913-foot-long, 17-foot-wide by 17-foot-high unlined tunnel; (3) two approximately 120-foot-long, 20-foot in cross section adits; (4) one approximately 507.5-foot-long, 16-to-18-foot in cross section adit; (5) a 75-foot-high, unlined vertical shaft surge chamber with a 40-foot maximum diameter lower section and 17-foot maximum diameter upper section; (6) one 913-foot-long, 84-to-96-inch-diameter steel penstock; (7) one 946-foot-long, 84-to-96-inch-diameter steel penstock; (8) an approximately 45-foot-wide by 99-foot-long reinforced concrete powerhouse containing three vertical reaction-type Francis turbine units; and (9) appurtenant facilities. The project's K1 transmission facilities include: (1) a switchyard located on a steep hillside immediately behind the powerhouse; (2) two transformer banks consisting of one, three-phase and seven, single-phase 6.6/115-kilovolt (kV) transformers; and (3) three, 115-kV circuit breakers. Three sets of non-project 115-kV transmission lines exit the switchyard.

K1 Powerhouse Unit No. 2 is not operational and was removed from the current project license in 2013. K1 Powerhouse Units No. 1 and No. 3 are rated at 11.36 megawatts (MW) each for an authorized installed capacity of 22.72 MW; however, both units have not operated since 2017. The three adits were sealed with concrete walls about 200 feet from their entrances, effectively eliminating access to the adits and to the tunnel via the adits. K1 penstock No. 2 is no longer operational; it was abandoned in place and removed from the current project license in 2013. PG&E permanently closed and sealed the main shutoff and bypass valves at K1 penstock No. 2, removed an approximately 12-foot-long section of the penstock immediately downstream of the shutoff valve, removed exposed air valves and cap, and permanently closed the turbine shutoff valve.

The project's Kerckhoff 2 (K2) powerhouse and associated facilities include: (1) a 63-foot-high, 43-foot by 52-foot-wide reinforced concrete intake structure located in Kerckhoff Reservoir; (2) a 21,632-foot-long, 24-foot-diameter unlined tunnel; (3) an 8-foot-diameter adit tunnel; (4) a 216.8-foot-high, vertical shaft surge chamber composed of a 20-foot-diameter lower section, a

71-foot-diameter middle section, and a 110-foot-diameter upper section, capped at the surface by a 34-foot-high, 111.5-foot-diameter above-ground steel surge tank; (5) one approximately 1,013-foot-long penstock composed of three sections: (a) a 481-foot-long, 20-foot-diameter concrete-lined upper section; (b) a 338-foot-long, 18-foot-diameter concrete-lined middle section; and (c) a 194-foot-long, 15-foot-diameter steel-lined lower section; (6) an approximately 85-foot-diameter, 124-foot-high three-floor (basement floor, turbine floor, and generator floor) underground powerhouse chamber containing one vertical shaft, Francis-type turbine rated at 140 MW; (7) an approximately 531-foot-long, 25-foot-diameter concrete-lined discharge tunnel, with two 19-foot-high, 13-foot-wide gates; (8) a 40-foot-wide open tailrace channel; and (9) appurtenant facilities. The project's K2 transmission facilities include: (1) an approximately 152-foot-wide by 177-foot-long switchyard located at ground level immediately above the underground powerhouse; (2) a transformer; and (3) four, 115-kV circuit breakers. Two sets of non-project 115-kV transmission lines exit the switchyard. From 1984 to 2019, with both powerhouses in operation, average annual generation was approximately 471,424 megawatt-hours.

PG&E operates the project for power generation, making use of available flows from upstream hydroelectric projects. The project operates in a run-of-river mode because of the project reservoir's limited storage capacity. Water used by the project for power generation is released back into the San Joaquin River and flows into Millerton Lake, a United States Bureau of Reclamation facility, located immediately downstream of the K2 Powerhouse.

The San Joaquin River basin upstream of the project is extensively developed for hydroelectric power generation, which influences the timing and magnitude of inflows into the project. Current operational requirements include flow requirements to protect American shad and water temperature requirements to protect smallmouth bass. PG&E is required to discharge a minimum flow of 25 cubic feet per second (cfs) downstream of Kerckhoff Dam during normal water years and a minimum flow of 15 cfs during dry water years. Minimum flows are temporarily modified in response to operating emergencies and for fishery management purposes upon agreement between PG&E and the California Department of Fish and Wildlife (CDFW). Additional releases can be

determined necessary by CDFW to maintain stream temperatures and to flush sediments in the streambed below Kerckhoff Dam. Kerckhoff Reservoir has an estimated capacity of 2,434 acre-feet of usable capacity at normal maximum water surface elevation and is generally operated as a forebay with no seasonal targets, therefore maintaining storage relatively constant at near full pool. Although, operational limitations of the K2 Powerhouse result in an operational storage of the reservoir of 692 acre-feet. PG&E has primarily operated the K1 Powerhouse only when the K2 Powerhouse is offline, at capacity, or during the American shad spawning releases; although, the K1 Powerhouse has not been operational since 2017. The K2 Powerhouse has a rough operating zone that occurs during flows of approximately 1,750 cfs to 3,200 cfs that generate 45–92 MW. To manage the rough operating zone, PG&E does not allow the unit to linger in the 45–92 MW range. Instead, the K2 Powerhouse operates above or below the range, in order to avoid damaging equipment. Further, the K2 Powerhouse cannot operate with flows less than approximately 580 cfs.

PG&E proposes to modify the existing project boundary to encompass all land and facilities necessary for operation and maintenance of the project and remove land and facilities that are not necessary for operation and maintenance of the project. PG&E proposes to decrease the boundary around Kerckhoff Reservoir and Dam, Smalley Cove Recreation Area and the adjacent dispersed day use area, the K1 and K2 developments, A.G. Wilson powerhouse that includes a non-project 12-kilovolt line and telephone line, the fiber optics and 12-kV distribution lines running from the K2 Switchyard to a non-project substation, and Access Road 6. PG&E proposes to increase the boundary to encompass the J–2 gage site and its associated facilities, the K2 Penstock Construction Access Tunnel Drainage Channel, the upstream extent of Kerckhoff Reservoir at its normal maximum surface water elevation, the proposed, currently-named Vista Day Use Area, the proposed San Joaquin River above Kerckhoff Reservoir Inflow Gage, and at various locations around project facilities to facilitate vegetation management activities. With these proposed changes, the area of PG&E-owned land within the project boundary will decrease to 125.6 acres, and Federal lands will decrease to 227.6 acres. The area of private lands encompassed by the project boundary will increase to 49.4 acres.

PG&E proposes to retire the K1 Powerhouse by making certain facilities, including turbine-related facilities, Adits 1 and 2, surge chamber, penstocks, and headworks, inoperable. However, PG&E proposes to retain, as operable for ongoing project operation and maintenance, the: (1) K1 intake structure, tunnel, and North Adit to continue providing instream flow releases; (2) the K1 Powerhouse building for operations support; and (3) the K1 switchyard because it is part of the electric transmission system. PG&E does not propose modifications to the project boundary to remove the K1 powerhouse or associated facilities.

PG&E proposes to construct a new recreation day use area (currently named the Vista Day Use Area) with a connecting trail to BLM's existing San Joaquin River Trail.

PG&E proposes to install one new flow gage upstream of Kerckhoff Reservoir and downstream of Southern California Edison's Big Creek No. 4 Powerhouse within 4 years of license issuance to measure San Joaquin River flow data at the location and provide data publicly on the internet.

PG&E proposes to upgrade two currently manually operated radial gates on the Kerckhoff Dam to be automatically operated adding a remote terminal unit to connect to the supervisory control and data acquisition (or SCADA) system, which would include upgrading the electronic communications, programming automatic control of the K2 Powerhouse, and calibrating the upgraded gates; and adding a generator to provide backup power.

PG&E further proposes the following plans and measures to protect and enhance environmental resources: (1) Proposed Retirement Plan for Kerckhoff 1 Powerhouse and Associated Facilities; (2) American Shad Spawning Season Flow Release Regime Measure; (3) Aquatic Resources Plan; (4) Water Temperature Measure; (5) End-of-Spill Flow Recession and Whitewater Flow Releases Measure; (6) Subsequent Spill Ramp Down Measure; (7) Spill Season Flow Measure; (8) Planned Outage Measure; (9) Flow Notifications Measure; (10) San Joaquin River above Kerckhoff Reservoir Inflow Gage Measure; (11) Modification of Infrastructure and Procedures Measure; (12) Wildlife Management Plan; (13) Vegetation Management and Pest Control Plan; (14) Project Road and Trail Maintenance Plan; (15) Recreation Management Plan; (16) Whitewater Notification and Access Measure and (17) Historic Properties Management Plan.

m. A copy of the application can be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or (202) 502-8659 (TTY).

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments,

recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

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.

You may also register online at <https://ferconline.ferc.gov/FERCOnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *The applicant must file no later than 60 days following the date of issuance of this notice either:* (1) evidence of the date on which the certifying agency received the certification request; (2) a copy of the water quality certification; or (3) evidence of waiver of water quality certification.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions	August 2024.
Licensee's Reply to REA Comments	October 2024.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: June 27, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-14671 Filed 7-2-24; 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: RP24-841-000.

Applicants: Algonquin Gas Transmission, LLC.

Description: 4(d) Rate Filing: Negotiated Rates—Eversource to Emera eff 6-26-2024 to be effective 6/26/2024.

Filed Date: 6/25/24.

Accession Number: 20240625-5112.

Comment Date: 5 p.m. ET 7/8/24.

Docket Numbers: RP24-842-000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: 4(d) Rate Filing: Negotiated Rates Filing—Oregon Clean Energy to be effective 7/1/2024.

Filed Date: 6/26/24.

Accession Number: 20240626-5036.

Comment Date: 5 p.m. ET 7/8/24.

Docket Numbers: RP24-843-000.

Applicants: WTG Hugoton, LP.

Description: 4(d) Rate Filing: Annual Fuel Retention Percentage Filing 2024-2025 to be effective 8/1/2024.

Filed Date: 6/26/24.

Accession Number: 20240626-5089.

Comment Date: 5 p.m. ET 7/8/24.

Docket Numbers: RP24-844-000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: 4(d) Rate Filing: Negotiated Rate Agreements Update (Pioneer July–Sept 2024) to be effective 7/1/2024.

Filed Date: 6/26/24.

Accession Number: 20240626-5094.

Comment Date: 5 p.m. ET 7/8/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://>

elibrary.ferc.gov/idmws/search/fercgensearch.asp) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

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: June 26, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-14590 Filed 7-2-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Project No. 15255–000]****Oquirrh Energy Storage, LLC; Notice of Effectiveness of Withdrawal of Preliminary Permit Application**

On January 25, 2022, Oquirrh Energy Storage filed a preliminary permit application pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Oquirrh Pumped Storage Project No. 15255 (Oquirrh Project). On June 25, 2024, Oquirrh Energy Storage filed a notice of withdrawal of its application.

No motion in opposition to the notice of withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,¹ the withdrawal of the application will be effective on July 10, 2024, and this proceeding is hereby terminated.

Dated: June 26, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–14589 Filed 7–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. ER24–2297–000]****Ross County Solar, 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 Ross County Solar, 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 July 8, 2024.

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>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

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: June 18, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–14664 Filed 7–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. ER24–2302–000]****Twin Lakes Solar 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 Twin Lakes Solar 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 July 10, 2024.

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

¹ 18 CFR 385.216(b) (2023).

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>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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Dated: June 20, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-14665 Filed 7-2-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24-92-000.

Applicants: Paxton BESS 1 LLC.

Description: Application for authorization under Section 203 of the Federal Power Act of Paxton BESS 1 LLC.

Filed Date: 6/25/24.

Accession Number: 20240625-5185.

Comment Date: 5 p.m. ET 7/16/24.

Docket Numbers: EC24-93-000.

Applicants: Mammoth North LLC.

Description: Application for authorization under Section 203 of the Federal Power Act of Mammoth North LLC.

Filed Date: 6/25/24.

Accession Number: 20240625-5188.

Comment Date: 5 p.m. ET 7/16/24.

Docket Numbers: EC24-95-000.

Applicants: Big Rock ESS Assets, LLC.

Description: Application for authorization under Section 203 of the Federal Power Act of Big Rock ESS Assets, LLC.

Filed Date: 6/25/24.

Accession Number: 20240625-5193.

Comment Date: 5 p.m. ET 7/16/24.

Docket Numbers: EC24-96-000.

Applicants: Coso Geothermal Power Holdings LLC, Arizona Solar One LLC, Mojave Solar LLC, Telocaset Wind Power Partners, LLC, High Prairie Wind Farm II, LLC, Old Trail Wind Farm, LLC, DCR Transmission, L.L.C., ECP ControlCo, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Coso Geothermal Power Holdings LLC, et al.

Filed Date: 6/27/24.

Accession Number: 20240627-5113.

Comment Date: 5 p.m. ET 8/12/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24-215-000.

Applicants: BRP Antlia BESS LLC.

Description: BRP Antlia BESS LLC submits notice of self-certification of exempt wholesale generator status.

Filed Date: 6/27/24.

Accession Number: 20240627-5120.

Comment Date: 5 p.m. ET 7/18/24.

Docket Numbers: EG24-216-000.

Applicants: BRP Carina BESS LLC.

Description: BRP Carina BESS LLC submits notice of self-certification of exempt wholesale generator status.

Filed Date: 6/27/24.

Accession Number: 20240627-5121.

Comment Date: 5 p.m. ET 7/18/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24-121-000.

Applicants: Old Dominion Electric Cooperative v. The Potomac Edison Company, FirstEnergy Service Company, and PJM Interconnection, L.L.C.

Description: Complaint of Old Dominion Electric Cooperative v. The Potomac Edison Company, et al.

Filed Date: 6/26/24.

Accession Number: 20240626-5150.

Comment Date: 5 p.m. ET 7/16/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-2434-013;

ER10-2436-013; ER17-1666-010;

ER18-1709-005; ER19-1635-004.

Applicants: Glaciers Edge Wind Project, LLC, Stoneray Power Partners, LLC, Red Pine Wind Project, LLC, Wapsipinicon Wind Project, LLC, Fenton Power Partners I, LLC.

Description: Triennial Market Power Analysis for Central Region of Fenton Power Partners I, LLC, et al.

Filed Date: 6/26/24.

Accession Number: 20240626-5199.

Comment Date: 5 p.m. ET 8/26/24.

Docket Numbers: ER13-172-003;

ER20-134-002; ER10-1342-008; ER18-1777-005.

Applicants: Meadowlark Wind I LLC, CP Energy Marketing (US) Inc., Cardinal Point LLC, Midland Cogeneration Venture Limited Partnership.

Description: Notice of Change in Status of Midland Cogeneration Venture Limited Partnership, et al.

Filed Date: 6/24/24.

Accession Number: 20240624-5230.

Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER14-153-011;

ER10-2742-017; ER16-517-006; ER20-1641-005.

Applicants: Southern Illinois Generation Company, LLC, Shelby County Energy Center, LLC, Tilton Energy, LLC, Gibson City Energy Center, LLC.

Description: Triennial Market Power Analysis for Central Region of Gibson City Energy Center, LLC, et al.

Filed Date: 6/26/24.

Accession Number: 20240626-5195.

Comment Date: 5 p.m. ET 8/26/24.

Docket Numbers: ER21-2445-004;

ER23-2716-002.

Applicants: Moraine Sands Wind Power, LLC, Glacier Sands Wind Power, LLC.

Description: Triennial Market Power Analysis for Central Region of Glacier Sands Wind Power, LLC, et al.

Filed Date: 6/26/24.

Accession Number: 20240626-5198.

Comment Date: 5 p.m. ET 8/26/24.

Docket Numbers: ER22-2967-003.

Applicants: Wisconsin Electric Power Company.

Description: Compliance filing; Settlement Compliance Filing to be effective 1/1/2023.

Filed Date: 6/27/24.

Accession Number: 20240627-5089.

Comment Date: 5 p.m. ET 7/18/24.

Docket Numbers: ER23-1625-001.

Applicants: Apex Solar LLC.

Description: Notice of Change in Status of Young, Erica.

Filed Date: 6/26/24.

Accession Number: 20240626-5191.

Comment Date: 5 p.m. ET 7/17/24.

Docket Numbers: ER24–851–002.
Applicants: PacifiCorp.
Description: Compliance filing:
 Compliance Filing to be effective 3/12/2024.
Filed Date: 6/27/24.
Accession Number: 20240627–5135.
Comment Date: 5 p.m. ET 7/18/24.
Docket Numbers: ER24–856–002.
Applicants: Nevada Power Company.
Description: Compliance filing:
 WRAP Compliance Filing to be effective 3/12/2024.
Filed Date: 6/27/24.
Accession Number: 20240627–5136.
Comment Date: 5 p.m. ET 7/18/24.
Docket Numbers: ER24–857–002.
Applicants: Sierra Pacific Power Company.
Description: Compliance filing:
 Compliance Filing to be effective 3/12/2024.
Filed Date: 6/27/24.
Accession Number: 20240627–5138.
Comment Date: 5 p.m. ET 7/18/24.
Docket Numbers: ER24–1901–000.
Applicants: Yum Yum Solar LLC.
Description: Supplement to 04/30/2024 Yum Yum Solar LLC tariff filing.
Filed Date: 6/27/24.
Accession Number: 20240627–5091.
Comment Date: 5 p.m. ET 7/8/24.
Docket Numbers: ER24–2384–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing:
 2024–06–26–SS–GI–2014–9 Amnd1–457–0.0.0 to be effective 6/27/2024.
Filed Date: 6/26/24.
Accession Number: 20240626–5145.
Comment Date: 5 p.m. ET 7/17/24.
Docket Numbers: ER24–2385–000.
Applicants: Monongahela Power Company.
Description: § 205(d) Rate Filing:
 Interconnection Service Agreement to be effective 6/27/2024.
Filed Date: 6/26/24.
Accession Number: 20240626–5162.
Comment Date: 5 p.m. ET 7/17/24.
Docket Numbers: ER24–2386–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing:
 Amendment to ISA No. 6106, AD2–213 to be effective 8/27/2024.
Filed Date: 6/27/24.
Accession Number: 20240627–5026.
Comment Date: 5 p.m. ET 7/18/24.
Docket Numbers: ER24–2387–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing:
 1266R16 Kansas Municipal Energy Agency NITSA and NOA to be effective 9/1/2024.
Filed Date: 6/27/24.

Accession Number: 20240627–5056.
Comment Date: 5 p.m. ET 7/18/24.
Docket Numbers: ER24–2388–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing:
 2024–06–27_SA 3409 Springfield, IL–ZEP Grand Prairie Wind 1st Rev GIA (J750) to be effective 6/12/2024.
Filed Date: 6/27/24.
Accession Number: 20240627–5067.
Comment Date: 5 p.m. ET 7/18/24.
Docket Numbers: ER24–2389–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing:
 3599R4 Missouri Electric Commission NITSA NOA to be effective 9/1/2024.
Filed Date: 6/27/24.
Accession Number: 20240627–5069.
Comment Date: 5 p.m. ET 7/18/24.
Docket Numbers: ER24–2390–000.
Applicants: The Narragansett Electric Company.
Description: § 205(d) Rate Filing:
 RIE Local Control Services Agreement FERC No. 1 to be effective 5/30/2024.
Filed Date: 6/27/24.
Accession Number: 20240627–5103.
Comment Date: 5 p.m. ET 7/18/24.
Docket Numbers: ER24–2391–000.
Applicants: Hecate Energy Highland LLC.
Description: § 205(d) Rate Filing:
 Category 1 Status Filing to be effective 6/28/2024.
Filed Date: 6/27/24.
Accession Number: 20240627–5124.
Comment Date: 5 p.m. ET 7/18/24.
Docket Numbers: ER24–2392–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing:
 Amendment to ISA; SA No. 6698; AE2–110 to be effective 8/27/2024.
Filed Date: 6/27/24.
Accession Number: 20240627–5159.
Comment Date: 5 p.m. ET 7/18/24.
Docket Numbers: ER24–2393–000.
Applicants: Midcontinent Independent System Operator, Inc., International Transmission Company.
Description: § 205(d) Rate Filing:
 Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2024–06–27_SA 4308 ITCTransmission-Swift Energy Storage E&P (J1902) to be effective 6/26/2024.
Filed Date: 6/27/24.
Accession Number: 20240627–5190.
Comment Date: 5 p.m. ET 7/18/24.
 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.

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Dated: June 27, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–14674 Filed 7–2–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12053–01–OA]

Applicability Date for the Office of Management and Budget's Regulatory Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of applicability date.

SUMMARY: The Environmental Protection Agency (EPA) is applying the Office of Management and Budget's final rule and final guidance revising the termination provisions of its regulations to financial assistance agreements that are awarded, or amended to add funds, on or after July 1, 2024 as specified in the terms and conditions of awards.

DATES: The revised version of 2 CFR 200.340 will apply to EPA financial assistance agreements awarded or amended to add funds on or after July 3, 2024.

FOR FURTHER INFORMATION CONTACT: EPA's Office of the Administrator

(Attention: Hieu Le) at Le.Hieu@epa.gov or (202) 564-4700.

SUPPLEMENTARY INFORMATION: As codified at 2 CFR 1500.2, EPA has adopted OMB's Federal Financial Assistance regulations (subparts A through F of 2 CFR part 200), including any amendments. EPA implements any amendments to OMB's regulations when such changes become effective. On April 22, 2024, OMB finalized several revisions and updates to its Federal Financial Assistance regulations. See Guidance for Federal Financial Assistance, 89 FR 30046 (April 22, 2024). OMB made the changes effective October 1, 2024, but authorized Federal agencies to apply the changes to Federal awards issued prior to October 1, 2024. Specifically, OMB stated: "Federal agencies may elect to apply the final guidance to Federal awards issued prior to October 1, 2024, but they are not required to do so. For agencies applying the final guidance before October 1, 2024, the effective date of the final guidance must be no earlier than June 21, 2024." 89 FR 30046 (April 22, 2024).

OMB's final rule revised, among others, the termination provisions of 2 CFR 200.340. Specifically, OMB revised 2 CFR 200.340(a)(4) to clarify that an agency may terminate a Federal award if it no longer effectuates the program goals or agency priorities (e.g. unilateral termination) but only when such language is clearly and unambiguously included in the terms and conditions of the award. OMB also revised 2 CFR 200.340(b) to require agencies to "clearly and unambiguously specify *all* termination provisions in the terms and conditions of the Federal award." 89 FR 30046, 30169 (emphasis added), April 22, 2024. As authorized under OMB's final rule, and in an effort to provide clarity on termination of its awards as expeditiously as possible, EPA has decided to apply the revised version of 2 CFR 200.340 to EPA financial assistance agreements awarded or amended to add funds on or after July 1, 2024. This will allow EPA to implement the revised version of 2 CFR 200.340 through the terms and conditions of awards, as determined by EPA on or after that date. Consistent with the revised termination provision, EPA will clearly and unambiguously specify all termination provisions in the terms and conditions of applicable awards, including an express authorization for unilateral termination when dictated by case- or program-specific needs. Any subsequent changes to the grounds for unilateral termination of an assistance agreement must be agreed to by both EPA and the financial

assistance agreement recipient and authorized by 2 CFR 200.340 or a successor regulation in effect at the time of award or the amendment adding additional funding.

EPA intends to implement all other revisions to title 2 of the Code of Federal Regulations described in the April 22, 2024 (89 FR 30046), OMB final rule and notification of final guidance in awards made or amended to add additional funds on or after October 1, 2024.

Janet McCabe,
Deputy Administrator, U.S. Environmental Protection Agency.

[FR Doc. 2024-14656 Filed 7-2-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2024-0036; FRL-12073-01-OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Climate Pollution Reduction Grants (CPRG) Program Implementation (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Climate Pollution Reduction Grants (CPRG) Program Implementation Grants ICR (EPA ICR Number 2806.01, OMB Control Number 2060-NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** on February 8, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before August 2, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA HQ-OAR-2024-0036, to the EPA online using www.regulations.gov (our preferred method), by email to a-and-r-docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the

comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards, Mail Code C504.1, Environmental Protection Agency, Post Office Box 12055 RTP, NC 27711; telephone number: (919) 541-0641; email address: long.pam@epa.gov.

SUPPLEMENTARY INFORMATION: This is a request for approval of a new collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on February 8, 2024, during a 60-day comment period (89 FR 8679). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The Climate Pollution Reduction Grants (CPRG) program was established under section 60114 of the Inflation Reduction Act (IRA) signed on August 16, 2022. Through a competitive process, the EPA anticipates awarding approximately \$4.6B in CPRG implementation grants to states, municipalities, Tribes, territories, and air quality management districts in 2024 to "facilitate the reduction of greenhouse gas air pollution." Grantees will be required to report projected greenhouse gas (GHG) emission reductions as well as changes in other air pollutants, both in general and specifically in low-income and disadvantaged communities (LIDAC). This information will be collected to ensure accurate projections of GHGs and

other air pollutant emissions both in and outside LIDAC areas for projects being funded under the CPRG program.

It is expected that the CPRG program, along with other IRA programs, will be required to demonstrate effective execution of the statutory responsibilities charged to the EPA, as well as comply with any additional reporting requirements (e.g., Evidence Act, Justice40). These responsibilities necessitate standardized data collection from CPRG implementation grantees for the purposes of (1) determining the accuracy of calculations and analyses submitted by grantees, (2) assessing the compliance of grantees in performing tasks agreed to under the Terms and Conditions of CPRG implementation grants, and (3) applying information collected from CPRG implementation grantees for analytical use.

Form Numbers: None.

Respondents/affected entities: CPRG Implementation Grant General Competition and Tribes & Territories Competition grantees.

Respondent's obligation to respond: Mandatory (to comply with CPRG grant Reporting Requirements/Terms and Conditions).

Estimated number of respondents: 218 (total).

Frequency of response: Once each for the 1-Year (General Competition) and Final Reports (General and Tribe & Territories Competitions).

Total estimated burden: 46,080 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$2,660,121 (per year), which includes \$0 annualized capital or operation & maintenance costs.

Changes in the Estimates: This is a new collection.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2024-14603 Filed 7-2-24; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activity: Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice and request for comments.

SUMMARY: This notice announces that the U.S. Equal Employment

Opportunity Commission (EEOC) is submitting a request for a three-year approval, under the Paperwork Reduction Act of 1995 (PRA), of a revision to the current Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery that the Office of Management and Budget (OMB) previously approved. This collection is part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery.

DATES: Written comments on this notice must be submitted on or before August 2, 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:

For Office of Communications and Legislative Affairs: Caitlin McCartney, caitlin.mccartney@eeoc.gov, 1-202-921-2709.

For Office of Federal Operations: Sharon Halstead, sharon.halstead@eeoc.gov, 1-202-921-2832.

For Office of Field Programs: Katrina Grider, katrina.grider@eeoc.gov, 1-202-921-2919.

For Office of National External Engagement Programs: Kessela Reis, kessela.reis@eeoc.gov, 1-917-596-6032.

For Office of State, Local & Tribal Programs: James Yao, james.yao@eeoc.gov, 1-202-921-2886.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The proposed information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the government's commitment to improving service delivery. By qualitative feedback, we mean information that provides useful insights on perceptions and opinions, but not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative,

and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, course materials, course instructor, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
 - The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
 - The collections are the only way to collect information; there are no alternative existing sources;
 - The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
 - Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program;
 - Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
 - Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
 - Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
 - Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.
- Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring

trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy

information and will not ask questions of a sensitive nature.

Pursuant to the PRA and OMB regulation 5 CFR 1320.8(d)(1), the EEOC solicited public comment on its intent to seek a three-year approval of this revised collection to enable it to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the EEOC's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the EEOC'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 the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. No comments were received in response to the 60-day notice published in the **Federal Register** on March 22, 2024 (89 FR 20473).

In addition to clearance hours for the previously approved customer feedback forms, the EEOC is also requesting an additional 1,000 clearance hours as a reserve to cover any additional feedback forms that may be developed over the next three years for new trainings offered by the EEOC. The EEOC anticipates any new potential feedback forms will be similar in length and content to existing feedback forms. The EEOC plans to seek clearance for the additional hours so the EEOC can use the existing OMB clearance number if the need arises for additional training and feedback forms.

Type of survey	Respondents	Number of respondents	Number of responses/ respondent	Participation time	Response burden (in hours)
<i>Questionnaire:</i> FEPA–TERO National Training Conference Survey..	Employees of state and local Fair Employment Practices Agencies (FEPAs) and Tribal Employment Rights Offices (TEROs)..	550	1	3 minutes per response	27.5
<i>Questionnaire:</i> EXCEL Training Conference Evaluation Survey..	Private sector and state and local government EEO managers, supervisors, practitioners, HR professionals, attorneys, ADR specialists and other interested parties..	310	1	10 minutes per response	52
<i>Questionnaire:</i> EEOC Training Institute Respectful Workplaces Course Evaluation..	Private sector and state and local government managers and employees..	5,000	1	5 minutes per response	417
<i>Questionnaire:</i> EEOC Training Institute Course Evaluation..	Private sector human resources staff, business owners, managers, and supervisors, and state and local government employees..	6,000	1	2 minutes per response	200
<i>Questionnaire:</i> EEOC In-Person Workshop Evaluation Survey.	Private sector and state and local government human resources staff, business owners, managers, supervisors, employment agency staff, union officials, attorneys, and others interested in EEO issues..	2,170	1	2 minutes per response	72
<i>Questionnaire:</i> EEOC Virtual Workshop Evaluation Survey..	Private sector and state and local government human resources staff, business owners, managers, supervisors, employment agency staff, union officials, attorneys, and others interested in EEO issues..	2,170	1	2 minutes per response	72
<i>Questionnaire:</i> National External Engagement Program Survey..	Attendees at Outreach and Training educational events..	2,500	1	5 minutes per response	208
<i>Questionnaire:</i> Federal Course and Customer Specific Training Feedback Survey..	Non-federal learners in federal courses and customized customer-specific training..	225	1	2 minutes per response	7.5
<i>Questionnaire:</i> Federal Education Consortium Registration..	Non-federal Education Consortium registrants..	50	1	2 minutes per response	2.0
<i>Questionnaire:</i> Request for Federal Training and Outreach services..	Non-federal entities requesting outreach or fee-based training..	20	1	2 minutes per response	<1
EEOC Website Satisfaction Survey.	Individuals or Households.	3,270	1	2 minutes per response	109
Future Training Assessments.	Future Training Attendees.	1,000	1	5 minutes per response	83
Total .....	.....	23,265	.....	.....	1,250

Overview of Information Collection

OMB Number: 3046–0048.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals and Households; Businesses and

Organizations; State, Local or Tribal Governments.

Average Expected Annual Number of Activities: Approximately 12 activities.

Respondents: 23,265.

Annual Responses: 23,265.

Frequency of Response: Once per respondent.

Average Minutes per Response: 3.2.

Annual Burden Hours: 1,250.

Dated: January 27, 2024

For the Commission.

Charlotte A. Burrows,
Chair.

Editorial Note: This document was received for publication by the Office of the Federal Register on June 28, 2024.

[FR Doc. 2024–14625 Filed 7–2–24; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection

Activities: Extension Without Change of an Existing Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension without change of the existing recordkeeping requirements under its regulations. The Commission is seeking public comment on the proposed extension.

DATES: Written comments on this notice must be submitted on or before September 3, 2024.

ADDRESSES: You may submit comments by any of the following methods—please use only one method:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the website for submitting comments.

Mail: Comments may be submitted by mail to Raymond Windmiller, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Fax: Comments totaling six or fewer pages may be sent by fax machine to (202) 663–4114. Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 921–

2815 (voice), (800) 669–6820 (TTY), or (844) 234–5122 (ASL Video Phone).

Instructions: All comments received will be posted without change to <http://www.regulations.gov>, including any personal information you provide. However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products.

Copies of the received comments will be available for review at the Commission's library, 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:00 a.m. and 4:30 p.m. on days the Commission is open for business. You must make an appointment with library staff.

FOR FURTHER INFORMATION CONTACT:

Kathleen Oram, Assistant Legal Counsel, at (202) 921–3240 or kathleen.oram@eeoc.gov. Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 921–3191 (voice), (800) 669–6820 (TTY), or (844) 234–5122 (ASL Video Phone).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission enforces Title VII of the Civil Rights Act of 1964 (Title VII), Title I of the Americans with Disabilities Act (ADA), and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which collectively prohibit discrimination on the basis of race, color, religion, sex, national origin, disability, or genetic information. Section 709(c) of Title VII, section 107(a) of the ADA, and section 207(a) of GINA authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary, or appropriate.¹ The EEOC has promulgated recordkeeping regulations under those authorities that are contained in 29 CFR part 1602. These regulations do not require the creation of any particular records but generally require employers and labor organizations to preserve any personnel and employment records they make or keep for a period of one year or two

¹ While the Pregnant Workers Fairness Act (PWFA) also authorizes the EEOC to issue recordkeeping regulations, this notice announces the EEOC's intent to seek an extension of the existing recordkeeping requirements under Title VII, the ADA, and GINA. Recordkeeping requirements concerning the PWFA will be addressed separately.

years, and possibly longer if a charge of discrimination is filed.

Pursuant to the Paperwork Reduction Act of 1995, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The EEOC seeks an extension without change of OMB's clearance under the PRA of the recordkeeping requirements in 29 CFR part 1602.

Overview of Current Information Collection

Collection Title: Recordkeeping Under Title VII, the ADA, and GINA.

OMB Number: 3046–0040.

Description of Affected Public: Employers and labor organizations subject to Title VII.

Number of Respondents: 887,869.

Number of Reports Submitted: 0.

Estimated Burden Hours: 178,485.

Burden Hour Cost: \$5,806,101.

Federal Cost: None.

Number of Forms: None.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), section 107(a) of the ADA, 42 U.S.C. 12117(a), and section 207(a) of GINA, 42 U.S.C. 2000ff–6(a), direct the Commission to establish regulations pursuant to which entities subject to those Acts shall make and preserve certain records to assist the EEOC in ensuring compliance with the Acts' prohibitions on employment discrimination. Accordingly, the EEOC issued regulations setting out recordkeeping requirements for private employers (29 CFR 1602.14); employers, labor organizations, and joint labor-management committees that control apprenticeship programs (29 CFR 1602.21(b)); labor organizations (29 CFR 1602.28(a)); state and local governments (29 CFR 1602.31); elementary and secondary school systems or districts

(29 CFR 1602.40); and institutions of higher education (29 CFR 1602.49(a)). Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII, which are also incorporated by reference into the ADA at section 107(a) and GINA at section 207(a).

Burden Statement: The estimated number of respondents subject to this recordkeeping requirement is 887,869 entities, which combines estimates from private employment,² the public sector,³ colleges and universities,⁴ apprenticeship programs,⁵ and referral unions.⁶ An entity subject to the recordkeeping requirement in 29 CFR part 1602 must retain all personnel or employment records, records relating to apprenticeship, or union membership or referral records made or kept by that entity for one year (private employers and referral unions) or two years (public sector, colleges and universities, apprenticeship programs), and must retain any records relevant to charges of discrimination filed under Title VII, the ADA, or GINA until final disposition of those matters, which may be longer than one or two years. This recordkeeping requirement does not require reports or the creation of new records, but merely requires retention of records that an entity has already made or kept in the normal course of its business

operations. Thus, existing employers and labor organizations bear no burden under this analysis because their systems for retaining these types of records are already in place.

Newly formed entities may incur a small burden when setting up their data collection and retention systems to ensure compliance with EEOC's recordkeeping requirements. We assume some effort and time must be expended by new employers or labor organizations to familiarize themselves with the Title VII, ADA, and GINA recordkeeping requirements and explain those requirements to the appropriate staff. We estimate that 30 minutes would be needed for this one-time familiarization process. Using projected business formation estimates from the U.S. Census Bureau for 2023 and the number of new apprenticeship programs established in 2021 provided by the Department of Labor, we estimate that there are 356,969 entities that would incur this start-up burden.⁷ Assuming a 30-minute burden per entity, the total annual hour burden is 178,485 hours (.5 hour × 356,969 new entities = 178,485 hours). The estimated associated burden hour cost to respondents is \$5,806,101, or around \$16.27 per new entity.⁸

For the Commission.

Charlotte A. Burrows,
Chair.

[FR Doc. 2024-14602 Filed 7-2-24; 8:45 am]

BILLING CODE 6570-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-XXXX; FR ID 229161]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction

Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before August 2, 2024.

ADDRESSES: Comments should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418-2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

² Source of original data: 2021 Economic Census (<https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html>). Local Downloadable CSV data. Select U.S. & states, 6 digit NAICS. The original number of employers was adjusted to include only those with 15 or more employees.

³ Source of original data: 2022 Census of Governments: Employment. Individual Government Data File (<https://www.census.gov/data/datasets/2022/econ/apes/2022.html>). Local Downloadable Data zip file “Individual Unit Files.” The original number of government entities was adjusted to include only those with 15 or more employees.

⁴ Source: U.S. Department of Education, National Center for Education Statistics, IPEDS, Fall 2022, Institutional Characteristics component (provisional data). See Table 1, “Number and percentage distribution of Title IV institutions, by control of institution, level of institution, and region: United States and other U.S. jurisdictions, academic year 2022–23” (<https://nces.ed.gov/ipeds/search/viewtable?tableId=35945&returnUrl=%2Fsearch>).

⁵ Source: U.S. Department of Labor, Registered Apprenticeship National Results Fiscal Year 2021, Number of active apprenticeship programs in 2021 (<https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2021>).

⁶ The EEOC has undertaken measures to enhance the agency's existing EEO-3 data frame (i.e., roster) of potentially eligible filers that was most recently used during the 2022 EEO-3 data collection. The number of referral unions was estimated by comparing the EEOC's 2022 EEO-3 frame to a list of active unions from the U.S. Department of Labor's Office of Labor Management Standards (OLMS) Online Public Disclosure Room (OPDR) database (<https://olmsapps.dol.gov/olpdr/>).

⁷ Sources: Business Formation Statistics from the U.S. Census Bureau (<https://www.census.gov/econ/bfs/index.html>); Total projected business formation statistics (series BF_PBF4Q) for 2023, across all industries, for the U.S., not seasonally adjusted; U.S. Department of Labor, New Apprenticeship programs for 2021 (<https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2021>).

⁸ Burden hour cost estimates are based on the median hourly wage rate of \$32.53 for Human Resources Specialists obtained from the Bureau of Labor Statistics, May 2024 (see U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, <https://www.bls.gov/ooh/>).

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–XXXX.

Title: Section 76.310, Truth in Billing and Advertising.

Type of Review: New collection.

Form Number: N/A.

Respondents: Business or other for profit entities.

Number of Respondents and Responses: 400 respondents and 54,000,400 responses.

Estimated Hours per Response: 0.0001 hours–0.5 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure requirement.

Total Annual Burden: 5,600 hours.

Total Annual Cost: No cost.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 303, 316, 335(a), 552(b), and 562.

Needs and Uses: The information collection requirements adopted in FCC 24–29 are as follows:

47 CFR 76.310 requires truth in billing and advertising:

47 CFR 76.310(a) requires cable operators and direct broadcast satellite (DBS) providers to state an aggregate price for the video programming that they provide as a clear, easy-to-understand, and accurate single line item on subscribers' bills, including on bills for legacy or grandfathered video programming service plans. If a price is introductory or limited in time, cable and DBS providers shall state on subscribers' bills the date the price

ends, by disclosing either the length of time that a discounted price will be charged or the date on which a time period will end that will result in a price change for video programming, and the post-promotion rate 60 and 30 days before the end of any introductory period. Cable operators and DBS providers may complement the aggregate line item with an itemized explanation of the elements that compose that single line item.

47 CFR 76.310(b) requires cable operators and DBS providers that communicate a price for video programming in promotional materials to state the aggregate price for the video programming in a clear, easy-to-understand, and accurate manner. If part of the aggregate price for video programming fluctuates based upon service location, then the provider must state where and how consumers may obtain their subscriber-specific “all-in” price (for example, electronically or by contacting a customer service or sales representative). If part or all of the aggregate price is limited in time, then the provider must state the post-promotion rate, as calculated at that time, and the duration of each rate that will be charged. Cable operators and DBS providers may complement the aggregate price with an itemized explanation of the elements that compose that aggregate price. The requirement in this paragraph (b) shall not apply to the marketing of legacy or grandfathered video programming service plans that are no longer generally available to new customers. For purposes of this section, the term “promotional material” includes communications offering video programming to consumers such as advertising and marketing.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–14583 Filed 7–2–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, July 9, 2024, at 10:00 a.m. and its continuation at the conclusion of the open meeting on July 11, 2024.

PLACE: 1050 First Street NE, Washington, DC and virtual.

(This meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2024–14788 Filed 7–1–24; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th

Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than August 2, 2024.

A. *Federal Reserve Bank of Boston* (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to BOS.SRC.Applications.Comments@bos.frb.org:

1. *Ion Financial, MHC, Naugatuck, Connecticut*; to become a bank holding company by merging with NVE Bancorp, MHC, and NVE Bancorp, Inc., and thereby indirectly acquiring NVE Bank, all of Englewood, New Jersey.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–14654 Filed 7–2–24; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice-MRB–2024–03; Docket No. 2024–0002; Sequence No. 31]

Notice of Charter Renewal a Federal Advisory Committee

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA is announcing the renewal of the charter for the GSA Acquisition Policy Federal Advisory Committee (hereinafter “the Committee” or “the GAP FAC”), a discretionary advisory committee, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended.

DATES: *Applicable:* July 3, 2024.

FOR FURTHER INFORMATION CONTACT: Stephanie Hardison, Designated Federal Officer, OGP, 202–258–6823, or David Cochennic, OGP, 904–403–0829, or email: gapfac@gsa.gov.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the provisions of the FACA, as amended (Pub. L. 92–463), and announces the renewal of the GAP FAC. The Administrator of GSA has determined that the renewal of the Committee is necessary and in the public interest.

The focus of the renewed GAP FAC shall be on providing GSA advice on regulatory, policy, and procedural reforms. These reforms will facilitate policy development and strategies for implementing emerging technological considerations in the Federal

acquisition process including acquisition policy considerations around Artificial Intelligence. Additionally, this will include not only technological advancements but also extend to a broad spectrum of interdisciplinary areas. In accordance with FACA, the renewed charter for the Committee will be filed with the appropriate entities.

Jeffrey A. Koses,

Senior Procurement Executive and Acting Chief Acquisition Officer, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2024–14636 Filed 7–2–24; 8:45 am]

BILLING CODE 6820–61–P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Information Collection Renewal; Comment Request for OGE Form 450 Executive Branch Confidential Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice and request for comments.

SUMMARY: After this second round notice, the Office of Government Ethics (OGE) plans to request that the Office of Management and Budget (OMB) renew its approval under the Paperwork Reduction Act for a modified version of an existing information collection, entitled the OGE Form 450 Executive Branch Confidential Financial Disclosure Report.

Comments: 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: Jennifer Matis at the U.S. Office of Government Ethics; telephone: 202–482–9216; TTY: 800–877–8339; Email: jmatis@oge.gov. A copy of the form with proposed changes marked in red is available here: <https://oge.box.com/s/vm33qroo5vbbvg542xr4mvqzacyz36fx>.

SUPPLEMENTARY INFORMATION:

Title: Executive Branch Confidential Financial Disclosure Report.

Agency Form Number: OGE Form 450.

Abstract: The OGE Form 450 collects information from covered executive

branch employees as required under OGE’s executive branch wide regulatory provisions in subpart I of 5 CFR part 2634. The basis for the OGE reporting regulation is section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990) and 5 U.S.C. 13109. The purpose of collecting this information is to allow agencies to identify and address potential financial conflicts of interest among covered employees. The information collected relates to: assets and income; liabilities; outside positions; agreements and arrangements; and gifts, reimbursements and travel expenses—all subject to various reporting thresholds and exclusions. OGE currently maintains the form in three formats on its website: a PDF version, a 508 compliant PDF version accessible to users who use screen readers to access and interact with digital information, and an Excel version.

OGE seeks renewal of the OGE Form 450 with several modifications. OGE sought and received input from a variety of stakeholders before proposing these modifications. Comments submitted by the public in response to the **Federal Register** notices published during the last renewal in 2021 were reconsidered. In addition, OGE solicited and received additional comments from OGE employees, agency ethics officials (who are the individuals responsible for reviewing the completed forms for potential conflicts of interest), interested Congressional offices, and the public. On January 19, 2023, OGE held a public meeting to discuss potential changes to the OGE Forms 450 and 278e and accepted written comments in lieu of appearing in-person. See 87 FR 73766 (Dec. 1, 2022).

OGE considered each comment submitted. The proposed modifications discussed below incorporate the suggested changes that OGE believes will provide added clarity and value to the financial disclosure process. OGE is declining to make other suggested changes at this time due to OGE’s lack of regulatory authority to make such changes, lack of interest by the affected agencies, and/or the associated costs to agencies’ electronic financial disclosure filing systems.

The proposed modifications are described below:

On the instruction page, OGE simplified the navigation to OGE’s website for filers who need instructions on completing the form and added a hyperlink.

On the cover page, OGE proposes to delete the field for mailing address and to add a question regarding whether the

filer has a spouse who has paid employment outside the federal government. The yes/no question would be added to the current list of yes/no questions. Filers are required by regulation to report their spouses' employment income. In OGE's listening sessions with agency ethics officials, they felt strongly that the addition of this yes/no question would permit agency reviewers to better identify potential inadvertent omissions elsewhere on the form. OGE believes that the minor impact to the filers of answering this additional yes/no question is outweighed by the benefit to the efficiency and effectiveness of the financial disclosure review process. OGE also clarified the definition of "special government employee" on the cover page based on feedback regarding the current explanatory language.

In the main body of the form, OGE proposes to make a number of changes to the instructions to increase their clarity. Guidance would be added to make it clearer what is and is not reportable. A note would be added indicating that the reporting thresholds for gifts are applicable for calendar years 2023–2025 and that the amounts are adjusted every three years. Additional examples would be added to the Examples page and each section, further demonstrating how particular information should be reported, and some definitions would be removed to make room for additional examples and other clarifying changes. The information that had been provided in the removed definitions is more clearly addressed on other parts of the form.

These changes would not modify the confidential financial disclosure reporting requirements in any way. They are intended to help ensure that filers report all required information in the proper manner, without overreporting unnecessary personally identifiable information.

Finally, OGE plans to discontinue use of the PDF version of the form that is not accessible to users who use screen readers (*i.e.*, it is not "508 compliant"). This version has a feature that allows users to add additional blank pages. This feature is no longer technologically supported. OGE proposes to discontinue use of the nonaccessible PDF version and instead add additional blank lines to the 508 compliant PDF version. Going forward, therefore, OGE seeks approval only for two versions of the form—the 508 compliant PDF version and the Excel version.

A **Federal Register** Notice with a 60-day comment period soliciting comments on this information collection was published on February

26, 2024 (89 FR 14073). OGE received no responses to that notice.

OMB Control Number: 3209–0006.

Type of Information Collection: Extension of a currently approved collection.

Type of Review Request: Regular.

Affected public: Prospective Government employees, including special Government employees, whose positions are designated for confidential disclosure filing and whose agencies require that they file new entrant confidential disclosure reports prior to assuming Government responsibilities.

Estimated Annual Number of Respondents: 31,654.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden: 94,962 hours.

Request for Comments: OGE is publishing this second round notice of its intent to request paperwork clearance renewal for the OGE Form 450. Public comment is invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). OGE specifically seeks comments on whether the proposed changes will change the burden of completing the form. Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of OMB paperwork approval. The comments will also become a matter of public record.

Approved: June 10, 2024.

Shelley K. Finlayson,

Acting Director, U.S. Office of Government Ethics.

[FR Doc. 2024–14599 Filed 7–2–24; 8:45 am]

BILLING CODE 6345–03–P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Information Collection Renewal; Comment Request for OGE Form 278e Executive Branch Personnel Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice and request for comments.

SUMMARY: After this second round notice, the Office of Government Ethics (OGE) plans to request that the Office of Management and Budget (OMB) renew

its approval under the Paperwork Reduction Act for a modified version of an existing information collection, entitled the OGE Form 278e Executive Branch Personnel Public Financial Disclosure Report.

Comments: 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:

Jennifer Matis at the U.S. Office of Government Ethics; telephone: 202–482–9216; TTY: 800–877–8339; Email: jmatis@oge.gov. A copy of the form with proposed changes marked in red is available here: <https://oge.box.com/s/jrca898wqy81iwy1gklc8ydoyuyp963b>.

SUPPLEMENTARY INFORMATION:

Title: Executive Branch Personnel Public Financial Disclosure Report.

Agency Form Number: OGE Form 278e.

Abstract: The OGE Form 278e collects information from certain officers and high-level employees in the executive branch for conflicts of interest review and public disclosure. The form also collects information from individuals who are nominated by the President for high-level executive branch positions requiring Senate confirmation and individuals entering into and departing from other public reporting positions in the executive branch. The information is collected in accordance with 5 U.S.C. 13104 and OGE's implementing financial disclosure regulations at 5 CFR part 2634. The information collected relates to: assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over \$5,000 paid by a source—all subject to various reporting thresholds and exclusions.

OGE has approval for five versions of the Form 278e: a PDF version, an Excel version, an electronic version called Integrity, a Chinese language version, and a Spanish language version. The translated versions are intended to be informational only, to allow more members of the public to understand the content of filers' public reports. The version of the Form 278e that is produced by Integrity is a streamlined output report format that presents only the filer's inputs in given categories and does not report other categories not selected by the filer. It is this output report that is made available to the

public in PDF form. Most public disclosure filers now use Integrity to file the OGE Form 278e. However, OGE also continues to maintain an Excel version of the form and a 508 compliant PDF version accessible to users who use screen readers to access and interact with digital information.

OGE seeks renewal of the OGE Form 278e with several modifications. OGE sought and received input from a variety of stakeholders before proposing these modifications. Comments submitted by the public in response to the **Federal Register** notices published during the last renewal in 2021 were reconsidered. In addition, OGE solicited and received additional comments from OGE employees, agency ethics officials (who are the individuals responsible for reviewing the completed forms for potential conflicts of interest), interested Congressional offices, and the public. On January 19, 2023, OGE held a public meeting to discuss potential changes to the OGE Forms 450 and 278e and accepted written comments in lieu of appearing in-person. See 87 FR 73766 (Dec. 1, 2022).

OGE considered each comment submitted. The proposed modifications discussed below incorporate the suggested changes that OGE believes will provide added clarity and value to the financial disclosure process. OGE is declining to make other suggested changes at this time due to OGE's lack of regulatory authority to make such changes, lack of interest by the affected agencies, and/or the associated costs to Integrity.

The proposed modifications are described below. These changes apply to the English language versions of the form only; OGE will update its Spanish and Chinese instructional versions at a later date.

Changes to All English Versions (Excel, PDF, and Integrity)

OGE proposes to add a question for all filers regarding their type of appointment. The options offered are "PAS," "Non-Career," and "Career." The information may be provided by the filer or by their agency. This information will appear on the cover page. This change was requested by a good government group in order to help the public understand the filer's potential conflicts. One of the primary purposes of the public financial disclosure report is to allow the public to understand any potential conflicts of interest the filer might have. Knowing the filer's type of appointment is important to this understanding because different types of officials have different ethics requirements.

OGE also proposes to identify the date of appointment on the cover page of reports for all filers other than nominees (who have not yet been appointed at the time they complete the form). Integrity currently identifies the date of appointment on the cover page of a new entrant report only. The Excel and PDF versions currently have one field for both date of appointment and date of termination, which OGE proposes separating into two fields. The purpose is to benefit the public's understanding of the time period during which the individual was in a public filing position.

Lastly, OGE proposes to add a link to its online Public Financial Disclosure Guide, the most widely used resource for completing and reviewing public financial disclosure reports.

Changes to the Excel and PDF Versions Only

OGE proposes instructional changes to the Excel and PDF versions to provide better guidance to those filers who do not use the Integrity application. OGE does not propose any changes to the information collected on the Excel and PDF versions of the form, beyond the addition of "appointment type" discussed above.

OGE proposes two changes to the initial instructions page to improve clarity: (1) changing the topic headings to plain language questions (e.g. changing "Late Filing" to "What Happens if I File Late?"); and (2) consolidating the guidance on which parts to complete into a new section headed "What Parts Must I Complete?"

In the rest of the instructions, OGE proposes to add clarifying guidance on reporting requirements, exceptions to reporting requirements, and definitions. OGE also proposes to add specific instructions to avoid reporting unnecessary personal information. Finally, OGE proposes to add a note indicating that the reporting thresholds for gifts are applicable for calendar years 2023–2025 and that the amounts are adjusted every three years.

A **Federal Register** Notice with a 60-day comment period soliciting comments on this information collection was published on February 26, 2024 (89 FR 14071). OGE received one response to that notice. The commenter sought an edit to the instructions for reporting liabilities as they apply to Presidentially-appointed, Senate-confirmed (PAS) uniformed service members reporting mortgages. As a result of this comment, OGE is making clarifying edits to the instructions and summary instructions for reporting liabilities. First, a

paragraph formerly entitled "Additional Exception for Certain Mortgages" will be retitled "Mortgage Reporting." Its language will be simplified and reorganized to clarify exactly who is required to report a mortgage on a personal residence, the exceptions to that requirement, and who is not required to report a mortgage. Second, minor language changes will be made to the Summary Instructions for the liabilities section to make it clear that certain PAS are required to report all mortgages.

OMB Control Number: 3209–0001.

Type of Information Collection: Extension of a currently approved collection.

Type of Review Request: Regular.

Affected Public: Private citizen Presidential nominees to executive branch positions subject to Senate confirmation; other private citizens who are potential (incoming) Federal employees whose positions are designated for public disclosure filing; those who file termination reports from such positions after their Government service ends; and Presidential and Vice-Presidential candidates.

Estimated Annual Number of Respondents: 4,257.

Estimated Time per Response: 10 hours.

Estimated Total Annual Burden: 42,570 hours.

Request for Comments: OGE is publishing this second round notice of its intent to request paperwork clearance renewal for OGE Form 278e. Public comment is invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). OGE specifically seeks comments on whether the proposed changes will change the burden of completing the form. Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of OMB paperwork approval. The comments will also become a matter of public record.

Approved: June 10, 2024.

Shelley K. Finlayson,

Acting Director, U.S. Office of Government Ethics.

[FR Doc. 2024–14597 Filed 7–2–24; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****Notice of Award of a Single Source Cooperative Agreement To Fund Tuskegee University**

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately \$320,000.00, with an expected total funding of approximately \$1,600,000.00 over a 5-year period, to Tuskegee University. The award will enhance ethical public health practice through educational activities geared towards professionals and students in schools of public health particularly from Historically Black Colleges and Universities (HBCU) and other minority serving institutions such as Hispanic-Serving Institutions (HSI), Tribal Colleges and Universities (TCU), and Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI).

DATES: The period for this award will be January 1, 2025 through December 31, 2030.

FOR FURTHER INFORMATION CONTACT: Norman A. Hayes, National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention, 1600 Clifton Road NE, (H24-4), Atlanta, GA 30333, Telephone: (404) 639-8991, email: Nhayes3@cdc.gov

SUPPLEMENTARY INFORMATION: The purpose of this notice of funding opportunity (hereafter referred to as program) is to enhance ethical public health practice through educational activities geared towards professionals and students in schools of public health particularly from Historically Black Colleges and Universities (HBCUs) and other minority serving institutions such as Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI); Hispanic-Serving Institutions (HSI); Tribal Colleges and Universities (TCU). CDC has supported public health ethics education (formerly known as the Bioethics program) since 1999 in response to the unethical syphilis study at Tuskegee and its implications to public health, and continuing needs for understanding complex ethical issues in public health. The program will require

to implement the following integrated strategies/components: Curriculum Development, Intensive Public Health Ethics (PHE) Training, Mentorship, Partnership Building, USPHS Study of Untreated Syphilis at Tuskegee Commemoration, and Dissemination and geared towards populations who have been affected by unethical research.

Tuskegee University is in a unique position to conduct this work, as its goals: (1) conduct research, scholarship, and training in public health ethics and bioethics for under-served populations; (2) educate students, faculty, scholars, and the general public about public health ethics issues to improve public health services to under-served populations; (3) promote racial/ethnic and geographic diversity in the field of public health ethics and bioethics; and (4) facilitate effective community partnerships to address inequities in health and health care and support health promotion for all Americans closely align with the purpose and goals of this program. Additionally, Tuskegee University's prior experience developing a public health ethics curriculum, facilitating a public health ethics intensive training, and make it the best suited institution to carry out the strategies and activities of this program.

Summary of the award:

Recipient: Tuskegee University

Purpose of the Award: The purpose of this award is to enhance ethical public health practice through educational activities geared towards professionals and students in schools of public health particularly from Historically Black Colleges and Universities (HBCUs) and other minority serving institutions such as Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI); Hispanic-Serving Institutions (HSI); Tribal Colleges and Universities (TCU). CDC has supported public health ethics education (formerly known as the Bioethics program) since 1999 in response to the unethical syphilis study at Tuskegee and its implications to public health, and continuing needs for understanding complex ethical issues in public health. The program will require to implement the following integrated strategies/components: Curriculum Development, Intensive Public Health Ethics (PHE) Training, Mentorship, Partnership Building, USPHS Study of Untreated Syphilis at Tuskegee Commemoration, and Dissemination and geared towards populations who have been affected by unethical research.

Amount of Award: \$320,000.00 in Federal Fiscal Year (FFY) 2025 funds, with a total estimated \$1,600,000.00 for the 5-year period of performance, subject to availability of funds.

Authority: This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)) and 318 (a)(b)(c) of the Public Health Service Act [42 U.S.C. 247c (a)(b) and (c)] as amended. Regulations governing the implementation of this legislation are covered under 42 CFR part 51b, subpart A.

Period of Performance: January 1, 2025 through December 31, 2030.

Dated: June 27, 2024.

Jamie Legier,

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024-14621 Filed 7-2-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services**

[Document Identifiers: CMS-855A]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by August 2, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Enrollment Application for Institutional Providers; *Use:* Various sections of the Social Security Act (Act), the United States Code (U.S.C.), Internal Revenue Service Code (Code) and the Code of Federal Regulations (CFR) require providers and suppliers to furnish information concerning the amounts due and the identification of individuals or entities that furnish medical services to beneficiaries before payment can be made.

The primary function of the CMS–855A Medicare enrollment application is to gather information from a certified provider or certified supplier (hereafter occasionally and collectively referenced as “provider(s)”) that tells us who it is, whether it meets certain qualifications to be a health care provider, where it practices or renders services, the identity of its owners, and other information necessary to establish correct claims payments. *Form Number:* CMS–855A (OMB control number: 0938–0685); *Frequency:* On occasion; *Affected Public:* Business or other for-profits, not-for-profit institutions; *Number of Respondents:* 45,473; *Total Annual Responses:* 217,493; *Total Annual Hours:* 41,120. (For policy questions regarding this collection contact Frank Whelan at 410–786–1302.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–14637 Filed 7–2–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Supporting Youth To Be Successful in Life (SYSIL) Study—Extension With Proposed Revisions (Office of Management and Budget #: 0970–0574)

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) is requesting approval from the Office of Management and Budget (OMB) for an extension with proposed revisions of a currently approved information collection activity as part of the Supporting Youth to be Successful in Life (SYSIL) study (OMB #: 0970–0574; expiration date: 07/31/2024).

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.

SUPPLEMENTARY INFORMATION:

Description: SYSIL builds evidence on how to decrease the risk of homelessness among youth and young adults with experience in the child welfare system by continuing work with an organization who conducted foundational work as part of the Youth At-Risk of Homelessness project (OMB Control Number: 0970–0445). SYSIL will provide important information to the field by designing and conducting a federally led evaluation of a comprehensive service model for youth at risk of homelessness.

The SYSIL evaluation includes an implementation study and an impact study, which will use a rigorous quasi-experimental design that includes a comparison group. This information collection request includes the baseline and follow-up survey instruments for the impact study (a single instrument administered three times), and discussion guides for interviews and focus groups for the implementation study. The data collected from the baseline and follow-up surveys will be used to describe the characteristics of the study sample of youth, develop models for estimating program impacts, and determine program effectiveness by comparing outcomes between youth in the treatment (youth receiving the Pathways program) and control groups. The study also collects updated contact information from youth at two points in time to assist in reaching youth to complete follow-up surveys. Data from the interviews and focus groups will provide a detailed understanding of program implementation. We are also conducting brief check-ins with program directors using a subset of questions from the interview guides to collect information on services provided at two additional points in time. The study also uses administrative data from the child welfare system, homelessness management information system, and program providers. Administrative data is being used in its existing format and does not impose any new information collection or recordkeeping requirements on respondents.

The purpose of the requested extension is to continue the ongoing data collection, which will provide

information on focal youth outcomes and program implementation. We are also requesting revisions to the interview and focus group protocols, as well as an additional round of interviews and focus groups. The purpose of the proposed revision is to better understand their experiences in delivering and receiving services and gather information on topics not previously covered in the protocols.

Respondents: The baseline and follow-up surveys and contact update requests are administered to youth in the treatment group (youth receiving the Pathways program) and youth in the control group who consent to participate in the study. Interviews are conducted with program leadership and staff. Focus groups are conducted with a subset of youth who are participating

in the study. Check-ins are conducted with program directors.

Annual Burden Estimates

Estimated burden reflects estimates over the next three years. The numbers of respondents have been updated to reflect completed efforts. There are no changes to estimated time per responses.

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)	Annual burden (in hours)
SYSIL Youth Survey—Baseline survey	120	1	.42	50.4	16.8
SYSIL Youth Survey—Follow-up survey 1 (6 months)	185	1	.42	77.70	25.9
SYSIL Youth Survey—Follow-up survey 2 (12 months)	256	1	.42	107.52	35.84
Interview guide for Pathways sites (treatment sites)	60	1	1.5	90	30
Program Director Check-ins for Pathways sites (treatment sites)	0	0	0	0	0
Interview guide for comparison sites	60	1	1.5	90	30
Program Director Check-ins for comparison sites	0	0	0	0	0
Focus group discussion guide for Pathways youth (treatment youth)	50	1	1.5	75	25
Focus group discussion guide for comparison youth	75	1	1.5	75	25
Contact Information Update Requests	120	2	.08	19.2	6.4
Contact Information Update Requests	185	1	.08	14.8	4.93

Estimated Total Annual Burden Hours: 199.87

Authority: Section 105(b)(5) of the Child Abuse Prevention and Treatment Act (CAPTA) of 1978 (42 U.S.C. 5106(b)(5)), as amended by the CAPTA Reauthorization Act of 2010 (Pub. L. 111–320).

Mary C. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2024–14615 Filed 7–2–24; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Interagency Coordination Committee on the Prevention of Underage Drinking Requests for Public Comments

AGENCY: The Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD), Office of Disease Prevention and Health Promotion, and Substance Abuse and Mental Health Services Administration (SAMHSA), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS).

ACTION: Notice of request for information.

SUMMARY: The Interagency Coordinating Committee on the Prevention of Underage Drinking requests public comments on the Alcohol Intake and Health methodology developed for performing a series of studies assessing the relationship between alcohol intake and related health conditions. The Alcohol Intake and Health studies will be completed by experts with experience conducting meta-analyses, relative risk estimates, and systematic reviews related to alcohol intake and health. The studies will assess the current, best, and most applicable scientific evidence on the relationship between consumption of alcohol and health outcomes.

DATES: Consideration will be given to all written comments received by August 2, 2024.

ADDRESSES: Interested persons are invited to submit written comments to samhsapra@samhsa.hhs.gov. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Send comments related to the methods for the Alcohol Intake and Health Study to Robert Vincent, SAMHSA Reports Clearance Officer, Center for Behaviors Health Quality and Statistics, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane,

Room 15E45, Rockville, MD 20857; Phone: (240) 276–0166; Email: samhsapra@samhsa.hhs.gov. Additional information is at ICCPUD Study on Alcohol Intake and Health (StopAlcoholAbuse.gov).

SUPPLEMENTARY INFORMATION:

Authority and Purpose: The Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD) was created in 2004 when Congress directed the Secretary of HHS to establish the ICCPUD to coordinate all federal agency activities related to the problem of underage drinking.

In April 2022, to support the *Dietary Guidelines for Americans* process and be responsive to stakeholder interest in the subject, the Alcohol Intake and Health Study (Study) was devised and approved by ICCPUD principles. The Study is designed to assess the scientific evidence on the relationship between chronic alcohol use and multiple health conditions, the relationship between alcohol use and injury risk, lifetime risks of alcohol-attributable mortality and morbidity, and the burden of disease related to alcohol intake in the United States. This information will be provided to HHS and USDA for consideration during the development of the 2025–2030 *Dietary Guidelines for Americans*.

Subcommittees Task: To support the Study, the ICCPUD convened a Technical Review Subcommittee (Subcommittee) and an external Scientific Review Panel (SRP). The Subcommittee is composed of ICCPUD member agencies that have subject matter and scientific expertise in alcohol intake and health policy and research, including:

- Office of the Assistant Secretary for Health
- U.S. Department of Agriculture
- Agency for Health Care Research and Quality
- Centers for Disease Control and Prevention
- Executive Office of the President, Office of National Drug Control Policy
- Indian Health Service
- National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism
- National Institutes of Health, National Cancer Institute
- Substance Abuse and Mental Health Services Administration

The Subcommittee will review all available literature and synthesize the data and conclusions from the Scientific Review Panel. The Subcommittee will assess the scientific evidence provided by the SRP in conjunction with the findings from a complementary National Academies of Science, Engineering, and Medicine (NASEM) Review of Evidence on Alcohol and Health (www.NationalAcademies.org/our-work/review-of-evidence-on-alcohol-and-health), provide a synthesis of the data, and summarize the science for the *2025 Report to Congress* and provide input to the process for developing the *2025–2030 Dietary Guidelines for Americans* related to alcohol and health.

The SRP is composed of nationally and internationally renowned subject matter experts. The SRP will conduct a series of studies to assess the available scientific research on alcohol intake and health and will provide the Subcommittee with an assessment of the best available science related to the risks of alcohol use on various health outcomes. Individuals of the SRP have expertise in the following areas:

- Public health strategies related to alcohol policies, programs, and practices
- Health effects of alcohol
- Dietary guidance policy
- Cancer epidemiology
- Data quality and analysis
- Systematic reviews and meta-analyses
- Biostatistics
- Adverse pregnancy outcomes

All Subcommittee members and external subject matter experts are

required to declare sources of funding (direct or indirect) and any connection (direct or indirect) with the tobacco, alcohol, cannabis, or pharmaceutical industries, including any connection (direct or indirect) with any entity that is substantially funded by one of these organizations. Biographies and financial disclosures can be found on the ICCPUD Study on Alcohol Intake and Health website: www.StopAlcoholAbuse.gov/research-resources/alcohol-intake-health.aspx.

Public Comments: ICCPUD requests written comment from the public on the Alcohol Intake and Health Methodology. Public comment is intended to ensure the broadest evidence base and available data are considered in this study and that the Alcohol Intake and Health methodology is scientifically rigorous. Alcohol Intake and Health methodology materials for public comment can be accessible at www.stopalcoholabuse.gov/research-resources/alcohol-intake-health.aspx. Materials may be requested by email at samhsapra@samhsa.hhs.gov.

• **Mail:** Mail/courier to SAMHSA Reports Clearance Officer, Center for Behaviors Health Quality and Statistics, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 15E45, Rockville, MD 20857.

• When providing public comment, please consider the following questions:

- Are the topic areas defined in the methodology sufficient for understanding the relationship between alcohol intake and health?
- Is the methodology clear and transparent?
- Are the methods proposed scientifically valid?
- Are the risks of bias identified?
- Are strategies to minimize bias included?
- Are there other methodological approaches that should be considered to estimate the risk of alcohol consumption on specific health outcomes?
- Are the methods proposed subject to major limitations? If so, what strategies could be employed to minimize these limitations?
- Are there additional data sources that should be considered and/or included for a comprehensive understanding of the burden of alcohol-related diseases?
- Are there specific scientific papers or research that should be included in the assessment of risk or concerns regarding the overall methodology outlined in the document?

Dated: June 28, 2024.

Paul Reed,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

[FR Doc. 2024–14650 Filed 7–2–24; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–29]

30-Day Notice of Proposed Information Collection: Stepped and Tiered Rent Demonstration Evaluation OMB Control No.: 2528–0339

AGENCY: Office of Policy Development and Research, Chief Data Officer, 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 an additional 30 days of public comment.

DATES: *Comments Due Date:* August 2, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email: PaperworkReductionActOffice@hud.gov; telephone (202)–402–5535. 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. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 12, 2024 at 89 FR 17862.

A. Overview of Information Collection

Title of Information Collection: Cohort 2 Stepped and Tiered Rent Demonstration Evaluation.

OMB Approval Number: 2528–0339.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: HUD has selected 10 Public Housing Agencies (PHAs) to participate in the second cohort of the Moving to Work (MTW) Expansion, Stepped and Tiered Rent Demonstration (STRD). These PHAs will implement an alternative rent policy (a stepped rent or tiered rent) that is intended to reduce PHA administrative burden and increase self-sufficiency of assisted households. Five PHAs will implement a stepped rent and five PHAs will implement a tiered rent. HUD's

Office of Policy Development and Research (PD&R) will evaluate the impacts of those alternative rent policies, using a randomized controlled trial. The evaluation will rely on data from a variety of sources, including new information collection efforts proposed in this Notice. HUD has contracted with MDRC to conduct the first phase of the evaluation, including random assignment, baseline data collection, and monitoring PHA implementation.

Within the 10 participating PHAs, eligible households will be randomly assigned to have their rent calculated under the new rules (stepped/tiered rent) or old rules (the Brooke rent, typically 30% of household income). Eligible households will be non-elderly, non-disabled participants in the public housing and housing choice voucher program. Prior to random assignment, each household will be asked to complete a baseline information form (BIF), review the informed consent form, and provide informed consent to authorize HUD's evaluator to use their data for the evaluation. The BIF will provide important information not otherwise available from HUD's administrative data, such as whether the household has significant barriers to employment. The BIF will average approximately 7 minutes long and reviewing the consent form is expected to take approximately 11 minutes.

MDRC will also conduct interviews with staff from participating PHAs, to better understand their experience implementing the new rent policies. For

the first phase of the evaluation, MDRC is expected to conduct two rounds of staff interviews with each PHA. During the first round, MDRC expects to interview up to ten staff per PHA (reflecting a mix of executive management staff, public housing and HCV directors, and public housing and HCV specialists). The second round will focus on staff most directly involved with implementing the new rent policies (public housing and HCV directors and/or managers, and public housing and HCV specialists). The mode in Round 1 will be a mix of one-on-one interviews and group interviews, with small groups of 2–3 staff performing similar roles. The mode in Round 2 will be group interviews, with groups of 2–4 staff performing similar roles.

MDRC will collect data extracts that will include a small subset of data elements captured by the PHAs exclusively for the demonstration, called the "Rent Policy Implementation Data Tracking Tool." MDRC will collect these data fields along with MTW Expansion 50058 data, which is collected under OMB control number 2577–0083, directly from PHAs during the early implementation period to ensure that the new rent rules are being implemented correctly and throughout the demonstration to track hardship requests and collect updated contact information for ongoing communications and reminders about the demonstration and for potential follow-up surveys.

EXHIBIT A—TOTAL ESTIMATED BURDEN

[Note: Rows 1 through 8 are unchanged from the previously approved ICR. Rows 9 and 10 are being added with this ICR modification]

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Baseline Information Form (household survey)	24,000	1	24,000	.12	2,880	\$9.43	\$27,158.40
Stepped Rent Informed Consent Form	7,000	1	7,000	.18	1,260	9.43	11,881.80
Tiered Rent Informed Consent Form	17,000	1	17,000	.18	3,060	9.43	28,855.80
PHA Executive Director Interviews (Round 1)	10	1	10	.75	7.5	59.86	448.95
PHA Program Director Interviews (Round 1)	20	1	20	1.5	30	44.24	1,327.20
PHA MTW Coordinator Interviews (Round 1)	10	1	10	.75	7.5	44.24	331.80
PHA Housing Specialist Interviews (Round 1)	60	1	60	1.5	90	25.64	2,307.60
Rent Policy Implementation Data Tracking Tool	10	1	10	9	90	25.64	2,307.60
PHA Managers/Supervisors/Policy Informants Interview Guide (Round 2)	40	1	40	1.5	60	46.83	2,809.80
Housing Specialist and Property Manager Interview Guide (Round 2)	80	1	80	1.5	120	27.00	3,240.00
Total	48,230	.....	.....	.....	7,605	.....	80,668.95

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.

(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.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

*Department Reports Management Office,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2024–14624 Filed 7–2–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7092–N–31]

Privacy Act of 1974; System of Records

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of Housing Urban and Development (HUD), Office of Policy Development and Research (PD&R) is issuing a public notice of its intent to create a new Privacy Act System of Records titled, “Policy and Research Information System.” The Policy and Research Information System (PARIS) contains information related to public housing agencies (PHAs), HUD-assisted families, HUD-assisted properties, and other HUD programs which are used for research, evaluation, monitoring, and budget formulation.

DATES: Comments will be accepted on or before August 2, 2024. This proposed action will be 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, The Privacy Office; 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’s Office of Policy Development and Research (PD&R) maintains the Policy and Research Information System (PARIS) system of records. PARIS serves as a repository of information related to public housing agencies (PHAs), HUD-assisted families, HUD-assisted properties, and other HUD programs for the purposes of research, evaluation, monitoring, and budget formulation. PARIS gives PD&R the ability to extract data from multiple data systems, both internal and external to HUD, and to transform the data into a format that can be easily analyzed and reported on. The records in PARIS are not collected directly from individuals. Records are sent to PARIS from other data systems. Data in PARIS are shared through data exchange within HUD with the following offices: PD&R’s Office of Research Evaluation and Monitoring (OREM), Office of Economic Affairs (OEA), the Office of Housing (Single Family and Multifamily), the Office of Public and Indian Housing (PIH), and the Office of Inspector General (OIG). Data in PARIS are exchanged external to HUD with the following agencies: the U.S. Census Bureau (Census), the Centers for Medicare and Medicaid Services (CMS), the National Center for Health Statistics (NCHS), the National Institutes of Health (NIH), the Bureau of Labor Statistics (BLS), the Federal Emergency Management Agency (FEMA), the Department of Justice (DOJ), and the Department of Treasury (DOT). The compilation and processing

of data from various HUD program offices as well as external sources into the PARIS system provides researchers and policymakers with easy access to data coming from disparate systems. In addition, the data exchange and data sharing through PARIS provides a secure environment for HUD analysts to make data useful for improving HUD programs. The records that come into PARIS from various sources, internal and external to HUD, are kept separate. The databases are constructed in such manner that sources of the data are identified.

SYSTEM NAME AND NUMBER:

Policy and Research Information System (PARIS), HUD/PD&R–07.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the U.S. Department of Housing and Urban Development Headquarters, 451 Seventh Street SW, Washington, DC 20410–0001. Servers are in Stennis Data Center, 9300 Building Complex Stennis Space Center, MS 39529–0001.

SYSTEM MANAGER(S):

Lydia Taghavi, Deputy Assistant Secretary, Office of the Chief Data Officer, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 8210, Washington, DC 20410–0001; Phone: (202) 402–5741.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 501 and 502(g) of the Housing and Urban Development Act of 1970 (Pub. L. 91–609); 84 Stat. 1784; 12 U.S.C. 1701z–1 and 1701z–2(g).

PURPOSE(S) OF THE SYSTEM:

HUD PD&R maintains the Policy and Research Information System (PARIS) system of records to serve as a repository of information related to public housing agencies (PHAs), HUD-assisted families, HUD-assisted properties, and other HUD programs for research, evaluation, monitoring, and budget formulation. PARIS gives PD&R the ability to extract data from multiple data systems, both internal and external to HUD, and transform the data into a format that can be easily analyzed and reported on. The reporting functions allow HUD to respond to Congressional requests for data on assisted housing programs. The data collected from the multiple systems and surveys is used and stored solely for statistical purposes and will not be used to identify individuals or make decisions that affect

the rights, benefits, or privileges of specific individuals unless it meets one routine uses identified in the next section. The data in this system will include location data used to analyze the neighborhoods in which people participating in HUD programs live.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the public, heads of households, spouses, children and other household members residing in a HUD-assisted property and/or receiving rental housing assistance through programs administered by HUD; children and other household members residing in Low-Income Housing Tax Credit (LIHTC) properties; individuals who are hired management agents by PHAs and Tribally Designated Housing Entities (TDHE); individuals who are designated as property owners and/or managing agents of privately-owned but HUD-assisted properties; individuals who are designated as agents of State Housing Finance agencies; individuals whose records are found in the National Center for Health Statistics (NCHS)-HUD data linkage which involves data from the National Health Interview Survey and the National Health and Nutrition Survey matched with HUD's data; individuals who have received or applied for housing-related disaster assistance from the Federal Emergency Management Agency (FEMA); families/individuals who are participants in:

- HUD-sponsored research and evaluation projects,
- HUD homeownership programs, and
- HUD Eviction Protection Grant Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full Name, Social Security Number, Date of Birth, Age, Disability Status, Race/Ethnicity, Alien Registration Number, Citizenship(s), Home Address, Email Address(es), Phone Number(s), Place of Birth, Salary, Sex, Gender, Eligibility to HUD program, Protected Health Information, Household Member Relationship to Head of Household.

RECORD SOURCE CATEGORIES:

HUD record sources: Low-Income Housing Tax Credit (LIHTC) Tenant Data Collection, Inventory Management System-PIH Information Center (IMS-PIC), the Housing Information Portal (HIP), Tenant Rental Assistance Certification System (TRACS), Single Family Housing Enterprise Data Warehouse (SFHEDW), Rental Assistance Demonstration (RAD) program data, Disaster Recovery Grant Reporting Systems (DRGR) Eviction

Protection Grant Program (EPGP) data, National Standards for the Physical Inspection of Real Estate (NSPIRE), and HUD Enforcement Management System (HEMS).

Non-HUD record sources: Federal Emergency Management Agency (FEMA), National Center for Health Statistics (NCHS), Department of Justice (DOJ), Department of Treasury (Treasury), Federal Housing Finance Agency (FHFA), United States Postal Service (USPS), and Consumer Financial Protection Bureau (CFPB).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) 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, [the agency] (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD'S efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(2) 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 a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach

(3) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

(4) 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.

(5) 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.

(6) 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.

To contractors, grantees, experts, consultants and their agents, students or others performing or working under a contract, service, grant, cooperative agreement, or other assignment with HUD, when necessary to accomplish an agency function related to a system of records. Since the records maintained in this system are also found in other HUD systems and used for other purposes, their routine use also applies.

(7) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic Records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Name, Social Security Number, and Date of Birth.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records files are maintained in accordance with Records Disposition Schedule 67.9.b and 67.9.f. The records will be retained as necessary. As such, when projects are satisfactorily closed, and records are no longer needed for administrative purposes, the records will be destroyed when the destruction date is reached. Electronic records are destroyed according to authorization number DAA-GRS-2017-0003-0002.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to any server, security, storage, backup, and infrastructure equipment is monitored, and is restricted to only those with a need-to-have system access, including being secured by administrative password and User ID, PIV Card, and authentication methods. All system users are required to sign a confidentiality pledge to abide by corporate policies and by HUD policies. Access to PARIS databases is controlled and monitored by HUD System Administrators and abides by policies set by HUD's Chief Information Officer. Servers and other storage equipment are within HUD's firewall.

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:

N/A.

HISTORY:

N/A.

LaDonne L. White,
Chief Privacy Officer, Office of Administration.

[FR Doc. 2024-14641 Filed 7-2-24; 8:45 am]

BILLING CODE 4210-67-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-24-029]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 9, 2024 at 1:00 p.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. TA-201-078 (Injury) (Fine Denier Polyester Staple Fiber).
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202-205-2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 1, 2024.

Lisa Barton,
Secretary to the Commission.

[FR Doc. 2024-14767 Filed 7-1-24; 4:15 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1125-XXXX]

Agency Information Collection Activities; Proposed Collection eComments Requested; Change of Address/Contact Information Form

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Executive Office for Immigration Review (EOIR), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 3, 2024

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Justine Fuga, Attorney Advisor, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone: (571) 294-2272, EOIR.PRA.Comments@usdoj.gov or Justine.Fuga@usdoj.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, 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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g.,

permitting electronic submission of responses.

Abstract: Pursuant to 8 U.S.C. 1229(a)(1)(F)(ii) and 8 CFR 1003.15(d)(2), individuals in EOIR immigration proceedings must provide the Immigration Court or Board of Immigration Appeals (BIA) with written notice of changes to the individual's address and contact information within five days of any change. To assist individuals in providing such written notice to the agency, EOIR created the Form EOIR-33. The form collects the individual's name, alien registration number (A-number), former and current contact information (address, phone number, and email address), and signature. The form instructs that an individual must serve a copy of the Form EOIR-33 on the opposing party. This information collection is required when an individual in EOIR immigration proceedings changes their address or contact information. The Form EOIR-33 is used by EOIR to maintain up to date mailing addresses and contact information of individuals who are subjects of immigration proceedings before the Immigration

Courts and BIA so that individuals receive official communications about their immigration proceedings from EOIR and the opposing party. EOIR created two versions of the Form EOIR-33, one for submission to the Immigration Court (EOIR-33/IC) and one for submission to the BIA (EOIR-33/BIA). Both versions of the form are available in seven languages (English, Spanish, Chinese, Haitian Creole, Portuguese, Punjabi, and Russian) and may be filed with the agency and served on the opposing party electronically or by mail or hand delivery.

Overview of This Information Collection

1. Type of Information Collection: New mandatory collection.
2. The Title of the Form/Collection: Change of Address/Contact Information Form.
3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: The agency form numbers are EOIR-33/IC and EOIR-33/BIA, and the Executive Office for Immigration Review is the

Department component sponsoring the collection.

4. Affected public who will be asked or required to respond, as well as the obligation to respond: Individuals and households. The obligation to respond is mandatory.
5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The total estimated number of respondents for the EOIR-33/IC and EOIR-33/BIA is 321,457. It is estimated that each respondent will complete the form in approximately 5 minutes.
6. An estimate of the total annual burden (in hours) associated with the collection: The estimated total annual burden hours for the EOIR-33/IC and EOIR-33/BIA is 26,681.
7. An estimate of the total annual cost burden associated with the collection, if applicable: The estimated public cost is zero. There are no capital or start-up costs associated with this information collection. There are no fees associated with filing the form. There are also no required printing costs associated with filing the form because electronic filing and service options are available.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
EOIR-33/IC	315,511	1/annually	315,511	5	26,187
EOIR-33/BIA	5,946	1/annually	5,946	5	494

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: June 28, 2024.

Darwin Arceo,
Department Clearance Officer for PRA, U.S. Department of Justice.
[FR Doc. 2024-14616 Filed 7-2-24; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF JUSTICE
[OMB Number 1121-0065]

Agency Information Collection Activities; Proposed eCollection Activities; Proposed eComments Requested; Extension of a Currently Approved Collection: National Corrections Reporting Program

AGENCY: Bureau of Justice Statistics, Department of Justice.
ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 3, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public

burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Derek Mueller, Ph.D., Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: Derek.Mueller@usdoj.gov; telephone: 202-353-5216).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, 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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Abstract: The National Corrections Reporting Program (NCRP, OMB Number 1121–0065) is the only national data collection furnishing annual individual-level information for state prisoners at five points in the incarceration process: prison admission, prison release, annual year-end prison custody census, entry to post-custody community corrections supervision, and exits from post-custody community corrections supervision. BJS, the U.S. Congress, researchers, and criminal justice practitioners use these data to describe annual movements of adult persons through state correctional systems, as well as to examine long-term trends in time served in prison, demographic and offense characteristics of persons in prison, sentencing practices in the states that submit data, transitions between incarceration and community corrections, and recidivism. Providers of the data are personnel in the states' Departments of Corrections and Parole, and all data are submitted on a voluntary basis. The NCRP collects the following administrative data on each person in participating states' custody:

- County of sentencing
- State and federal inmate identification numbers
- Dates of: birth, prison admission, prison release, projected prison release, mandatory prison release, eligibility hearing for post-custody community corrections supervision, post-custody community corrections supervision entry, post-custody community corrections supervision exit
- First, middle, and last names
- Demographic information: sex, race, Hispanic origin, education level, prior military service, date and type of last discharge from military
- Offense type and number of counts per inmate for a maximum of three convicted offenses per person
- Total sentence length imposed
- Type of facility where person is serving sentence (for year-end custody census records only, the name of the facility is also requested)

- Country of current citizenship, country of birth, and status of current U.S. citizenship

- Type of prison admission
- Type of prison release
- Location of post-custody

community supervision exit or post-custody community supervision office (post-custody community supervision records only)

- Social security number
- Address of last residence prior to incarceration
- Prison security level at which the inmate is held

BJS is not proposing making additions or deletions from the previously approved collection. BJS uses the information gathered in NCRP in published reports and statistics. The reports will be made available to the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, others interested in criminal justice statistics, and the general public via the BJS website.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a Currently Approved Collection.

2. *The Title of the Form/Collection:* National Corrections Reporting Program. The collection includes the following parts: Prisoner Admission Report, Prisoner Release Report, Prisoners in Custody at Year-end Report, Post-Custody Community Supervision Entry Report, Post-Custody Community Supervision Exit Report.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number(s): NCRP–1A, NCRP–1B, NCRP–1D, NCRP–1E, NCRP–1F. The applicable component within the Department of Justice is the Bureau of Justice Statistics (Prisons Statistics Unit), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: 50 state departments of corrections (DOCs) and 7 parole boards (in six states and the District of Columbia). The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS anticipates 57 respondents to NCRP by 2027: 50 state DOC respondents and seven separate parole boards (in six states and the District of Columbia). Burden hours for the three collection years (2025–2027) differ based on whether a state has previously submitted NCRP prison and PCCS data in recent years. In the last four years, 47

DOCs have submitted NCRP prison data, but currently, only 35 respondents have submitted PCCS data.

Burden Hours for Prison Records (NCRP–1A, NCRP–1B, NCRP–1D)

All 50 DOCs have submitted NCRP prison data in the past, so the average time needed to continue providing prison data is expected to be 7 hours per respondent for both prisoner admissions and releases (NCRP–1A and NCRP–1B) and 7 hours for data on persons in prison at year-end (NCRP–1D). For 2025–2027, the total burden estimate is 14 hours per DOC for a total of 700 hours annually for the 50 DOCs (14 hours*50 = 700 hours). This is the same estimate as given for the 2024 collection since BJS is not requesting changes to the collection.

Burden Hours for PCCS Records (NCRP–1E, NCRP–1F)

In 2023, there were 35 jurisdictions submitting 2022 PCCS data (31 DOCs and 4 parole supervising agencies), and BJS estimates that extraction and submission of both the PCCS entries and exits takes an average of 8 hours per jurisdiction. For 2025–2027, BJS hopes to recruit an additional five jurisdictions to submit NCRP PCCS data. For those 35 supervising agencies currently responding, provision of the PCCS data in 2022–2024 will total 280 hours (8 hours*35 = 280 hours) annually. The total estimate for submission of PCCS for new jurisdictions in 2022–2024 is 120 hours (24 hours*5 = 120 hours). For new agencies, BJS assumes the initial submission will take about three times longer than established reporters to account for programming, questions, and submission. The total amount of time for all PCCS submissions annually is 400 hours.

Burden Hours for Data Review/Follow-Up Consultations

Follow-up consultations with respondents are usually necessary while processing the data to obtain further information regarding the definition, completeness and accuracy of their report. The duration of these follow-up consultations will vary based on the number of record types submitted, so BJS has estimated an average of 3 hours per jurisdiction to cover all of the records (prison and/or PCCS) submitted. In 2025, BJS anticipates that one of the two parole boards not currently submitting PCCS data will begin to submit, so the number of jurisdictions requiring follow-up consultations is 51 (50 DOCs submitting at least the prison data, and one parole board submitting only PCCS data). This yields a total of

153 hours of follow-up consultation after submission (3 hours*51 = 153 hours). This total estimate of 153 hours for data review/follow-up consultations remains the same for 2026 and 2027.

Total Burden Hours for Submitting NCRP Data

BJS anticipates that the total burden for provision and data follow-up of all NCRP data across the participating jurisdictions in 2025–2027 to be 1,235 hours (700 hours for prison records, 400 hours for PCCS records, and 153 hours for follow-up consultation).

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,235 total burden hours associated with this collection in 2025–2027.

7. *An estimated of the total annual cost burden associated with the collection, if applicable:* \$48,696.

TOTAL BURDEN HOURS						
Activity	Number of respondents	Frequency	Total annual responses	Time per survey (hours)	Time for follow-up (hours)	Total annual burden (hours)
NCRP Prison (NCRP–1A, 1B, 1D)	50	1	50	14	1.5	15.5
NCRP PCCS (NCRP 1E, 1F)	35	1	35	8	1.5	9.5
NCRP PCCS New	5	1	5	24	1.5	25.5
Unduplicated Totals .....	.....	.....	.....	.....	.....	1,235

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: June 28, 2024.

Darwin Arceo,
Department Clearance Officer for PRA, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2024–14629 Filed 7–2–24; 8:45 am]

BILLING CODE 4410–18–P

DATES: Thursday, August 8, 2024, and Friday, August 9, 2024, 9 a.m. to 5 p.m., eastern time.

ADDRESSES: The committee will meet in person and virtually. Public participation is virtual only. See dial-in information below under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mrs. KarShelia Kinard, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355 or karshelia.kinard@nasa.gov.

SUPPLEMENTARY INFORMATION: This meeting will only be available by Webex or telephonically for members of the public. Any interested person may join via Webex at <https://nasa.enterprise.webex.com/nasaenterprise/j.php?MTID=m5d235ac79e6801fcb676f4905f35be60>, the meeting number is 2826 208 8023, and the password is SWCSummer2024# (case sensitive), both days. To join by telephone call, use US Toll +1–415–527–5035 (Access code: 2826 208 8023), both days, to participate in this meeting by telephone.

The agenda for the meeting includes the following topics:

- Discussion of SWC future advisory topics and activities such as
 - Coordination of Space Weather Council with other Space Weather Groups
 - Domestic and International collaboration in the NASA Space Weather Program
 - Impact of revisions of space weather scales on NASA science

and missions

Carol J. Hamilton,
Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2024–14676 Filed 7–2–24; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 24–046]

Heliophysics Advisory Committee; Space Weather Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Space Weather Council (SWC). The SWC is a subcommittee of the Heliophysics Advisory Committee, which functions in an advisory capacity to the Director, Heliophysics Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the science community and other persons, scientific and technical information relevant to program planning.

NATIONAL SCIENCE FOUNDATION
Committee Management; Renewals

The National Science Foundation (NSF) management officials having responsibility for the advisory committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Committees

- Advisory Committee for Computer and Information Science and Engineering #1115
- Advisory Committee for Mathematical and Physical Sciences #66
- Advisory Committee for Social, Behavioral, and Economic Sciences #1171
- Committee on Equal Opportunities in Sciences and Engineering #1173
- Proposal Review Panel for Astronomical Sciences #1186
- Proposal Review Panel for Chemical, Bioengineering, Environmental, and Transport Systems #1189
- Proposal Review Panel for Chemistry #1191

Proposal Review Panel for Civil, Mechanical, and Manufacturing Innovation #1194
 Proposal Review Panel for Computer and Network Systems #1207
 Proposal Review Panel for Computing & Communication Foundations #1192
 Proposal Review Panel for Cyberinfrastructure #1185
 Proposal Review Panel for Electrical, Communications, and Cyber Systems #1196
 Proposal Review Panel for Engineering Education and Centers #173
 Proposal Review Panel for Graduate Education #57
 Proposal Review Panel for Information and Intelligent Systems #1200
 Proposal Review Panel for Materials Research #1203
 Proposal Review Panel for Mathematical Sciences #1204
 Proposal Review Panel for Physics #1208
 Proposal Review Panel for Polar Programs #1209
 Proposal Review Panel for Undergraduate Education #1214
 Effective date for renewal is June 28, 2024. For more information, please contact Crystal Robinson, NSF, at (703) 292-8687.

Dated: June 28, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024-14619 Filed 7-2-24; 8:45 am]

BILLING CODE 7555-01-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2022-34]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 8, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT:

David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2022-34; *Filing Title:* Notice of United States Postal Service of Modifications to Inbound Competitive Multi-Service IRA-USPS II Agreement; *Filing Acceptance Date:*

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

June 27, 2024; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* July 8, 2024.

This Notice will be published in the **Federal Register**.

Jennie Jbara,

Primary Certifying Official.

[FR Doc. 2024-14622 Filed 7-2-24; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35221]

Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 28, 2024.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC")

ACTION: Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June 2024. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretaries-Office@sec.gov and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on July 23, 2024, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the

Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551-6413 or Chief Counsel's Office at (202) 551-6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549-8010.

5-to-15 Year Laddered Municipal Bond Portfolio [File No. 811-23151]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 19, 2023, applicant made a liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on May 8, 2024.

Applicant's Address: One Post Office Square, Boston, Massachusetts 02109.

Global Income Builder Portfolio [File No. 811-23145]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 16, 2023, applicant made a liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on May 8, 2024.

Applicant's Address: One Post Office Square, Boston, Massachusetts 02109.

Principal Private Credit Fund [File No. 811-23897]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on June 6, 2024.

Applicant's Address: 711 High Street, Des Moines, Iowa 50392.

Stone Ridge Investment Grade Income Longevity Trust 2045 65F [File No. 811-23560]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on April 29, 2024 and amended on June 20, 2024.

Applicant's Address: One Vanderbilt Avenue, 65th Floor, New York, New York 10017.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-14649 Filed 7-2-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-480, OMB Control No. 3235-0537]

Proposed Collection; Comment Request; Extension: Regulation S-P

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in the privacy notice and opt out notice provisions of Regulation S-P—Privacy of Consumer Financial Information (17 CFR part 248, subpart A) under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

The privacy notice and opt out notice provisions of Regulation S-P (the "Rule") implement the privacy notice and opt out notice requirements of Title V of the Gramm-Leach-Bliley Act ("GLBA"), which requires that at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer of such financial institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties ("privacy notice"). Title V of the GLBA also provides that, unless an exception applies, a financial institution may not disclose nonpublic personal information of a consumer to a nonaffiliated third party unless the financial institution clearly and conspicuously discloses to

the consumer that such information may be disclosed to such third party; the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and the consumer is given an explanation of how the consumer can exercise that nondisclosure option ("opt out notice"). The Rule applies to broker-dealers, investment advisers registered with the Commission, and investment companies ("covered entities").

Commission staff estimates that, as of April 1, 2024, the Rule's information collection burden applies to approximately 32,707 covered entities (approximately 3,410 broker-dealers, 15,531 investment advisers registered with the Commission, and 13,766 investment companies). In view of (a) the minimal recordkeeping burden imposed by the Rule (since the Rule has no recordkeeping requirement and records relating to customer communications already must be made and retained pursuant to other SEC rules); (b) the summary fashion in which information must be provided to customers in the privacy and opt out notices required by the Rule (the model privacy form adopted by the SEC and the other agencies in 2009, designed to serve as both a privacy notice and an opt out notice, is only two pages); (c) the availability to covered entities of the model privacy form and online model privacy form builder; and (d) the experience of covered entities' staff with the notices, SEC staff estimates that covered entities will each spend an average of approximately 12 hours per year complying with the Rule, for a total of approximately 392,484 annual burden-hours (12 × 32,707 = 392,484). SEC staff understands that the vast majority of covered entities deliver their privacy and opt out notices with other communications such as account opening documents and account statements. Because the other communications are already delivered to consumers, adding a brief privacy and opt out notice should not result in added costs for processing or for postage and materials. Also, privacy and opt out notices may be delivered electronically to consumers who have agreed to electronic communications, which further reduces the costs of delivery. Because SEC staff assumes that most paper copies of privacy and opt out notices are combined with other required mailings, the burden-hour estimates above are based on resources required to integrate the privacy and opt notices into another mailing, rather than on the resources required to create and

send a separate mailing. SEC staff estimates that, of the estimated 12 annual burden-hours incurred, approximately 8 hours would be spent by administrative assistants at an hourly rate of \$90, and approximately 4 hours would be spent by internal counsel at an hourly rate of \$518, for a total annual internal cost of compliance of approximately \$2,792 for each of the covered entities ($8 \times \$90 = \$720$; $4 \times \$518 = \$2,072$; $\$720 + \$2,072 = \$2,792$). Hourly cost of compliance estimates for administrative assistant time are derived from the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*, modified by SEC staff to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. Hourly cost of compliance estimates for internal counsel time are derived from the Securities Industry and Financial Markets Association's *Management & Professional Earnings in the Securities Industry 2013*, modified by SEC staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Accordingly, SEC staff estimates that the total annual internal cost of compliance for the estimated total hour burden for the approximately 32,707 covered entities subject to the Rule is approximately \$91,371,944 ($\$2,796 \times 32,707 = \$91,317,944$).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 3, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: June 28, 2024.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-14623 Filed 7-2-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100445; File No. SR-NASDAQ-2024-030]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Launch Proximity-On-Demand, a Managed Colocation Solution

June 27, 2024.

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 June 24, 2024, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to launch Proximity-On-Demand, a managed colocation solution.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to launch Proximity-On-Demand ("POD"), a

managed colocation solution. POD will offer colocation customers a convenient variant of colocation where applications are deployed on managed infrastructure in the form of virtual or dedicated servers in the co-location space.

Current Co-Location Offering

The Exchange currently offers colocation services, which include a suite of data center space, power, telecommunication, and other ancillary products and services that allow customers to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange. The use of colocation services is entirely voluntary and colocation services are available to all market participants who desire them.

Colocation customers are not provided any separate or superior means of direct access to the Exchange quoting and trading facilities. Nor does the Exchange offer any separate or superior means of access to the Exchange quoting and trading facilities as among colocation customers themselves within the data center (or any future expansions to the data center).³

In addition, all orders sent to the Exchange market enter the marketplace through the same central system quote and order gateway regardless of whether the sender is co-located in the Exchange data center or not. In short, the Exchange has created no special market technology or programming that is available only to co-located customers and the Exchange has organized its systems to minimize, to the greatest extent possible, any advantage for one customer versus another.

Proximity-On-Demand

POD will be an alternative to the traditional offering of space and power for the physical colocation of customers' equipment. The Exchange will continue to offer its traditional colocation services.

With POD, customers will not need to order cabinets and power to install a server or network hardware in the Exchange's data center to be able to set up their systems and access the market directly. Instead, POD will provide customers with a variant of colocation where applications are deployed on a

³ Although the proposal and launch of POD are not dependent on the expansion of the data center, the Exchange notes that is in the process of expanding its data center in Carteret, New Jersey. Client connections to the matching engine will be equal across the board, within and among the current data center and the expansion.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

shared computing infrastructure⁴ co-located in the data center,⁵ providing customers with a convenient avenue to do business on the Exchange. With the Exchange's traditional colocation offering, the Exchange provides space and power and customers provide the hardware. With POD, the Exchange will provide the hardware. This allows the Exchange's customers to connect more quickly and with lower cost.

Customers will be able to select a dedicated server or a virtual machine. A dedicated server is single-tenant environment, meaning that only one customer has access to the server hardware. A virtual machine is a computing environment where each customer has exclusive access to their virtualized server, including its operating system and applications. While customers will control their virtual machines independently, the physical hardware resources, such as the CPU, memory, and storage, are shared among multiple virtual machines on the same physical server. Hypervisor technology keeps the separate customer operating systems securely segmented from each other, allowing a single server to support multiple virtual machines. This allows quicker deployment times and provides customers with the flexibility to dynamically adjust the amount of compute resources needed without requiring hardware changes. The Exchange anticipates that customers will choose a dedicated server where better performance is required but may prefer a virtual server for short-lived requirements or less performance-sensitive workloads.

The servers (dedicated and virtual) for POD will be located in a cabinet in the colocation space at the data center. Each customer will have their own logical network that is fully isolated and not shared with other customers. Those customers selecting a dedicated server would also have the option to add an analytics service.⁶ The analytics service will provide the ability to monitor network traffic to and from the POD infrastructure, allowing customers access to data about bandwidth usage, latency, and information related to Precision Time Protocol (PTP) timestamped messages.

⁴ Shared computing infrastructure means that Nasdaq would provide the infrastructure, including hardware, that can be used by multiple customers.

⁵ POD will be housed within the same data center as the existing traditional colocation offering and Exchange systems, located in Carteret, New Jersey.

⁶ The analytics service is not available for virtual machines because the compute resourcing for operating analytics is incompatible with virtual machines.

Access to POD will be available via virtual private network (VPN) or Secure Shell (SSH), similar to how customers would access their fully owned co-located hardware. Customers will be able to choose from several existing options for physical connectivity, including 1G Ultra, 10G, 10G Ultra, and 40G. POD will provide access to the market through the same Extranet network as is used currently by existing colocation customers. To be clear, POD will not afford its users any special advantages relative to users of its traditional colocation services.

Exchanges offer colocation services to facilitate the trading activities of those market participants who believe that colocation enhances the efficiency of their trading. The Exchange believes that the launch of POD will benefit an underserved market segment, including a niche of smaller customers who do not currently co-locate in any form at the data center but wish to do so. These smaller trading firms that do not directly connect and interface with Nasdaq may struggle with the complexity, upfront investment, ongoing expense, and knowledge gaps required to code, connect, host and manage their own infrastructure, and trade directly with the Exchange.

The Exchange notes that similar services are currently offered by, and customers may obtain such service from, managed service providers that operate at the Carteret data center. For example, Pico and Options-IT currently offer managed service colocation at the Carteret data center.⁷ In addition to managed service providers currently offering POD-like services at the data center, additional providers offer similar services in other locations and will likely be in the Carteret data center in the future as well.⁸ ICE offers a comparable service, "Compute on Demand,"⁹ in select locations,

⁷ See <https://www.pico.net/infrastructure/colocation-hosting/>; <https://www.options-it.com/products/trading-infrastructure/exchange-colos/>.

⁸ See, e.g., <https://deploy.equinix.com/product/bare-metal/>; <https://tnsi.com/resource/fin/tns-dedicated-server-comprehensive-cloud-server-management-press-release/>.

⁹ See <https://www.ice.com/fixed-income-data-services/access-and-delivery/connectivity-and-feeds/hosting-managed-services#demand>. Compute on Demand provides customers with a managed solution and is a delivery model in which computing resources are made available to customers on an on-demand basis. ICE offers Compute on Demand in collaboration with Beeks. The Exchange also intends to launch POD in partnership with Beeks. Beeks will provide the hardware that will allow the Exchange to offer POD. In addition, the Johannesburg Stock Exchange currently offers an advanced managed infrastructure as a service solution, similar to POD, in collaboration with Beeks. See <https://beeksgroup.com/news/johannesburg-stock-exchange-jse-choose-beeks-and-ipc-to-power-private-cloud-deployments-for-their-customers/>.

including at NY4 (located in Secaucus, New Jersey).¹⁰ Customers of ICE's Compute on Demand could (and presumably do) connect to national securities exchanges.

POD will provide customers with increased options for colocation. POD will be entirely optional and available to all market participants who desire to subscribe to POD. It is a business decision of each firm whether to subscribe to POD. Rather than choosing POD, customers may choose to (1) directly co-locate at the data center by ordering cabinet space and power, and placing their equipment at the data center; (2) co-locate through a third party; or (3) not co-locate at all.

Implementation

The Exchange intends to submit a fee filing in the future to establish fees for POD, including fees for a dedicated server, a dedicated server with analytics, and a virtual machine. Implementation of the proposal described herein to offer POD would coincide with the subsequent fee filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest because POD would provide customers with increased optionality to access the Exchange. The Exchange operates in a highly competitive market in which exchanges offer colocation services to facilitate the trading activities of those customers who believe that colocation enhances the efficiency of their trading. POD is a voluntary variant of colocation where customers can directly access the market without needing to procure physical hardware independently, instead they can use a shared computing infrastructure co-located in the data center.

The Exchange believes that the launch of POD will benefit an underserved market segment, including smaller customers who do not currently co-locate in any form at the data center but wish to do so. These smaller trading firms that do not directly connect and

[exchange-jse-choose-beeks-and-ipc-to-power-private-cloud-deployments-for-their-customers/](https://beeksgroup.com/news/johannesburg-stock-exchange-jse-choose-beeks-and-ipc-to-power-private-cloud-deployments-for-their-customers/).

¹⁰ Choe affiliated exchanges utilize the Equinix NY4 data center in Secaucus, NJ.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

interface with Nasdaq may struggle with the complexity, upfront investment, ongoing expense, and knowledge gaps required to code, connect, host and manage their own infrastructure, and trade directly with the Exchange. As such, the Exchange believes that the proposal would further the objective of removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The proposal would benefit the public interest by providing customers more colocation options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. As noted above, POD will be entirely optional and available to all market participants who desire to subscribe to POD. Rather than choosing to co-locate via POD, customers may choose to (1) directly co-locate at the data center by ordering cabinet space and power, and placing their equipment at the data center; (2) co-locate through a third party; or (3) not co-locate at all. Services comparable to POD are currently offered by, and customers may obtain such service from, any managed service providers that operate at the Carteret data center.

Again, POD will offer its users no special advantages relative to users of the Exchange's traditional colocation services. Though POD will allow customers to use Nasdaq-provided hardware to access the Exchange, POD does not otherwise fundamentally differ from current connectivity to the Exchange. The Exchange is not proposing to change the nature of the services provided today. Rather, POD will differ as to who provides the hardware.

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.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations.

Nothing in the Proposal burdens intra-market competition because POD will be available to any customer and

customers that wish to co-locate via POD can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services, including POD, based on the requirements of its business operations. POD will offer its users no special advantages relative to users of the Exchange's traditional colocation services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2024-030 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-2024-030. 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-NASDAQ-2024-030 and should be submitted on or before July 24, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-14596 Filed 7-2-24; 8:45 am]

BILLING CODE 8011-01-P

¹⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100444; File No. SR-CBOE-2024-028]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Clarify Its Certification Port Fees

June 27, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 13, 2024, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to 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” or “Cboe Options”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify its fees for Certification Logical Port fees.³

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange’s System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports⁴ [sic] Purge Ports,⁵ Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.⁶ For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Trading Permit Holders (“TPHs”) and non-TPHs access to the Exchange’s certification environment to test proprietary systems and applications (*i.e.*, “Certification Logical Ports”). The certification environment facilitates testing using replicas of the Exchange’s production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancellations, and purge requests. The Exchange currently provides free of charge one Certification Logical Port per port type offered in the production environment (*i.e.*, Logical Ports, Purge, Multicast PITCH GRP, and Multicast PITCH Spin Server Ports) and a monthly fee of \$250 per Certification Logical Port for any additional Certification Logical Ports.⁷

³ The Exchange initially filed this proposed rule change on May 31, 2024 for June 3, 2024 effectiveness (SR-CBOE-2024-023). On June 13, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁵ Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

⁶ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange’s Multicast PITCH data feeds.

⁷ For example, if a TPH maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the TPH will be assessed \$500 per month for Certification Logical Port Fees (*i.e.*, 1 FIX, 1 Purge and 1 set of Multicast

The Exchange proposes to make clear in the notes section under the Logical Port Fees section of the Fees Schedule that the Certification Logical Port fees only apply if the corresponding logical port is also in the production environment. For example, if the Exchange intends to adopt a new port type that has not yet been launched in the live production environment, any certification port for that port type will be free until such time that the proposed new port is in the production environment. Once any new logical port type is in the live production environment, TPHs and Non-TPHs will only be entitled to one free certification logical port for that port type, and any additional certifications ports of that type will be assessed the regular monthly \$250 per port charge.

The Exchange notes that purchasing additional Certification Logical Ports continues to be voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, TPHs and non-TPHs are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.⁸ Further, the Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.⁹

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.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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

PITCH Spin Server Certification Logical Ports × \$0 and 2 FIX Certification Logical Ports × \$250).

⁸ For example, a TPH may obtain a Certification Purge Port free of charge, even if that TPH has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled, but rather must be proactively requested by TPHs or Non-TPHs.

⁹ See *e.g.*, Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. See also MIAAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Section 6(b)(4) of the Act,¹² which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing a new port type that has not yet launched in the production environment. As such, the Exchange believes it's reasonable to only assess the Certification Logical Port fee to ports that are also available in the production environment as to not discourage the testing of new ports ahead of any respective launch date. The Exchange also believes applying the Certification Logical Port fee is reasonable once such ports are available in the production environment because while such ports will no longer be completely free, TPHs and non-TPHs will continue to be entitled to receive free of charge one Certification Logical Port for such port. The Exchange continues to believe one Certification Logical Port per logical port type will be sufficient for most TPHs or non-TPHs and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. For those who wish to obtain additional Certification Logical Ports based on their respective business needs, such as those wishing to test across various diverse systems within their own infrastructure, they are able to do so for a modest fee. Indeed, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's

certification environment.¹³ Further, the Exchange has observed that market participants that do choose to purchase additional Certification Logical Ports maintain significantly fewer Certification Logical Ports as compared to the corresponding logical ports they use in the production environment.

The Exchange believes the proposal to make clear that the Certification Logical Port fee applies only to logical ports that are in the production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports and all market participants will have further clarity as to which certification ports are subject to the current fee. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of Certification Logical Ports for new port types before they launch to become acclimated with the new connectivity offering ahead of going live in the trading environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Certification Logical Port fee applies and reduces potential confusion.

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 intramarket or intermarket 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 intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type once offered in the production environment. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market

participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment, which may be especially critical during the time leading up to the launch of a new port type in the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 16 other options exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, 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."¹⁴ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[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

¹³ Although many TPHs and Non-TPHs use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by user and depends on their respective business needs. To the extent a TPH or Non-TPH purchases additional Certification Logical Ports and their needs later change, or they determine they no longer wish to maintain excess Certification Logical Ports, the TPH or Non-TPH is free to cancel such ports for the following month(s).

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹² 15 U.S.C. 78f(b)(4).

dealers'. . .'.¹⁵ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and paragraph (f) of Rule 19b-4¹⁷ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-028 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-2024-028. 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-CBOE-2024-028 and should be submitted on or before July 24, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-14593 Filed 7-2-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100443; File No. SR-CboeEDGX-2024-039]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Clarify Its Certification Port Fees

June 27, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 13, 2024, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule

change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to 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 EDGX Exchange, Inc. (the "Exchange" or "EDGX" or "EDGX Options") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify its fees for Certification Logical Port fees, effective June 3, 2024 [sic].³

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,⁴ Purge

³ The Exchange initially filed this proposed rule change on May 31, 2024 for June 3, 2024 effectiveness (SR-CboeEDGX-2024-030). On June 13, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies)

¹⁵ *NetCoalition v. SEC*, 615 F.3d 525, 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)).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Ports,⁵ Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.⁶ For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications (*i.e.*, "Certification Logical Ports"). The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancellations, and purge requests. The Exchange currently provides free of charge one Certification Logical Port per port type offered in the production environment (*i.e.*, Logical Ports, Purge, Multicast PITCH GRP, and Multicast PITCH Spin Server Ports) and a monthly fee of \$250 per Certification Logical Port for any additional Certification Logical Ports.⁷

The Exchange proposes to make clear in the notes section under the Logical Port Fees section of the Fees Schedule that the Certification Logical Port fees only apply if the corresponding logical port is also in the production environment. For example, if the Exchange intends to adopt a new port type that has not yet been launched in the live production environment, any certification port for that port type will be free until such time that the proposed new port is in the production environment. Once any new logical port type is in the live production environment, Members and Non-Members will only be entitled to one free certification logical port for that port type, and any additional certifications ports of that type will be assessed the regular monthly \$250 per port charge.

and ports that are used for receipt of certain market data feeds.

⁵ Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

⁶ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

⁷ For example, if a Member maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the Member will be assessed \$500 per month for Certification Logical Port Fees (*i.e.*, 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × \$0 and 2 FIX Certification Logical Ports × \$250).

The Exchange notes that purchasing additional Certification Logical Ports continues to be voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, Members and non-Members are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.⁸ Further, the Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.⁹

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.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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 Section 6(b)(4) of the Act,¹² which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing

software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing a new port type that has not yet launched in the production environment. As such, the Exchange believes it's reasonable to only assess the Certification Logical Port fee to ports that are also available in the production environment as to not discourage the testing of new ports ahead of any respective launch date. The Exchange also believes applying the Certification Logical Port fee is reasonable once such ports are available in the production environment because while such ports will no longer be completely free, Members and non-Members will continue to be entitled to receive free of charge one Certification Logical Port for such port. The Exchange continues to believe one Certification Logical Port per logical port type will be sufficient for most Members and non-Members and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. For those who wish to obtain additional Certification Logical Ports based on their respective business needs, such as those wishing to test across various diverse systems within their own infrastructure, they are able to do so for a modest fee. Indeed, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.¹³ Further, the Exchange has observed that market participants that do choose to purchase additional Certification Logical Ports maintain significantly fewer Certification Logical Ports as compared to the corresponding logical ports they use in the production in environment.

The Exchange believes the proposal to make clear that the Certification Logical Port fee applies only to logical ports that are in the production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that

⁸ For example, a Member may obtain a Certification Purge Port free of charge, even if that Member has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled, but rather must be proactively requested by Members or Non-Members.

⁹ See *e.g.*, Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. See also MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(4).

¹³ Although many Members and Non-Members use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by user and depends on their respective business needs. To the extent a Member or Non-Member purchases additional Certification Logical Ports and their needs later change, or they determine they no longer wish to maintain excess Certification Logical Ports, the Member or Non-Member is free to cancel such ports for the following month(s).

choose to obtain additional Certification Logical Ports and all market participants will have further clarity as to which certification ports are subject to the current fee. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of Certification Logical Ports for new port types before they launch to become acclimated with the new connectivity offering ahead of going live in the trading environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Certification Logical Port fee applies and reduces potential confusion.

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 intramarket or intermarket 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 intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type once offered in the production environment. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment, which may be especially critical during the time leading up to the launch of a new port type in the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 16 other options exchanges, as well as a number of alternative trading systems and other

off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, 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."¹⁴ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[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'. . . ."¹⁵ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and paragraph (f) of Rule 19b-4¹⁷ thereunder. At any time within

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁵ *NetCoalition v. SEC*, 615 F.3d 525, 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)).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2024-039 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-CboeEDGX-2024-039. 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–CboeEDGX–2024–039 and should be submitted on or before July 24, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–14592 Filed 7–2–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100447; File No. SR–ISE–2024–17]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Approving a Proposed Rule Change To Amend the Strike Interval for Options on Exchange-Traded Fund Shares and To Allow \$1 Strike Price Intervals Above \$200 for Options on SPDR Gold Shares (GLD)

June 28, 2024.

I. Introduction

On May 3, 2024, Nasdaq ISE, LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder,² a proposed rule change to amend Options 4, Section 5 of the Exchange’s rules to (i) permit options on exchange-traded fund shares to have an interval of \$1 or greater where the strike price is \$200 or less and \$5.00 or greater where the strike price is greater than \$200 and (ii) list options on SPDR® Gold Shares (“GLD”) with \$1 strike price intervals instead of \$5 strike price intervals when the strike price of the option is greater than \$200. The proposed rule change was published for comment in the **Federal Register** on May 20, 2024.³ The Commission did not receive any comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

Currently, Options 4, Section 5 of the Exchange’s rules provides that the interval between strike prices of series of options on exchange-traded fund

shares (“ETFs”) ⁴ will be fixed at a price per share which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for trading on the Exchange, or at such intervals as may have been established on another options exchange prior to the initiation of trading on the Exchange,⁵ except that the interval between strike prices of series of options on SPDR S&P 500 ETF (“SPY”), iShares Core S&P 500 ETF (“IVV”), PowerShares QQQ Trust (“QQQ”), iShares Russell 2000 Index Fund (“IWM”), and the SPDR Dow Jones Industrial Average ETF (“DIA”) may be \$1 or greater.⁶

The Exchange proposes to establish an alternative to the strike price interval regime described above. Specifically, ISE would also allow the interval for options on ETFs to be \$1 or greater where the strike price is \$200 or less and \$5.00 or greater where the strike price is greater than \$200.⁷ As described above, the Exchange may fix the interval between strike prices of series of options on ETFs at such intervals as may have been established on another options exchange prior to the initiation of trading on the Exchange.⁸ The Exchange states that today, Cboe Exchange, Inc. (“Cboe”) ⁹ permits the interval between strike prices of series of options on ETFs to be \$1 or greater where the strike price is \$200 or less and \$5.00 or greater where the strike price is greater than \$200.¹⁰ The Exchange states that its proposal adopts Cboe’s language.¹¹

The Exchange also proposes to permit strike intervals to be \$1 or greater where the strike price is greater than \$200 for options on GLD,¹² similar to options on SPY, IVV, QQQ, IWM, and DIA.¹³ The Exchange states that \$1 strike price intervals already exist below the \$200

price point and that GLD has consistently inclined in price toward the \$200 level.¹⁴ In light of this, the Exchange believes that continuing to maintain the current \$5 strike intervals above \$200 may have a negative effect on investing, trading and hedging opportunities, and volume, particularly to the extent it impacts the ability of market participants to roll their positions once strike prices pass \$200.¹⁵ The Exchange states that the proposed strike setting regime will “permit strikes to be set to more closely reflect the increasing value in the underlying and allows investors and traders to roll open positions from a lower strike to a higher strike in conjunction with the price movements of the underlying ETF.” ¹⁶

The Exchange acknowledges that the proposal would increase the total number of options series available on the Exchange, but represents that it and the Options Price Reporting Authority (“OPRA”) have the necessary system capacity to handle any potential additional traffic associated with the proposal.¹⁷ The Exchange also states that its members would not have a capacity issue as a result of the proposal.¹⁸ Further, the Exchange represents that the proposal would not cause fragmentation of liquidity but, by providing more trading opportunities to market participants, instead would increase both available liquidity as well as price efficiency.¹⁹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²¹ which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and

⁴ See Exchange Rule Options 4, Section 3(h).

⁵ See Exchange Rule Options 4, Section 5(d).

⁶ See Exchange Rule Options 4, Section 5(e).

⁷ See proposed Exchange Rule Options 4, Section 5(d).

⁸ See *supra* note 5.

⁹ See Cboe Rule 4.5, Interpretation and Policy .07(a).

¹⁰ See Notice, *supra* note 3, at 43936.

¹¹ See *id.*

¹² According to the Exchange, GLD is an ETF whose shares are designed to closely track the price and performance of the price of gold bullion. See *id.* The Exchange states: “GLD is widely quoted as an indicator of gold stock prices” and the “leading product in its asset class that trades within a ‘complex’ where, in addition to the underlying security, there are multiple instruments available for hedging such as, COMEX Gold Futures; Gold Daily Futures; iShares GOLD Trust; SPDR GOLD Minishares Trust; Aberdeen Physical Gold Trust; and GraniteShares Gold Shares.” *Id.*

¹³ See proposed Exchange Rule Options 4, Section 5(e).

¹⁴ See Notice, *supra* note 3, at 43937.

¹⁵ See *id.* For example, the Exchange states that “to move a position from a \$200 strike to a \$205 strike under the current rule, an investor would need for the underlying product to move 2.5%” whereas rolling an open position from a \$200 to a \$201 strike represents “only a 0.5% move from the underlying.” *Id.*

¹⁶ *Id.*

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b)(5).

¹⁸ 17 CFR 200.30–3(a)(12).

¹⁹ 15 U.S.C. 78s(b)(1).

²⁰ 17 CFR 240.19b–4.

²¹ See Securities Exchange Act Release No. 100133 (May 14, 2024), 89 FR 43936 (“Notice”).

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. Permitting \$1 strike price intervals above \$200 in options on GLD will provide the investing public and other market participants with more flexibility in their investment and hedging decisions using options on GLD. The proposal is also consistent with past precedent for options on other similar ETFs.²² Moreover, the proposal to specify the interval between strike prices of series of options on ETFs where the strike price is less than \$200 and where the strike price is greater than \$200 is consistent with the intervals of another options exchange.²³

In approving this proposal, the Commission notes that the Exchange has represented that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with this proposed rule change.²⁴ The Exchange further stated that it believes its members will not have a capacity issue because of the proposal and that it does not believe this expansion will cause fragmentation of liquidity.²⁵

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-ISE-2024-17), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-14646 Filed 7-2-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100440; File No. SR-NASDAQ-2024-026]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its Co-Location Services

June 27, 2024.

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 June 14, 2024, 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 expand its co-location services. The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange's expanded data center.

The Exchange's current data center (“NY11”) in Carteret, NJ is undergoing an expansion (“NY11-4”) in response to demand for power and cabinets. NY11-4 is not a new or distinct co-location facility. Instead, NY11-4 is simply an expansion of the existing Nasdaq NY11 data center,³ and Nasdaq intends to operate it generally in the same manner as existing aspects of NY11.⁴ Client connections to the matching engine will be equal across the board, within and among NY11 and NY11-4. In 2010, the Exchange undertook a similar expansion to its data center, where connectivity to the Exchange remained equalized, as is the case with the NY11-4 expansion.

The Exchange submits this filing to propose offering new services in NY11-4, as described below, and to the extent the Exchange offers additional new services, whether in the existing NY11 data halls or in the new NY11-4 data hall, the Exchange will submit additional filings with the Commission.

NY11-4 Expanded Cabinet Optionality: Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁵ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange proposes to introduce a new cabinet choice in NY11-4, an “Ultra High Density Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW. Based on demand, the Exchange wishes to

³ NY11-4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11-2, NY11-3, and NY11-4.

⁴ One aspect of the data center that will be treated differently in NY11-4 as compared to NY11 at its outset is telecommunications access and inter-client connectivity. In NY11-4, connections between colocated client cabinets and the carrier cage will be of equal length. Inter-client connectivity will also be equalized in NY11-4. The Exchange believes that equalizing telecommunications access and inter-client connectivity in NY11-4 will provide a fair solution and avoid market disruption by avoiding both a race for real estate adjacent to NY11-4 and for particular space in NY11-4. The Exchange believes that these actions would facilitate a fair and orderly market and protect investors and the public interest, consistent with its obligations under the Act.

⁵ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

²² See Securities Exchange Act Release No. 85754 (Apr. 30, 2019), 84 FR 19823 (May 6, 2019) (allowing \$1 Strike Price intervals above \$200 on options on QQQ and IWM).

²³ See *supra* note 11.

²⁴ See *supra* note 17.

²⁵ See *supra* notes 18 and 19.

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

introduce the Ultra High Density Cabinet as an option for customers between the High Density Cabinet and the Super High Density Cabinet. The Ultra High Density Cabinet option would only be offered in NY11–4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution. Because of the addition of the Ultra High Density Cabinet option in NY11–4, the Super High Density Cabinet in NY11–4 would have power density greater than 15 kW and less than or equal to 17.3 kW.

In addition to the Ultra High Density Cabinet, the Exchange would offer the other, existing cabinet options in NY11–4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The cabinets in NY11–4 will include certain features, including but not limited to: uniform, wider cabinets⁶ (32" W × 48" D × 91" H), cable management, and a rear split door and combo lock.

NY–11 4 Cabinet Power and Power Distribution Units

The Exchange currently provides various cabinet power options, including: 2×20 amp 110 volt, 2×30 amp 110 volt, 2×20 amp 208 volt, 2×30 amp 208 volt, Phase 3 2×20 amp 208 volt, Phase 3 2×30 amp 208 volt, 2×60 amp 208 volt, Phase 3 2×40 amp 208 volt, Phase 3 2×50 amp 208 volt, Phase 3 2×60 amp 208 volt, and 2×30 amp 48 volt DC. For NY11–4, the data center operator is bringing in higher voltage power options, which are more consistent with power options used in other data centers across the globe. The Exchange proposes to amend General 8, Section 1(c) to add the cabinet power options for NY11–4, which include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. The Exchange also proposes to specify in its Rules that these cabinet power options are specific to NY11–4 and that one of these options must be selected for cabinets in NY11–4. Although different cabinet power options will be offered in NY11 and NY11–4 due to differing power configurations, the new cabinet power options are not inherently preferable to

the existing cabinet power options and the Exchange does not anticipate material differences in equipment performance based on the power distribution. Due to higher voltage options being offered in NY11–4, the data center operator is likely to experience increased power distribution efficiencies across the data center. As between the various cabinet power options, customers choose power based on their preference and capacity needs.

The Exchange also proposes to offer power distribution units ("PDUs")⁷ in NY11–4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange wishes to simplify and standardize its PDU offering in NY11–4 by offering Phase 1 and Phase 3⁸ power distribution units. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange also proposes to offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,⁹ the Exchange anticipates opening NY11–4 Exchange access on October 21, 2024 and providing customers access to the space on August 1, 2024. In concert with this filing, the Exchange will allow customers to place orders for NY11–4, which would not be fee liable until customers are provided access to the space.¹⁰ The Exchange will submit a fee filing to establish fees for

⁷ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11–4.

⁸ Phase 1 PDUs would be compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs would be compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

⁹ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹⁰ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

the services described herein. Allowing customers to place orders in advance of opening its doors will allow the Exchange to plan ahead for capacity and demand for services, as well as procure necessary equipment.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Today, the Exchange offers various cabinet choices and power options in the data center for colocation customers. The proposal would expand the cabinet and power options available, by introducing an additional cabinet option, the Ultra High Density Cabinet, and new power choices. The proposal would benefit the public interest by providing customers more cabinet and power options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. In general, the proposal is consistent with the Act because the Exchange's expansion of the data center and expansion of available power and cabinets will enable the Exchange to meet customer needs and address demand for both cabinets and power. In lieu of collocating directly with the Exchange, market participants may choose not to collocate at all or to collocate indirectly through a vendor.

The Exchange also believes that the proposal will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) of the Act¹³ because the expanded cabinet and power options in the data center would be offered equally to all customers. Although certain optionality is only offered in NY11–4 because of different power configurations in NY11–4 as compared to NY11, NY11–4 is merely an expansion of the data center, and any customer may order cabinets and power in NY11–4 (and across the data center broadly) on the same terms as any other customer.

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

⁶ In the existing data halls, clients may bring their own cabinets or use Exchange-provided cabinets. Because of the cooling system in NY11–4 (hot aisle containment), all cabinets must be uniform and therefore, the Exchange will provide all cabinets. The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. As part of its colocation offering, the Exchange currently offers similar cabinets and power, as do other exchanges.

Nothing in the Proposal burdens intra-market competition because the Exchange's colocation services, including those proposed herein, are available to any customer and customers that wish to order cabinets and power can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services based on the requirements of its business operations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-026 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-2024-026. 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-NASDAQ-2024-026 and should be submitted on or before July 24, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-14594 Filed 7-2-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100442; File No. SR-CboeBZX-2024-058]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fee Schedule To Clarify its Certification Port Fees

June 27, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 13, 2024, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX" or "BZX Options") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/BZX/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify its fees for Certification Logical Port fees.³

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,⁴ Purge Ports,⁵ Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.⁶ For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications (*i.e.*, "Certification Logical Ports"). The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancellations, and purge requests. The Exchange currently provides free of charge one Certification Logical Port per port type offered in the production environment (*i.e.*, Logical Ports, Purge, Multicast PITCH GRP, and Multicast PITCH Spin Server Ports) and a monthly fee of \$250 per Certification

Logical Port for any additional Certification Logical Ports.⁷

The Exchange proposes to make clear in the notes section under the Logical Port Fees section of the Fees Schedule that the Certification Logical Port fees only apply if the corresponding logical port type is also in the production environment.⁸ For example, if the Exchange intends to adopt a new port type that has not yet been launched in the live production environment, any certification port for that port type will be free until such time that the proposed new port is in the production environment. Once any new logical port type is in the live production environment, Members and Non-Members will only be entitled to one free certification logical port for that port type, and any additional certifications ports of that type will be assessed the regular monthly \$250 per port charge.

The Exchange notes that purchasing additional Certification Logical Ports continues to be voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, Members and non-Members are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.⁹ Further, the Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.¹⁰

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.¹¹ Specifically,

⁷ For example, if a Member maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the Member will be assessed \$500 per month for Certification Logical Port Fees (*i.e.*, 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × \$0 and 2 FIX Certification Logical Ports × \$250).

⁸ The Exchange also proposes to add the word "receive" in the notes section under the Logical Port section of the Fees Schedule as it was inadvertently omitted in the original filing that adopted the Certification Logical Port language.

⁹ For example, a Member may obtain a Certification Purge Port free of charge, even if that Member has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled, but rather must be proactively requested by Members or Non-Members.

¹⁰ See *e.g.*, Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. See also MIA Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

¹¹ 15 U.S.C. 78f(b).

the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² 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 Section 6(b)(4) of the Act,¹³ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing a new port type that has not yet launched in the production environment. As such, the Exchange believes it's reasonable to only assess the Certification Logical Port fee to ports that are also available in the production environment as to not discourage the testing of new ports ahead of any respective launch date. The Exchange also believes applying the Certification Logical Port fee is reasonable once such ports are available in the production environment because while such ports will no longer be completely free, Members and non-Members will continue to be entitled to receive free of charge one Certification Logical Port for such port. The Exchange continues to believe one Certification Logical Port per logical port type will be sufficient for most Members or Non-Members and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. For those who wish to obtain additional Certification Logical Ports based on

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(4).

³ The Exchange initially filed this proposed rule change on May 31, 2024 for June 3, 2024 effectiveness (SR-CboeBZX-2024-045). On June 13, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁵ Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

⁶ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

their respective business needs, such as those wishing to test across various diverse systems within their own infrastructure, they are able to do so for a modest fee. Indeed, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.¹⁴ Further, the Exchange has observed that market participants that do choose to purchase additional Certification Logical Ports maintain significantly fewer Certification Logical Ports as compared to the corresponding logical ports they use in the production environment.

The Exchange believes the proposal to make clear that the Certification Logical Port fee applies only to logical ports that are in the production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports and all market participants will have further clarity as to which certification ports are subject to the current fee. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of Certification Logical Ports for new port types before they launch to become acclimated with the new connectivity offering ahead of going live in the trading environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Certification Logical Port fee applies and reduces potential confusion.

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 intramarket or intermarket 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 intramarket competition because as the proposed change applies uniformly to all market participants.

¹⁴ Although many Members and Non-Members use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by user and depends on their respective business needs. To the extent a Member or Non-Member purchases additional Certification Logical Ports and their needs later change, or they determine they no longer wish to maintain excess Certification Logical Ports, the Member or Non-Member is free to cancel such ports for the following month(s).

Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type once offered in the production environment. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment, which may be especially critical during the time leading up to the launch of a new port type in the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 16 other options exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, 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."¹⁵ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[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'. . . ."¹⁶ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-058 on the subject line.

¹⁶ *NetCoalition v. SEC*, 615 F.3d 525, 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)).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2024–058. 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–CboeBZX–2024–058 and should be submitted on or before July 24, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–14595 Filed 7–2–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20230 and #20231;
KENTUCKY Disaster Number KY–20000]

Administrative Declaration of a Disaster for the State of Kentucky

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster

for the State of Kentucky dated 06/26/2024.

Incident: Severe Storms and Tornadoes.

Incident Period: 03/14/2024 through 03/15/2024.

DATES: Issued on 06/26/2024.

Physical Loan Application Deadline Date: 08/26/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 03/26/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Trimble
Contiguous Counties:

Kentucky: Carroll, Henry, Oldham

Indiana: Clark, Jefferson

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 20230B and for economic injury is 202310.

The States which received an EIDL Declaration are Indiana, Kentucky.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2024–14607 Filed 7–2–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12439]

Privacy Act of 1974; System of Records

AGENCY: Department of State.

ACTION: Rescindment of a system of records notice.

SUMMARY: The “Post Capabilities Database, State-71” which is being rescinded, contained information which was used and reviewed by medical and administrative personnel to make clearance decisions for individuals eligible to participate in the State Department Medical program (MED) and as a reference for local medical capabilities. It was also used as a directory of MED employees working overseas.

DATES: On May 5, 2023, the Department of State published a notice in the **Federal Register** (88 FR 29171) stating that records in State-71 were being consolidated with “Medical Records, State-24” into a single modified State-24 because the records and system purposes were substantially similar. The consolidation of these two systems of records into State-24 became effective on June 5, 2023.

ADDRESSES: Questions can be submitted by mail, email, or by calling Ereney A. Hadjigeorgalis, the Senior Agency Official for Privacy, on (771) 204–7399. If mail, please write to: U.S. Department of State; Office of Global Information Services, A/GIS; Room 4534, 2201 C St. NW, Washington, DC 20520. If email, please address the email to the Senior Agency Official for Privacy, Ereney A. Hadjigeorgalis, at Privacy@state.gov. Please write “Post Capabilities Database, State-71” on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Ereney A. Hadjigeorgalis, Senior Agency Official for Privacy; U.S. Department of State; Office of Global Information Services, A/GIS; Room 4534, 2201 C St. NW, Washington, DC 20520 or by calling (771) 204–7399.

SUPPLEMENTARY INFORMATION: The records in “Post Capabilities Database State-71” (originally published at 74 FR 65586) were consolidated with “Medical Records, State-24” (previously

¹⁹ 17 CFR 200.30–3(a)(12).

published at 80 FR 7671). The new SORN reflecting the consolidated systems of records “Medical Records, State-24” published at 88 FR 29171 became effective on June 5, 2023.

SYSTEM NAME AND NUMBER:

Post Capabilities Database, State-71.

HISTORY:

“Post Capabilities Database, State-71” was previously published at 74 FR 65586. “Medical Records, State-24” was previously published at 80 FR 7671 before being modified and re-published at 88 FR 29171.

Ereney A. Hadjigeorgalis,

Acting Deputy Assistant Secretary, Global Information Services (A/GIS), Department of State.

[FR Doc. 2024–14631 Filed 7–2–24; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF STATE

[Public Notice: 12438]

Privacy Act of 1974; System of Records

AGENCY: Department of State.

ACTION: Rescindment of a system of records notice.

SUMMARY: The “Communications Personnel Training Records, State-57” which is being rescinded, contains information which was used to determine current and future training requirements of those individuals who are professional communications personnel and who have been tasked to perform additional back-up communications duties at Foreign Service posts.

DATES: On May 9, 2023, the Department of State published a notice in the **Federal Register** (88 FR 29960) that records in State-57 were being consolidated with “Foreign Service Institute Records, State-14” into a single modified State-14 because the records and system purposes were substantially similar. The consolidation of these two systems of records into State-14 became effective on June 8, 2023.

ADDRESSES: Questions can be submitted by mail, email, or by calling Ereney A. Hadjigeorgalis, the Senior Agency Official for Privacy, on (771) 204–7399. If mail, please write to: Ereney A. Hadjigeorgalis, Senior Agency Official for Privacy; U.S. Department of State; Office of Global Information Services, A/GIS; Room 4534, 2201 C St. NW, Washington, DC 20520. If email, please address the email to the Senior Agency Official for Privacy, Ereney A.

Hadjigeorgalis, at Privacy@state.gov. Please write “Communications Personnel Training Records, State-57” on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT:

Ereney A. Hadjigeorgalis, Senior Agency Official for Privacy; U.S. Department of State; Office of Global Information Services, A/GIS; Room 4534, 2201 C St. NW, Washington, DC 20520 or by calling (771) 204–7399.

SUPPLEMENTARY INFORMATION: The records in “Communications Personnel Training Records, State-57” (originally published at 53 FR 16208) were consolidated with “Foreign Service Institute Records, State-14” (previously published at 71 FR 8882). The new SORN reflecting the consolidated systems of records “Foreign Service Records, State-14” was published at 88 FR 29960 on May 9, 2023.

SYSTEM NAME AND NUMBER:

Communications Personnel Training Records, State-57.

HISTORY:

“Communications Personnel Training Records, State-57” was previously published at 53 FR 16208. “Foreign Service Institute Records, State-14” was previously published at 71 FR 8882 before being modified and re-published at 88 FR 29960.

Ereney A. Hadjigeorgalis,

Acting Deputy Assistant Secretary, Global Information Services, Department of State.

[FR Doc. 2024–14630 Filed 7–2–24; 8:45 am]

BILLING CODE 4710–34–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36789]

Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group, Inc.—Continuance in Control Exemption—Front Range Railroad LLC

Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group, Inc. (collectively, Applicants), all noncarriers, have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Front Range Railroad, LLC (FRRL), upon FRRL’s becoming a Class III rail carrier.

This transaction is related to a verified notice of exemption filed concurrently in *Front Range Railroad—Operation Exemption—Line in Adams County, Colo.*, Docket No. FD 36789, in which FRRL seeks to operate as a rail carrier over approximately 0.51 miles (approximately 2,700 feet) of track located in Bennett, Adams County, Colo.

According to the verified notice, Applicants currently control existing Class III rail carriers (Patriot Short Lines) in 21 states.¹

The verified notice indicates that: (1) the Line does not connect with any of the Patriot Short Lines; (2) Applicants do not intend to undertake any transactions to connect any of the Patriot Short Lines to each other or to the Line; and (3) the proposed transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The transaction may be consummated on or after July 18, 2024, the effective

¹ Although Applicants state that they currently control 31 existing Class III rail carriers (Verified Notice 2 & n.2), they include 32 individual carriers in the list of carriers that they control (*id.* at 3–5).

The verified notice lists the railroads and the location of their operations as follows: (1) Alabama & Florida Railway Co., Inc. d/b/a Ripley & New Albany Railroad Co.—Alabama and Mississippi; (2) Columbia & Cowlitz Railway, LLC—Washington; (3) Decatur Junction Railway Co. LLC—Illinois; (4) Delta Southern Railroad, Inc.—Louisiana; (5) DeQueen and Eastern Railroad, LLC—Arkansas; (6) Elkhart & Western Railroad Co. LLC—Indiana; (7) Fort Smith Railroad Co. LLC—Arkansas; (8) The Garden City Western Railway LLC—Kansas; (9) Georgia Northeastern Railroad Company LLC—Georgia; (10) Georgia Southern Railway Co. LLC—Georgia; (11) Gettysburg & Northern Railroad Co. LLC—Pennsylvania; (12) Golden Triangle Railroad, LLC—Mississippi; (13) Indiana Southwestern Railway Co. LLC—Indiana; (14) Kendallville Terminal Railway Co. LLC—Indiana; (15) Keokuk Junction Railway Co. LLC—Iowa and Illinois; (16) Keokuk Union Depot Company LLC (KUD)—Iowa; (17) Kingman Terminal Railroad, LLC—Arizona; (18) Lakeshore Terminal Railroad LLC—Indiana; (19) Louisiana and North West Railroad Company, LLC—Arkansas and Louisiana; (20) Merced County Central Valley Railroad LLC—California; (21) Michigan Southern Railroad Company (in Indiana and Ohio, d/b/a Napoleon Defiance and Western Railway)—Indiana, Michigan, and Ohio; (22) Mississippi Central Railroad Co. LLC—Mississippi, Tennessee, and Alabama; (23) Pioneer Industrial Railway Co. LLC—Illinois; (24) Rarus Railway, LLC d/b/a Butte, Anaconda & Pacific Railway Co.—Montana; (25) Sacramento Valley Railroad, LLC—California; (26) Salt Lake, Garfield and Western Railway Company—Utah; (27) Temple & Central Texas Railway, LLC—Texas; (28) Tennessee Southern Railroad Company, LLC—Tennessee and Alabama; (29) Texas Oklahoma & Eastern Railroad, LLC—Oklahoma; (30) Utah Central Railway Company, LLC—Utah; (31) Vandalia Railroad Company—Illinois; (32) West Belt Railway LLC—Missouri (collectively, Patriot Short Lines). Applicants state that it is unclear whether KUD is a rail carrier subject to the Board’s jurisdiction and they have included KUD in this list out of an abundance of caution.

date of the exemption (30 days after the verified notice was filed).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III rail carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than July 11, 2024.

All pleadings, referring to Docket No. FD 36789, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Applicants' representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to the verified notice, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: June 28, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Eden Besera,
Clearance Clerk.

[FR Doc. 2024-14640 Filed 7-2-24; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36788]

Front Range Railroad LLC—Operation Exemption—Line in Adams County, Colo.

Front Range Railroad LLC (FRRL), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to operate over approximately 0.51 miles (approximately 2,700 feet) of what is currently private industry railroad track that is part of a logistics complex in Bennett, Adams County, Colo. (the Line). Rail Land Company, LLC (RLCL), an unaffiliated noncarrier, owns the

Line. The Line connects to a rail line of the Union Pacific Railroad Company (UP) at UP milepost 613.81 and proceeds approximately eastward and then northward 0.51 miles to the main switch to an RLCL-owned yard facility.

According to the verified notice, FRRL and RLCL have entered into an operation agreement under which FRRL will operate and provide common carrier rail service to customers on the Line and connecting ancillary (yard) trackage.

This transaction is related to a concurrently filed verified notice of exemption in *Patriot Rail Company LLC—Continuance in Control Exemption—Front Range Railroad*, Docket No. FD 36789, in which Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group, Inc., seek to continue in control of FRRL upon FRRL's becoming a Class III rail carrier.

FRRL certifies that its annual projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier and will not exceed \$5 million. FRRL also states that the operation agreement does not have any interchange commitments.

FRRL intends to consummate the transaction on or shortly after the effective date of this notice. The earliest this transaction may be consummated is July 18, 2024, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 11, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36788, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on FRRL's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to FRRL, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: June 28, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Eden Besera,
Clearance Clerk.

[FR Doc. 2024-14639 Filed 7-2-24; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2024-1721]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewal Approval of Information Collection: PIREP Form FAA Form 7110-2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves an aircraft pilot's voluntary submission of weather conditions that were encountered while in flight. The information to be collected is necessary because Pilot Report (PIREP) Solicitation and Dissemination has been identified by the ATO as one of the Top 5 hazards in the National Airspace System (NAS). For certain weather conditions, PIREPs are the only means of confirmation that forecasted conditions are occurring. The FAA 7110-2 PIREP Form is a guide to assist pilots in submitting Pilot Weather Reports into the NAS.

DATES: Written comments should be submitted by September 3, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket:
www.regulations.gov (Enter docket number into search field).

By mail: Federal Aviation Administration, Mail Stop AJR-B1, 800 Independence Ave SW, Suite 300 W, Washington DC 20591.

By fax: 202-267-6310.

FOR FURTHER INFORMATION CONTACT:

Katie J. Ludwig by email at: Katie.J.Ludwig@faa.gov; phone: 202-267-6195.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this

information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120-0801.

Title: PIREP Form FAA form 7110-2.

Form Numbers: FAA 7110-2.

Type of Review: Renewal of information collection.

Background: The guidance for collecting PIREP information is contained in FAAO 7110.10, Flight Service, of which System Operations Services (AJR) is the office of primary responsibility.

Respondents: 821,832.

Frequency: On occasion, depending on the weather conditions encountered.

Estimated Average Burden per

Response: 3 minutes.

Estimated Total Annual Burden: <1 hour per respondent.

Issued in Washington, DC on June 28, 2024.

Katie Jo Ludwig,

Air Traffic Control Specialist, AJR-B100.

[FR Doc. 2024-14634 Filed 7-2-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2019-0065]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on May 29, 2024, Mr. Ray Kolasa, President, Buffalo, Cattaraugus & Jamestown Scenic Railway (Petitioner) petitioned the Federal Railroad Administration (FRA) to extend a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215 (Railroad Freight Car Safety Standards). FRA assigned the petition Docket Number FRA-2019-0065.

Specifically, Petitioner requests to extend the previous special approval pursuant to 49 CFR 215.203, *Restricted cars*, in this docket for caboose PC 18216, which is more than 50 years from the date of original construction. Petitioner also seeks relief from

§ 215.303, *Stenciling of restricted cars*, to operate the car in tourist service on the Buffalo Southern Railroad and the Buffalo, Cattaraugus & Jamestown Scenic Railway. The petition states that stenciling of the caboose per the regulation "would distract from [the caboose's] historical image." In support of this request, Petitioner explains that no accidents or injuries have been associated with the use of the caboose. Further, PC 18216 will not be interchanged with any other railroad.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at www.regulations.gov. Follow the online instructions for submitting comments.

Communications received by September 3, 2024 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of the U.S. Department of Transportation's (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024-14627 Filed 7-2-24; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2008-0097]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated May 8, 2024, New Jersey Transit (NJT) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 218 (Railroad Operating Practices). The relevant Docket Number is FRA-2008-0097.

Specifically, NJT requests continued relief from § 218.29(c)(1), *Alternate methods of protection*, which states that "when workers are on, under, or between rolling equipment on any track, other than main track: a derail . . . will fulfill the requirements of a manually operated switch when positioned no less than 150 feet from the end [of] such equipment." This relief permits NJT to instead apply the requirements of § 218.29(a)(4), which allows a derail to be positioned "at least 50 feet from the end of the equipment to be protected by the blue signal," at the Morrisville Yard facility in Morrisville, Pennsylvania.

In support of its request, NJT states that since the waiver has been in effect, no accidents, incidents, or injuries have occurred due to the relief. Additionally, NJT continues to enforce a speed restriction of 5 miles per hour and ensure that a Yard Master is present at the Morrisville Yard 7 days per week and for 24 hours per day, per the conditions of the relief.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at www.regulations.gov. Follow the online instructions for submitting comments.

Communications received by September 3, 2024 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of the Department of Transportation's (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2024-14626 Filed 7-2-24; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2011-0106]

Denver Regional Transportation District's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on June 24, 2024, the Denver Regional Transportation District (RTD) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP) to support upgrades to the Locomotive Segment software for its Interoperable Electronic Train Management System (I-ETMS). As this RFA involves a request for FRA's approval of proposed material modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on RTD's RFA to its PTCSP.

DATES: FRA will consider comments received by July 23, 2024. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES: *Comments:* Comments may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA-2011-0106. For convenience, all active PTC dockets are hyperlinked on FRA's website at <https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets>. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information.

FOR FURTHER INFORMATION CONTACT:

Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816-516-7168, email: Gabe.Neal@dot.gov.

SUPPLEMENTARY INFORMATION: In general, title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal or train control system. Accordingly, this notice informs the public that, on June 24, 2024, RTD submitted an RFA to its PTCSP for its I-ETMS system, which seeks FRA's approval for an I-ETMS Locomotive Segment software update that includes additional features and enhancements to existing functionality. That RFA is available in Docket No. FRA-2011-0106.

Interested parties are invited to comment on RTD's RFA to its PTCSP by submitting written comments or data. During FRA's review of RTD's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent

practicable, without delaying implementation of valuable or necessary modifications to a PTC system. See 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov. To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2024-14645 Filed 7-2-24; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No.: PHMSA-2024-0079]

Adoption of Department of Energy Categorical Exclusion Under the National Environmental Policy Act

AGENCY: Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is adopting a categorical exclusion (CE) established by the Department of Energy (DOE) that covers a category of actions that PHMSA proposes to take. This notice identifies the DOE CE and PHMSA's category of proposed actions for which it intends to use DOE's CE, describes the consultation between the agencies, and how PHMSA will apply and notify the public of its use.

DATES: The CE identified below is available for PHMSA to use for its proposed actions effective July 3, 2024.

FOR FURTHER INFORMATION CONTACT: Carolyn Nelson, Office of Planning and Analytics, PHMSA, by email at Carolyn.Nelson@dot.gov or by phone at 202-860-6173.

SUPPLEMENTARY INFORMATION:

I. Background on the National Environmental Policy Act and CEs

Congress enacted the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. 42 U.S.C. 4321, 4331. NEPA seeks to ensure that agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations). To comply with NEPA, agencies determine the appropriate level of review of any major federal action—an environmental impact statement (EIS), environmental assessment (EA), or CE. 40 CFR 1501.3. If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. 40 CFR part 1502, 1505.2. If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an EA, which involves a more concise analysis and process than an EIS. 40 CFR 1501.5. Following the EA, the agency may conclude the action will have no significant effects and document that conclusion in a finding of no significant impact. 40 CFR 1501.6. If the analysis concludes that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, CEs are categories of actions that the agency has determined normally do not have a significant effect on the human environment—in their agency NEPA procedures. 42 U.S.C. 4336e (1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). Once established, an agency determines whether a CE covers a proposed action, and if so, whether there are extraordinary circumstances in which a normally excluded action may have a

significant effect. 40 CFR 1501.4(b). If no extraordinary circumstances are present, the agency may apply the CE to the proposed action. 42 U.S.C. 4336(a)(2), 40 CFR 1501.4. If extraordinary circumstances are present, the agency nevertheless may still categorically exclude the proposed action if it determines there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a federal agency to “adopt” another federal agency’s CEs for proposed actions. 42 U.S.C. 4336c. To adopt another agency’s CEs under section 109, the adopting agency must identify the relevant CEs listed in another agency’s (“establishing agency”) NEPA procedures that cover the borrowing agency’s category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the CE for a category of actions is appropriate; identify to the public the CE that the borrowing agency plans to use for its proposed actions; and document adoption of the CE. 42 U.S.C. 4336c.

In addition, per the process outlined in CEQ regulations Section 1501.4(e), an agency may adopt a CE listed in another agency’s NEPA procedures that covers its proposed action through identifying the CE, consultation between agencies, public notification of the CE to adopt, evaluate actions for extraordinary circumstances, and publishing the documentation of the application of the adopted CE. PHMSA has identified DOE’s categorical exclusion B5.4 repair or replacement of pipelines that could be utilized for a number of PHMSA’s proposed actions. PHMSA has consulted with DOE and determined that the proposed adoption of the CE for these categories of actions is appropriate. This FR notice serves as the notification to the public on PHMSA’s adoption of the CE, the process PHMSA will use to evaluate proposed actions for extraordinary circumstances, as well as where PHMSA will publish any CE determinations that utilize this CE will be posted.

PHMSA’s Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) Grant Program

PHMSA has prepared this notice to meet these statutory requirements. PHMSA is a United States Department of Transportation (DOT) agency created in 2004. PHMSA’s mission is to protect people and the environment by advancing the safe transportation of

energy and other hazardous materials that are essential to our daily lives. To do this, the agency establishes national policy, sets and enforces standards, educates, and conducts research to prevent incidents. On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law, which includes PHMSA’s NGDISM Grant Program. The grant funding is available to a municipality or community owned utility (not including for-profit entities) to repair, rehabilitate, or replace its natural gas distribution pipeline systems or portions thereof or to acquire equipment to (1) reduce incidents and fatalities, and (2) to avoid economic losses.

II. DOE CE B5.4

PHMSA has decided to adopt DOE CE B5.4 listed in appendix B to subpart D of DOE’s NEPA regulations, 10 CFR part 1021. That CE is:

B5.4 Repair or Replacement of Pipelines

Repair, replacement, upgrading, rebuilding, or minor relocation of pipelines within existing rights-of-way, provided that the actions are in accordance with applicable requirements (such as Army Corps of Engineers permits under section 404 of the Clean Water Act). Pipelines may convey materials including, but not limited to, air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water.

The text of DOE CE B5.4 includes conditions on the scope or application of the CE (e.g., that actions be within existing rights-of-way and in accordance with applicable requirements). DOE’s regulations also include additional conditions that apply to all of their categorical exclusions, referred to as integral elements, at 10 CFR part 1021, subpart D, appendix B (1)–(5). These integral elements are similar to other agencies’ extraordinary circumstance criteria. DOE’s integral elements require that to fit within CE B5.4 a proposal must be one that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DOE or Executive Orders.

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities.

(3) Disturb hazardous substances, pollutants, contaminants, or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)-excluded petroleum and

natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases.

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by federal, state, or local government, or a federally recognized Indian tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

i. Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a federal, state, or local government, federally recognized Indian tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places;

ii. Federally listed threatened or endangered species or their habitat (including critical habitat) or federally proposed or candidate species or their habitat (Endangered Species Act); state-listed or state-proposed endangered or threatened species or their habitat; federally protected marine mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise federally protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);

iii. Floodplains and wetlands (as defined in 10 CFR 1022.4, "Compliance with Floodplain and Wetland Environmental Review Requirements: Definitions," or its successor);

iv. Areas having a special designation such as federally and state-designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, state and federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

v. Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), "Farmland Protection Policy Act: Definitions," or its successor;

vi. Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

vii. Tundra, coral reefs, or rain forests.

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment, and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health.

In addition, DOE requires as a prerequisite to applying any CE listed in its NEPA regulations that the proposal has not been segmented to meet the definition of a CE; the proposal is not connected to other actions with potentially significant impacts; is not related to other actions with individually insignificant but cumulatively significant impacts; and is not precluded by 40 CFR 1506.1 or 10 CFR 1021.211 during EIS preparation. 10 CFR 1021.410(b)(3). Also, DOE requires that use of all CEs in its appendix B, including CE B5.4, be documented and be made available to the public by posting online. 10 CFR 1021.410(e).

III. PHMSA Proposed Use of DOE CE B5.4

Upon adoption, PHMSA would apply DOE's CE B5.4 to the repair or replacement of pipelines associated with the NGDISM Grant Program. In addition, PHMSA may also use the CE for similar repair and replacement of pipelines that are funded or approved under other programs, where appropriate.

PHMSA has consulted with DOE and determined that the repair and replacement of pipelines associated with the NGDISM grant program are within the same scope of the projects where DOE has applied this categorical exclusion. PHMSA adopts the CE and includes the conditions on the scope that the actions be within existing rights-of-way and be in accordance with applicable requirements.

IV. Consideration of Extraordinary Circumstances

If an agency determines that a CE covers a proposed action, the agency must evaluate the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). PHMSA has identified the following as potential extraordinary circumstances based on DOE's integral elements, DOE's extraordinary circumstances, as well as other DOT operating

administrations' extraordinary circumstances list to evaluate when applying this categorical exclusion.

1. The proposed action is greater in scope or size than normally encompassed for actions in the category, or the proposed action is controversial or likely to create controversy on environmental grounds.

2. The proposed action has a high potential to increase the likelihood of a reportable release of hazardous material.

3. The proposed action is reasonably likely to be inconsistent with or cause a violation of a federal, state, local, or tribal law or requirement.

4. The proposed action is reasonably likely to result in substantial adverse effects associated with climate change.

5. The proposed action is reasonably likely to have disproportionate and adverse effects on communities with environmental justice concerns as defined in the PHMSA Environmental Justice Procedures Document.1

6. The proposed action is likely to have an effect on an environmentally sensitive resource, unless the effect has been resolved through another environmental process, such as the Clean Water Act or Coastal Zone Management Act. An environmentally sensitive resource includes:

7. Wildlife or waterfowl refuges, historic sites, public parks, or other protected properties under section 4(f) of the Department of Transportation Act (49 U.S.C. 303) or section 6(f) of the Land and Water Conservation Fund Act of 1965 (54 U.S.C. 200305(f)(3)).

8. Historic, architectural, archeological, or cultural resources protected under section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108) or the Archeological and Historic Preservation Act of 1974 (54 U.S.C. ch. 3125). PHMSA will consult with the National Register of Historic Places and the State Historic Preservation Officer.

9. Farmland protected under the Farmland Protection Policy Act. This must involve the acquisition and conversion of the land to non-agricultural uses. PHMSA will consult with the U.S. Department of Agriculture (7 U.S.C. 4201 *et seq.*).

10. Threatened or endangered species or their habitat, as defined under the Endangered Species Act (16 U.S.C. 1531 *et seq.*). PHMSA will consult with the U.S. Fish and Wildlife Service (non-marine species) or the National Marine Fisheries Service (marine species).

11. Wetlands, as defined in Executive Order 11990, Protection of Wetlands, and DOT Order 5660.1A, Preservation of the Nation's Wetlands and Floodplains, as defined in Executive Order 11988,

Floodplain Management, and DOT Order 5650.2. Generally, this definition refers to areas with aquatic or hydrophytic vegetation. PHMSA will consult with the Army Corps of Engineers.

12. State coastal zones, as defined by state coastal zone management programs, or undeveloped coastal barriers along the Atlantic or Gulf Coasts. (Refer to the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.*) PHMSA will consult with the National Oceanic and Atmospheric Administration.

13. Wild and scenic rivers in the National Inventory established by the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287). PHMSA will consult with the National Park Service.

PHMSA will then assess whether there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects, consistent with 40 CFR 1501.4(b). If PHMSA cannot apply CE B5.4 to a particular proposed action due to extraordinary circumstances, PHMSA will prepare an EA or EIS, consistent with 40 CFR 1501.4(b)(2), or determine if the action is covered under an existing NEPA document. PHMSA must also consider the presence of any integral elements at 10 CFR part 1021, subpart D, appendix B (1)–(5). PHMSA does not currently have its own NEPA implementing procedures. When PHMSA establishes NEPA implementing procedures, PHMSA will add this categorical exclusion to the PHMSA NEPA procedures along with an extraordinary circumstances list to apply to not only this CE, but other CEs that are identified.

V. Consultation With DOE and Determination of Appropriateness

PHMSA worked with DOE to identify DOE CEs that could apply to PHMSA proposed actions and began consultation on April 24, 2024. During this consultation, the agencies considered DOE's past use of the CE, including how often DOE has modified a proposed action, or prepared an EA or EIS for a proposed action otherwise covered by the CE. The agencies discussed and concurred that the categories of PHMSA proposed actions would be appropriately covered by the DOE CE. The agencies discussed the extraordinary circumstances that DOE applies to help inform the extraordinary circumstances that PHMSA should consider before applying this CE to PHMSA's proposed actions. Finally, the agencies discussed the level of documentation PHMSA should complete and publish (per 10 CFR

1021.410(e)) when applying this CE. Based on this consultation, PHMSA has concluded that it is appropriate for PHMSA to adopt DOE's CE and apply to the replacement or repair of pipelines, including those covered under the NGDISM Grant Program. PHMSA will be posting any CE determinations using this CE on our website at <https://www.phmsa.dot.gov/about-phmsa/working-phmsa/grants/pipeline/nepa-and-ngdism-grant>.

VI. Conclusion

This notice documents adoption of the DOE CE B5.4 listed above in accordance with 42 U.S.C. 4336c (4), and its availability for use by PHMSA, effective immediately. Issued on June 27, 2024, under authority delegated in 49 CFR 1.81(a)(5).

Tristan Brown,

Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2024–14652 Filed 7–2–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Fiduciary Activities

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, “Fiduciary Activities.”

DATES: Comments must be received by September 3, 2024.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel's Office,

Attention: Comment Processing, Office of the Comptroller of the Currency,

Attention: 1557–0140, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Fax:* (571) 293–4835.

Instructions: You must include “OCC” as the agency name and “1557–0140” in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

• **Viewing Comments Electronically:** Go to www.reginfo.gov. Hover over the “Information Collection Review” tab and click on “Information Collection Review” from the drop-down menu. From the “Currently under Review” drop-down menu, select “Department of Treasury” and then click “submit.” This information collection can be located by searching OMB control number “1557–0140” or “Fiduciary Activities.” Upon finding the appropriate information collection, click on the related “ICR Reference Number.” On the next screen, select “View Supporting Statement and Other Documents” and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT:

Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the

OMB for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include 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 title 44 generally 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, the OCC is publishing notice of the renewal of this collection.

Title: Fiduciary Activities.

OMB Control No.: 1557–0140.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Description: The OCC regulates the fiduciary activities of national banks and Federal savings associations (FSAs), including the administration of collective investment funds (CIFs), pursuant to 12 U.S.C. 92a and 12 U.S.C. 1464(n), respectively. Twelve CFR part 9 contains the regulations that national banks must follow when conducting fiduciary activities, and 12 CFR part 150 contains the regulations that FSAs must follow when conducting fiduciary activities. The OCC's CIF regulation in 12 CFR 9.18 governs CIFs managed by both national banks and FSAs.¹

Twelve CFR 9.8 and 12 CFR 150.410–150.430 require that national banks and FSAs document the establishment and termination of each fiduciary account and maintain adequate records. Records must be retained for a period of three years from the later of the termination of the account or the termination of any litigation. The records must be separate and distinct from other records of the institution.

Twelve CFR 9.9 and 150.480 require national banks and FSAs to note the results of any audit conducted (including significant actions taken as a result of the audit) in the minutes of the board of directors. National banks and FSAs that adopt a continuous audit system must note the results of all discrete audits performed since the last audit report (including significant actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year.

Twelve CFR 9.17(a) and 150.530 require that an institution seeking to

surrender its fiduciary powers file with the OCC a certified copy of the resolution of its board of directors evidencing that intent.

Twelve CFR 9.18(b)(1) (and 12 CFR 150.260 by cross-reference) require national banks and FSAs to establish and maintain each CIF in accordance with a written plan (Plan). The Plan must include provisions relating to:

- Investment powers and policies;
- Allocation of income, profits, and losses;
- Fees and expenses that will be charged to the fund and to participating accounts;
- Terms and conditions regarding admission and withdrawal of participating accounts;
- Audits of participating accounts;
- Basis and method of valuing assets in the fund;
- Expected frequency for income distribution to participating accounts;
- Minimum frequency for valuation of fund assets;
- Amount of time following a valuation date during which the valuation must be made;
- Bases upon which the institution may terminate the fund; and
- Any other matters necessary to define clearly the rights of participating accounts.

Twelve CFR 9.18(b)(1) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs make a copy of the Plan available for public inspection at their main offices and provide a copy of the Plan to any person who requests it.

Twelve CFR 9.18(b)(4)(iii)(E) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt portfolio and issuer qualitative standards and concentration restrictions for STIFs.

Twelve CFR 9.18(b)(4)(iii)(F) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt liquidity standards and include provisions that address contingency funding needs for STIFs.

Twelve CFR 9.18(b)(4)(iii)(G) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt shadow pricing procedures for STIFs that calculate the extent of difference, if any, of the mark-to-market net asset value per participating interest from the STIF's amortized cost per participating interest and to take certain actions if that difference exceeds \$0.005 per participating interest.

Twelve CFR 9.18(b)(4)(iii)(H) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures for stress testing of the STIF's ability to maintain a stable

net asset value per participating interest and provide for reporting the results.

Twelve CFR 9.18(b)(4)(iii)(I) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures that require an institution to disclose to the OCC and to STIF participants within five business days after each calendar month-end the following information about the fund: total assets under management; mark-to-market and amortized cost net asset values; dollar-weighted average portfolio maturity; dollar-weighted average portfolio life maturity as of the last business day of the prior calendar month; and certain other security-level information for each security held.

Twelve CFR 9.18(b)(4)(iii)(J) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures that require a national bank or FSA that manages a STIF to notify the OCC prior to or within one business day thereafter of certain events.

Twelve CFR 9.18(b)(4)(iii)(K) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs, adopt, for STIFs, certain procedures in the event that the STIF has repriced its net asset value below \$0.995 per participating interest.

Twelve CFR 9.18(b)(4)(iii)(L) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures for initiating liquidation of a STIF upon the suspension or limitation of withdrawals as a result of redemptions.

Twelve CFR 9.18(b)(5)(iii)(A) (and 12 CFR 150.260 by cross-reference) provides that a national bank or FSA administering a collective investment fund that is invested primarily in real estate or other assets that are not readily marketable may require a prior notice period, not to exceed one year, for withdrawals.

Section 9.18(b)(5)(iii)(B) (and 12 CFR 150.260 by cross-reference) provides that a bank that requires a prior notice period for withdrawals must withdraw an account from the fund within the prior notice period or, if permissible under the fund's written plan, within one year after the date on which notice was required.

Section 9.18(b)(5)(iii)(C) (and 12 CFR 150.260 by cross-reference) provides that a bank may, with OCC approval, withdraw an account from a collective investment fund up to one year after the end of the standard withdrawal period in 12 CFR 9.18(b)(5)(iii)(B) if certain conditions are satisfied. Among other conditions, the fund's written plan, including its notice and withdrawal policy, must authorize an extended

¹ Twelve CFR 9.18 expressly applies to national banks. FSAs are subject to 12 CFR 9.18 pursuant to 12 CFR 150.260(b)(3).

withdrawal period and be fully disclosed to fund participants. In addition, the bank's board of directors, or a committee authorized by the board of directors, must determine that, due to unanticipated and severe market conditions for specific assets held by the fund, an extended withdrawal period is necessary in order to preserve the value of the fund's assets for the benefit of fund participants.

Twelve CFR 9.18(b)(5)(iii)(D) provides that a bank may request that the OCC approve an extension beyond the initial one-year extended withdrawal period in 12 CFR 9.18(b)(5)(iii)(C) if certain conditions are satisfied. Extensions past the initial one-year extension must be requested and approved annually, for a maximum of two years after the initial one-year extension period.

Twelve CFR 9.18(b)(6)(ii) (and 12 CFR 150.260 by cross-reference) require, for CIFs, that national banks and FSAs, at least once during each 12-month period, prepare a financial report of the fund based on the audit required by section 9.18(b)(6)(i). The report must disclose the fund's fees and expenses in a manner consistent with applicable state law in the state which the institution maintains the fund and must contain:

- A list of investments in the fund showing the cost and current market value of each investment;
- A statement covering the period after the previous report showing the following (organized by type of investment):
 - A summary of purchases (with costs);
 - A summary of sales (with profit or loss and any investment change);
 - Income and disbursements; and
 - An appropriate notation of investments.

Twelve CFR 9.18(b)(6)(iv) (and 12 CFR 150.260 by cross-reference) require that an institution managing a CIF provide a copy of the financial report, or provide notice that a copy of the report is available upon request without charge, to each person who ordinarily would receive a regular periodic accounting with respect to each participating account. The institution may provide a copy to prospective customers. In addition, the institution must provide a copy of the report upon request to any person for a reasonable charge.

Twelve CFR 9.18(c)(5) (and 12 CFR 150.260 by cross-reference) require that, for special exemption CIFs, national banks and FSAs, respectively, must submit to the OCC a written plan that sets forth:

- The reason the proposed fund requires a special exemption;

- The provisions of the fund that are inconsistent with section 9.18(a) and (b);
- The provisions of section 9.18(b) for which the institution seeks an exemption; and
- The manner in which the proposed fund addresses the rights and interests of participating accounts.

Estimated Burden:

Estimated Frequency of Response: On occasion.

Estimated Number of Respondents: 282.

Estimated Total Annual Burden: 198,957 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility; (b) The accuracy of the OCC's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Patrick T. Tierney,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2024-14611 Filed 7-2-24; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Collection Activities; Requesting Comments on Form 637 and IRS Notice 2023-06, IRS Notice 2024-06, Notice 2024-37, IRS Notice 2024-49

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting

comments concerning Form 637, Application for Registration (For Certain Excise Tax Activities) and Questionnaires and IRS Notice 2023-06, IRS Notice 2024-06, Notice 2024-37, and IRS Notice 2024-49.

DATES: Written comments should be received on or before September 3, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include OMB Control No. 1545-1835 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jason Schoonmaker, (801) 620-2128, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at jason.m.schoonmaker@irs.gov.

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Application for Registration (For Certain Excise Tax Activities) and Questionnaires; IRS Notice 2023-06; IRS Notice 2024-06; IRS Notice 2024-37; IRS Notice 2024-49.

OMB Number: 1545-1835.

Form Number: Form 637.

Guidance Number: IRS Notice 2023-06, IRS Notice 2024-06, IRS Notice 2024-37, and IRS Notice 2024-49.

Abstract: Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under Internal Revenue Code (IRC) section 4101 for purposes of the Federal excise tax on taxable fuel imposed under IRC sections 4041 and 4081; other persons required to be registered by IRC section 4101 for certain fuel activities for tax credits; certain manufacturers or sellers and purchasers required to be registered by IRC section 4222 to be exempt from the excise tax on taxable articles; certain persons required to be registered by IRC section 4662 to be exempt from the excise tax on taxable chemicals; and certain persons required to be registered by IRC section 4682 to be exempt from the excise tax on ozone-depleting chemicals. The data from Form 637 is used to determine if the applicant qualifies for registration.

IRS Notice 2023-26 provides guidance on the new sustainable aviation fuel credits under IRC sections 40B and 6426(k) and related credit and payment rules under IRC sections

34(a)(3), 38, 87, and 6427(e)(1) (SAF credit). This notice also provides rules related to the section 4101 registration requirements. The certificate, reseller statement, and declaration created by IRS Notice 2023–06 will allow the IRS to verify that claimants are making proper credit and payment claims with respect to the SAF credit.

IRS Notice 2024–06 allows taxpayers to use the Renewable Fuel Standard (RFS) methodology to calculate the amount of the SAF credit. IRS Notice 2024–06 updated the certificate to include the RFS methodology.

IRS Notice 2024–37 allows taxpayers to use the 40BSAF–GREET 2024 methodology to calculate the amount of the SAF credit. IRS Notice 2024–37 also allows use of domestic corn and soybean grown using climate smart agriculture pursuant to a program called the U.S. Department of Agriculture (USDA) Climate Smart Agriculture (CSA) Pilot Program (USDA CSA Pilot Program) to be considered in determining the amount of the SAF credit. If all the elements are met, the registered producer can increase the emissions reduction, allowing for a larger amount of the SAF credit.

IRS Notice 2024–49 provides guidance on the registration requirements under IRC sections 45Z and 4101 for the clean fuel production credit. Section 45Z(f)(1)(A)(i)(I) provides that no clean fuel production credit shall be determined with respect to any transportation fuel unless the taxpayer is registered as a producer of clean fuel under section 4101 at the time of production. IRS Notice 2024–49 provides guidance on the time, form, and manner of such registration. IRS Notice 2024–49 provides that applicants will use Form 637 to apply for registration with the IRS and can apply for Activity Letter “CN” (for a producer of clean transportation fuel which is not SAF), or Activity Letter “CA” (for a producer of clean transportation fuel which is SAF), or both, in accordance with the instructions provided in the notice until Form 637 is updated.

Current Actions: IRS Notice 2024–37 has added a new certificate, revised the certificate from Notice 2024–06, and included new recordkeeping requirements. IRS Notice 2024–49 is revising Form 637 to add new activity codes and activity letters to be requested on Form 637.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit, and not-for-profit entities.

Estimated Number of Responses: 9,949.

Estimated Time per Response: varies, from 30 minutes up to 13 hours 30 minutes.

Estimated Total Annual Burden Hours: 32,344.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 28, 2024.

Jason M. Schoonmaker,
Tax Analyst.

[FR Doc. 2024–14643 Filed 7–2–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, FACA 5 U.S.C. ch. 10, that a meeting of the Federal Advisory Committee on Prosthetics and Special-Disabilities Programs will be held on Thursday, July 25–Friday, July 26, 2024. The meeting will be a hybrid meeting, held in-person at the New Orleans Ernest N. Morial

Convention Center, 900 Convention Center Boulevard, New Orleans, Louisiana 70130, and virtually via WebEx. The meeting sessions will begin and end as follows:

Date	Time (Central Daylight Time)
July 25, 2024	8:15 a.m.–4:30 p.m.
July 26, 2024	8:15 a.m.–12:00 p.m.

This meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on VA's prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special-disabilities programs, which are defined as any program administered by the Secretary to serve Veterans with spinal cord injuries, blindness or visual impairments, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

On July 25, 2024, the Committee will convene open (hybrid) sessions, from 8:15 a.m.–3:00 p.m. CDT, with introductory remarks from the Committee Acting Chair; and the Executive Director and Deputy Executive Director of Rehabilitation and Prosthetic Services. The Committee will have presentations from Physical Medicine & Rehabilitation and the Polytrauma/Traumatic Brain Injury System of Care. The Committee will also hear from Physical Therapy and Occupational Therapy programs. The afternoon will include presentations from the Polytrauma/Amputation System of Care; and Orthotic, Prosthetic and Pedorthic Clinical Services. After Program Office presentations, the Committee will attend National Veteran Wheelchair Games events starting at 3:15 p.m. CDT that will be open to anyone present at the events.

On July 26, 2024, the Committee members will convene open (hybrid) sessions from 8:15 a.m.–12:00 p.m. CDT, beginning with introductory remarks and review of day one. Immediately following there will be presentations on Chiropractic Care; and Spinal Cord Injury and Disorders programs.

Time will be allocated for receiving public comments on July 26, 2024, beginning at 10:30 a.m. CDT. Individuals wishing to present public comments should contact Ms. Linda Picon, M.C.D., Designated Federal Officer, Veterans Health Administration at Linda.Picon@va.gov or at 202–870–1155 no later than close of business on July 12, 2024. Only the first 4 members

of the public who have confirmed registrations to present public comment will be allowed to speak at this meeting. In the interest of time, each speaker will be held to a 5-minute time limit. Members of the public who are unable to attend may submit written comments for Committee review. Written comments may be received no later than July 17, 2024, for Committee discussion and inclusion in the official meeting

record. Please send these comments to Linda.Picon@va.gov.

Members of the public should contact Linda Picon and provide your name, professional affiliation, email address, and phone number to obtain a copy of the agenda or seek additional information. Members of the public may attend the meeting in person or by joining the WebEx link below: <https://veteransaffairs.webex.com/veterans>

[affairs/j.php?MTID=medb02dbc6c87eeab5d10f4f408a04906](https://va.gov/affairs/j.php?MTID=medb02dbc6c87eeab5d10f4f408a04906).

Audio Only 404.397.1596/Access Code 2822 111 1294.

Dated: June 28, 2024.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–14679 Filed 7–2–24; 8:45 am]

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Part II

Department of Health and Human Services

Centers for Medicare and Medicaid Services

42 CFR Parts 424, 483, and 484

Medicare Program; Calendar Year (CY) 2025 Home Health Prospective Payment System (HH PPS) Rate Update; HH Quality Reporting Program Requirements; HH Value-Based Purchasing Expanded Model Requirements; Home Intravenous Immune Globulin (IVIG) Items and Services Rate Update; and Other Medicare Policies; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 424, 483, and 484

[CMS–1803–P]

RIN 0938–AV28

Medicare Program; Calendar Year (CY) 2025 Home Health Prospective Payment System (HH PPS) Rate Update; HH Quality Reporting Program Requirements; HH Value-Based Purchasing Expanded Model Requirements; Home Intravenous Immune Globulin (IVIG) Items and Services Rate Update; and Other Medicare Policies

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth routine updates to the Medicare home health payment rates; the payment rate for the disposable negative pressure wound therapy (dNPWT) devices; and the intravenous immune globulin (IVIG) items and services payment rate for CY 2025 in accordance with existing statutory and regulatory requirements. In addition, it proposes changes to the Home Health Quality Reporting Program (HH QRP) requirements and provides an update on potential approaches for integrating health equity in the Expanded Health Value Based Purchasing (HHVBP) Model. It also proposes a new standard for acceptance to service policy in the HH conditions of participation (CoPs) and includes requests for information (RFIs) soliciting input on permitting rehabilitative therapists to conduct the initial and comprehensive assessment and the factors that may influence the patient referral and intake processes. Lastly, it proposes updates to provider and supplier enrollment requirements and changes to the long-term care reporting requirements for acute respiratory illnesses.

DATES: To be assured consideration, comments must be received at one of the addresses provided in the **ADDRESSES** section, no later than 5 p.m. EDT on August 26, 2024.

ADDRESSES: In commenting, please refer to file code CMS–1803–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Comments, including mass comment submissions, must be submitted in one of the following three

ways (please choose only one of the ways listed):

1. *Electronically.* You may (and we encourage you to) submit electronic comments on this regulation to <https://www.regulations.gov>. Follow the instructions under the “submit a comment” tab.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1803–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments via express or overnight mail to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1803–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, we refer readers to the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Brian Slater, (410) 786–5229, for home health and home IVIG payment inquiries.

For general information about the Home Health Prospective Payment System (HH PPS), send your inquiry via email to HomeHealthPolicy@cms.hhs.gov.

For information about the Home Health Quality Reporting Program (HH QRP), send your inquiry via email to HHQRPquestions@cms.hhs.gov.

For more information about the expanded Home Health Value-Based Purchasing Model, please visit the Expanded HHVBP Model web page at <https://innovation.cms.gov/innovation-models/expanded-home-health-value-based-purchasing-model>.

Frank Whelan (410) 786–1302, for Medicare provider and supplier enrollment inquiries.

Mary Rossi-Coajou at mary.rossi-coajou@cms.hhs.gov or Molly Anderson at molly.anderson@cms.hhs.gov, for more information about the home health conditions of participation (HH CoPs).

Kim Roche (kim.roche1@cms.hhs.gov), for more information about the long-term care requirements for participation.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for

viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov/>. Follow the search instructions on that website to view public comments.

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I. Executive Summary

A. Purpose and Legal Authority

1. Home Health Prospective Payment System (HH PPS)

As required under section 1895(b) of the Social Security Act (the Act), this proposed rule would update the CY 2025 payment rates for home health agencies (HHAs) and the CY 2025 payment rate for the disposable negative pressure wound therapy (dNPWT) device. In this proposed rule, we include analysis on home health utilization, as well as analysis determining the difference between assumed versus actual behavior change on estimated aggregate expenditures for home health payments as result of the change in the unit of payment to 30 days and the implementation of the Patient Driven Groupings Model (PDGM) case-mix adjustment methodology. This rule proposes a crosswalk for mapping the Outcome and Assessment Information Set-D (OASIS—D) data elements to the equivalent OASIS—E data elements for use in the methodology to analyze the difference between assumed versus actual behavior change on estimated aggregate expenditures and proposes a permanent prospective behavior adjustment to the CY 2025 home health payment rate. In addition, this rule proposes to recalibrate the PDGM case-mix weights and to update the low-utilization payment adjustment (LUPA) thresholds, functional impairment levels, and comorbidity adjustment subgroups under section 1895(b)(4)(A)(i) and (b)(4)(B) of the Act for 30-day periods of

care in CY 2025; proposes to adopt the most recent Office of Management and Budget (OMB) Core-Based Statistical Area (CBSA) delineations for the home health wage index; and proposes an occupational therapy (OT) LUPA add-on factor and updates to the physical therapy (PT), speech-language pathology (SLP), and skilled nursing (SN) LUPA add-on factors. Additionally, this rule proposes to update the CY 2025 fixed-dollar loss ratio (FDL) for outlier payments (so that outlier payments as a percentage of estimated total payments are projected not to exceed 2.5 percent, as required by section 1895(b)(5)(A) of the Act).

2. Home Health (HH) Quality Reporting Program (QRP)

In accordance with the statutory authority at section 1895(b)(3)(B)(v) of the Act, we are proposing updated policies. We are proposing to add four new assessment items and to modify one assessment item on the OASIS, an update to the removal of the suspension of OASIS all-payer data collection, and we are seeking information on future HH QRP quality measure (QM) concepts.

3. Expanded Home Health Value-Based Purchasing (HHVBP) Model

In accordance with the statutory authority at section 1115A of the Act, we are doing the following for the expanded HHVBP Model: (1) providing an update on potential approaches for integrating health equity that are being considered; and (2) including a request for information (RFI) related to future performance measure concepts.

4. Home Intravenous Immune Globulin (IVIG) Items and Services

In section V.D.1. of this proposed rule, we propose a rate update for the CY 2025 IVIG items and services payment under the home intravenous immune globulin (IVIG) benefit.

5. Home Health CoP Changes

In section VI. A. of this proposed rule, we are proposing to add a new standard at § 484.105(i) that would require HHAs to develop, consistently apply, and maintain an acceptance to service policy, including specified factors, that would govern the process for accepting patients to service. We also propose that HHAs would be required to make specified information about their services and service limitations available to the public. Section VI.B. of this proposed rule includes an RFI to obtain information from stakeholders on whether CMS should shift its longstanding policy and permit

rehabilitative therapists to conduct the initial and comprehensive assessment for cases that have both therapy and nursing services ordered as part of the plan of care. In addition, we are seeking public comments on other factors that influence the patient referral and intake processes.

6. Provider and Supplier Enrollment Requirements

In accordance with section 1866(j)(3)(A) of the Act, we are proposing to revise our requirements in 42 CFR 424.527(a) regarding the application of provisional periods of enhanced oversight (PPEO). Section 1866(j)(3)(A) of the Act states that the Secretary shall establish procedures to provide for a provisional period of between 30 days and 1 year during which new providers and suppliers—as the Secretary determines appropriate, including categories of providers or suppliers—will be subject to enhanced oversight. We are proposing to expand the definition of “new provider or supplier” (solely for purposes of applying a PPEO) to include providers and suppliers that are reactivating their Medicare enrollment and billing privileges.

7. Long-Term Care (LTC) Requirements for Acute Respiratory Illness Reporting

Sections 1819(d)(3) and 1919(d)(3) of the Act explicitly require that LTC facilities develop and maintain an infection control program that is designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public. In addition, sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act explicitly authorize the Secretary to issue any regulations he deems necessary to protect the health and safety of residents. As such, we are proposing streamlined weekly data reporting requirements for certain respiratory illnesses. We are also proposing additional, related data elements that could be activated in the event of a future acute respiratory illness public health emergency (PHE).

B. Summary of the Provisions of This Proposed Rule

1. Home Health Prospective Payment System (HH PPS)

In section II.B.1. of this proposed rule, we provide monitoring and data analysis on PDGM utilization.

In section II.C.1 of this proposed rule, we propose a permanent adjustment to the base payment rate under the HH PPS. Additionally, we propose a

crosswalk for mapping the OASIS–D data elements to the equivalent OASIS–E data elements for use in the methodology to analyze the difference between assumed versus actual behavior change on estimated aggregate expenditures.

In section II.D. of this proposed rule, we discuss a proposal to recalibrate the CY 2025 home health LUPA thresholds, case-mix weights, and co-morbidity subgroups. Additionally, we discuss providers' suggestions regarding the reassignment of specific ICD–10–CM diagnosis codes under the PDGM.

In section II.E. of this proposed rule, we propose to update the home health wage index and adopt the new labor market delineations from the July 21, 2023, OMB Bulletin No. 23–01 based on data collected from the 2020 Decennial Census. This section includes the CY 2025 national, standardized 30-day period payment rate update, the updated CY 2025 national per-visit payment amounts by the home health payment update percentage, and the OT LUPA add-on factor and PT, SLP, and SN add-on factor updates. The proposed home health payment update percentage for CY 2025 is 2.5 percent. Additionally, this rule proposes the CY 2025 FDL ratio to ensure that aggregate outlier payments are projected not to exceed 2.5 percent of the total aggregate payments, as required by section 1895(b)(5)(A) of the Act.

In section II.F.4. of this proposed rule, we propose the CY 2025 payment rate update for dNPWT devices.

2. Home Health Quality Reporting Program (HH QRP)

In section III. of this proposed rule, we are proposing to collect four new items as standardized patient assessment data elements in the social determinants of health (SDOH) category and modify one item collected as a standardized patient assessment data element in the SDOH category beginning with the CY 2027 HH QRP. The four assessment items proposed for collection are: one Living Situation item, two Food items, and one Utilities item. We also propose modifying the current Transportation item beginning

with the CY 2027 HH QRP. We are also proposing an update to the removal of the suspension of OASIS all-payer data collection to change all-payer data collection to begin with the start of care OASIS data collection timepoint instead of discharge timepoint. Lastly, we seek input on future HH QRP measure concepts.

3. Expanded Home Health Value Based Purchasing (HHVBP) Model

In section IV. of this proposed rule, we include an RFI related to future measure concepts for the expanded HHVBP Model. We are also including an update to the RFI, *Future Approaches to Health Equity in the Expanded HHVBP Model*, that was published in the CY 2023 HH PPS final rule (87 FR 66874, November 4, 2022) and subsequently updated in the CY 2024 HH PPS final rule (88 FR 77687, November 13, 2023).

4. Home Intravenous Immune Globulin (IVIG) Items and Services

In section V.D.1. of this proposed rule, we propose a rate update for CY 2025 IVIG items and services payment under the home intravenous immune globulin (IVIG) benefit.

5. Home Health CoP Changes

In section VI.A. of this proposed rule, we are proposing to add a new standard at § 484.105(d) that would require HHAs to develop, implement, and maintain an acceptance to service policy that is applied consistently to each prospective patient referred for home health care. We also propose that the policy must address, at minimum, the following criteria related to the HHA's capacity to provide patient care: the anticipated needs of the referred prospective patient, the HHA's case load and case mix, the HHA's staffing levels, and the skills and competencies of the HHA staff. We also propose that HHAs would be required to make specified information available to the public that is reviewed at least annually. Section VI.B. of this proposed rule we include an RFI to obtain information from stakeholders on whether CMS should shift its longstanding policy and permit

rehabilitative therapists to conduct the initial and comprehensive assessment for cases that have both therapy and nursing services ordered as part of the plan of care. Specifically, we are seeking information regarding the training and education of rehabilitative therapists that is relevant to conducting the initial and comprehensive assessments and any additional information on any patient health and safety benefits or unintended consequences of expanding the category of clinicians that can conduct the initial and comprehensive assessments. In addition, we are seeking public comments on other factors that influence the patient referral and intake processes.

6. Provider and Supplier Enrollment Requirements

Section 1866(j)(3)(A) of the Act states that the Secretary shall establish procedures to provide for a provisional period of between 30 days and 1 year during which new providers and suppliers—as the Secretary determines appropriate, including categories of providers or suppliers—will be subject to enhanced oversight. We are proposing to expand the definition of “new provider or supplier” (solely for purposes of applying a PPEO) to include providers and suppliers that are reactivating their Medicare enrollment and billing privileges.

7. Long-Term Care (LTC) Requirements for Acute Respiratory Illness Reporting

The current LTC requirements for reporting COVID–19 related data expire on December 31, 2024, except for reporting COVID–19 resident and staff vaccination status. Given the utility of LTC facility data, we propose to replace these requirements with streamlined continued data reporting requirements for certain respiratory illnesses. We are also proposing additional, related data elements that could be activated in the event of a future acute respiratory illness PHE.

C. Summary of Costs, Transfers, and Benefits

BILLING CODE 4120–01–P

TABLE 1: SUMMARY OF COSTS, TRANSFERS, AND BENEFITS

Provision Description	Costs and Cost Savings	Transfers	Benefits
CY 2025 HH PPS Payment Rate Update		The overall economic impact related to the changes in payments under the HH PPS for CY 2025 is estimated to be -\$280 million (-1.7 percent). The \$280 million decrease in estimated payments for CY 2025 reflects the effects of the CY 2025 proposed home health payment update percentage of 2.5 percent (\$415 million increase), an estimated 3.6 percent decrease* that reflects the effects of the permanent behavior assumption adjustment (\$595 million decrease) and an estimated 0.6 percent decrease that reflects the effects of an updated FDL (\$100 million decrease). *The estimated 3.6 percent decrease related to the proposed behavior assumption adjustment includes all payments, while the proposed -4.067 percent BA adjustment only applies to the national, standardized 30-Day period payments and does not impact payments for 30-day periods which are LUPAs.	To ensure that home health payments are consistent with statutory payment authority for CY 2025.
HH QRP		The total economic impact of these proposals including the addition of one Living Situation item, two Food items, and one Utilities item, and the modification of the current Transportation item proposed for implementation in CY 2027 is an estimated increase of \$12,604,894.62	Collection of the new SDOH items will also permit us to develop the statistical tools necessary to maximize the value of Medicare data, reducing costs and improving the quality of care for all beneficiaries.
Expanded HHVBP Model		There are no transfers related to the RFI or the HE Update.	The purpose of the RFI and HE updates is to obtain feedback on potential new performance measures and measure concepts for potential future rulemaking.
CY 2025 Home IVIG Items and Services Payment Rate Update		The overall economic impact for CY 2025 is an estimated increase of \$9,435,233 in total costs to Medicare FFS.	To update the items and services payment under the home intravenous immune globulin benefit in accordance with section 4134 of the CAA of 2023.

Provision Description	Costs and Cost Savings	Transfers	Benefits
Home Health CoP Changes	To develop, implement, and maintain through an annual review the acceptance to service policy, we expect a one-time cost to develop the policy at a total of \$3,078,400 for all HHA's and \$ \$65,999 for an annual review. To make specified information publicly available, we estimate a onetime cost of \$99,763 for all HHA's and \$33,286 for an annual update.	No transfers related to this policy.	To improve the referral process and reduce avoidable care delays by helping to ensure that referring entities and patients— can select the most appropriate HHA based on their care needs and to make this information available to the public.
Provider Enrollment Provisions Long-Term Care (LTC) Requirements for Acute Respiratory Illness Reporting	To review and update the facility's infection control policies and procedures we estimate a cost of \$182 per LTC facility. To electronically report the required data, we estimate costs ranging from \$4,732 to \$33,215 per LTC facility depending on the required reporting frequency as determined by the Secretary. The low estimate is based on weekly reporting and the high estimate is based on daily reporting. In total, we estimate costs ranging from \$4,914 to \$33,397 per LTC facility to comply with the proposed requirements.	No transfers related to this policy.	To strengthen CMS' ability to detect and deter Medicare fraud, waste, and abuse by reactivating providers and suppliers. To continue national monitoring of COVID-19, Influenza, and respiratory syncytial virus (RSV) cases to guide infection control interventions and LTC facility operations that directly relate to resident safety; monitor emerging and evolving respiratory illnesses; guide and motivate community-level disease control interventions; and enhance preparedness and resiliency to improve health system responses to future threats, including pandemics that pose catastrophic risks to resident safety and the health care system.

BILLING CODE 4120-01-C

II. Home Health Prospective Payment System

A. Overview of the Home Health Prospective Payment System

1. Statutory Background

Section 1895(b)(1) of the Act requires the Secretary to establish a Home Health Prospective Payment System (HH PPS) for all costs of home health services paid under Medicare. Section 1895(b)(2) of the Act requires that, in defining a prospective payment amount, the Secretary will consider an appropriate unit of service and the number, type, and duration of visits provided within that unit, potential changes in the mix of services provided within that unit and their cost, and a general system design that provides for continued access to quality services. In accordance with the statute, as amended by the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), we issued a final rule which appeared in the July 3, 2000, **Federal Register** (65 FR 41128) to implement the HH PPS legislation.

Section 5201(c) of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171, enacted February 8, 2006) added new section 1895(b)(3)(B)(v) to the Act, requiring home health agencies (HHAs) to submit data for purposes of measuring health care quality, and linking the quality data submission to

the annual applicable home health payment update percentage increase. This data submission requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the home health market basket percentage increase is reduced by 2 percentage points. In the November 9, 2006, **Federal Register** (71 FR 65935), we issued a final rule to implement the pay-for-reporting requirement of the DRA, which was codified at § 484.225(h) and (i) in accordance with the statute. The pay-for-reporting requirement was implemented on January 1, 2007.

Section 51001(a)(1)(B) of the Bipartisan Budget Act of 2018 (BBA of 2018) (Pub. L. 115–123) amended section 1895(b) of the Act to require a change to the home health unit of payment to 30-day periods beginning January 1, 2020. Section 51001(a)(2)(A) of the BBA of 2018 added a new subclause (iv) under section 1895(b)(3)(A) of the Act, requiring the Secretary to calculate a standard prospective payment amount (or amounts) for 30-day units of service furnished that end during the 12-month period beginning January 1, 2020, in a budget neutral manner, such that estimated aggregate expenditures under the HH PPS during CY 2020 are equal to the estimated aggregate expenditures that otherwise would have been made under the HH PPS during CY 2020 in

the absence of the change to a 30-day unit of service. Section 1895(b)(3)(A)(iv) of the Act requires that the calculation of the standard prospective payment amount (or amounts) for CY 2020 be made before the application of the annual update to the standard prospective payment amount as required by section 1895(b)(3)(B) of the Act.

Additionally, section 1895(b)(3)(A)(iv) of the Act requires that in calculating the standard prospective payment amount (or amounts), the Secretary must make assumptions about behavior changes that could occur as a result of the implementation of the 30-day unit of service under section 1895(b)(2)(B) of the Act and case-mix adjustment factors established under section 1895(b)(4)(B) of the Act. Section 1895(b)(3)(A)(iv) of the Act further requires the Secretary to provide a description of the behavior assumptions made in notice and comment rulemaking. CMS finalized these behavior assumptions in the CY 2019 HH PPS final rule with comment period (83 FR 56461).

Section 51001(a)(2)(B) of the BBA of 2018 also added a new subparagraph (D) to section 1895(b)(3) of the Act. Section 1895(b)(3)(D)(i) of the Act requires the Secretary annually to determine the impact of differences between assumed behavior changes, as described in section 1895(b)(3)(A)(iv) of the Act, and actual behavior changes on estimated

aggregate expenditures under the HH PPS with respect to years beginning with 2020 and ending with 2026. Section 1895(b)(3)(D)(ii) of the Act requires the Secretary, at a time and in a manner determined appropriate, through notice and comment rulemaking, to provide for one or more permanent increases or decreases to the standard prospective payment amount (or amounts) for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures, as determined under section 1895(b)(3)(D)(i) of the Act. Additionally, section 1895(b)(3)(D)(iii) of the Act requires the Secretary, at a time and in a manner determined appropriate, through notice and comment rulemaking, to provide for one or more temporary increases or decreases to the payment amount for a unit of home health services for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures, as determined under section 1895(b)(3)(D)(i) of the Act. Such a temporary increase or decrease shall apply only with respect to the year for which such temporary increase or decrease is made, and the Secretary shall not take into account such a temporary increase or decrease in computing the payment amount for a unit of home health services for a subsequent year. Finally, section 51001(a)(3) of the BBA of 2018 amends section 1895(b)(4)(B) of the Act by adding a new clause (ii) to require the Secretary to eliminate the use of therapy thresholds in the case-mix system for CY 2020 and subsequent years.

Division FF, section 4136 of the Consolidated Appropriations Act, 2023 (CAA, 2023) (Pub. L. 117–328) amended section 1834(s)(3)(A) of the Act to require that, beginning with 2024, the separate payment for furnishing negative pressure wound therapy (NPWT) be for just the device and not for nursing and therapy services. Payment for nursing and therapy services are to be included as part of payments under the HH PPS. The separate payment for 2024 was required to be equal to the supply price used to determine the relative value for the service under the Medicare Physician Fee Schedule (as of January 1, 2022) for the applicable disposable device updated by the percentage increase in the Consumer Price Index for All Urban

Consumers (CPI-U). The separate payment for 2025 and each subsequent year is to be the payment amount for the previous year updated by the percentage increase in the CPI-U (United States city average) for the 12-month period ending in June of the previous year reduced by the productivity adjustment as described in section 1886(b)(3)(B)(xi)(II) of the Act for such year. The CAA, 2023 also added section 1834(s)(4) of the Act to require that beginning with 2024, as part of submitting claims for the separate payment, the Secretary shall accept and process claims submitted using the type of bill that is most commonly used by home health agencies to bill services under a home health plan of care.

2. Current System for Payment of Home Health Services

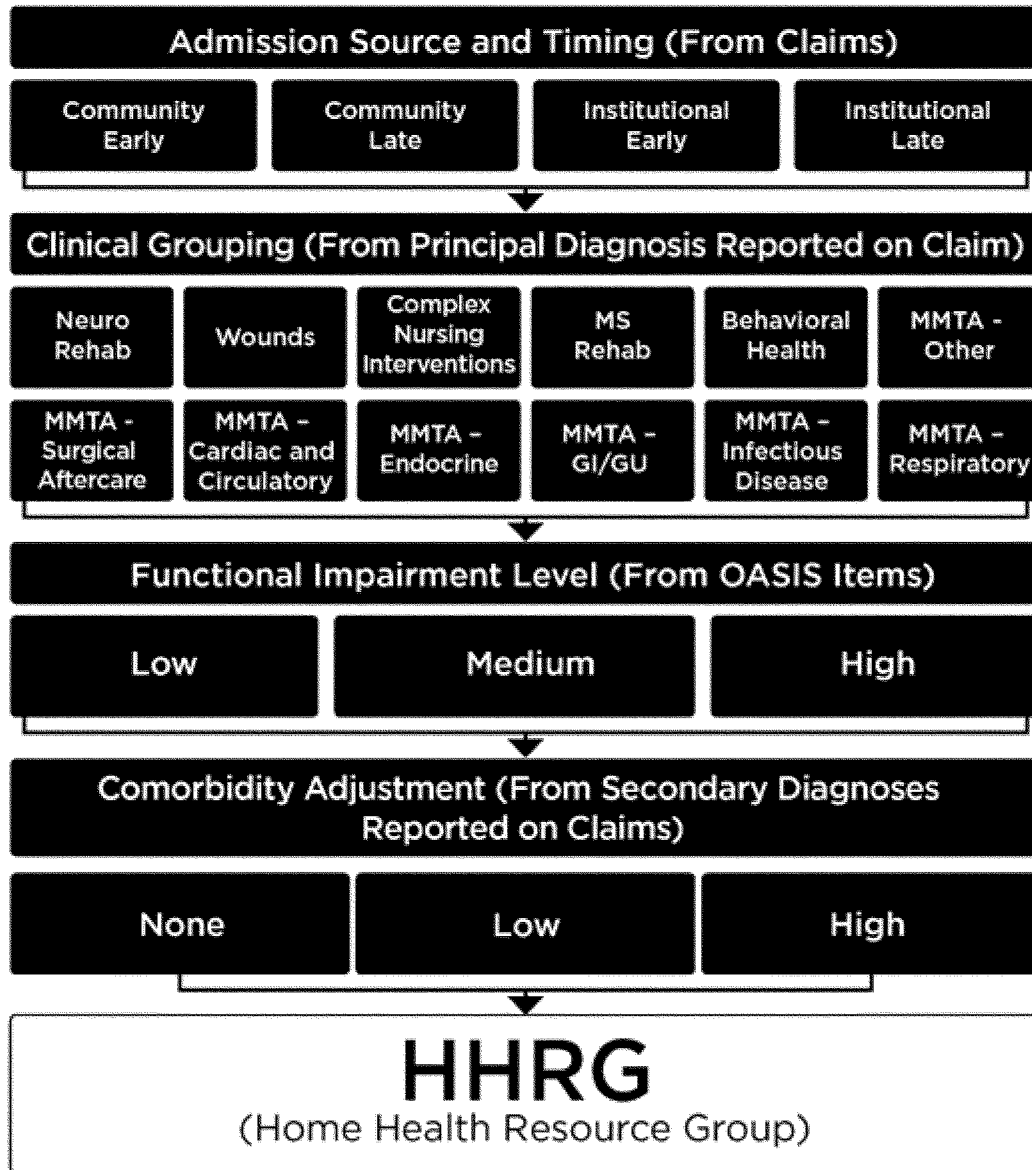
For home health periods of care beginning on or after January 1, 2020, Medicare makes payment under the HH PPS on the basis of a national, standardized 30-day period payment rate that is adjusted for case-mix and area wage differences in accordance with section 51001(a)(1)(B) of the BBA of 2018. The national, standardized 30-day period payment rate includes payment for the six home health disciplines (skilled nursing, home health aide, physical therapy, speech-language pathology, occupational therapy, and medical social services). Payment for non-routine supplies (NRS) is also part of the national, standardized 30-day period rate. Durable medical equipment (DME) provided as a home health service, as defined in section 1861(m) of the Act, is paid the fee schedule amount or is paid through the competitive bidding program and such payment is not included in the national, standardized 30-day period payment amount. Additionally, the 30-day period payment rate does not include payment for certain injectable osteoporosis drugs and disposable negative pressure wound therapy (dNPWT) devices, but such drugs and devices must be billed by the HHA while a patient is under a home health plan of care, as the law requires consolidated billing of osteoporosis drugs and dNPWT devices.

To better align payment with patient care needs and to better ensure that clinically complex and ill beneficiaries have adequate access to home health care, in the CY 2019 HH PPS final rule with comment period (83 FR 56406), we

finalized case-mix methodology refinements through the Patient-Driven Groupings Model (PDGM) for home health periods of care beginning on or after January 1, 2020. The PDGM did not change eligibility or coverage criteria for Medicare home health services, and as long as the individual meets the criteria for home health services as described at 42 CFR 409.42, the individual can receive Medicare home health services, including therapy services. For more information about the role of therapy services under the PDGM, we refer readers to the Medicare Learning Network (MLN) Matters article SE20005 available at <https://www.cms.gov/regulations-and-guidance/guidance/transmittals2020-transmittals/se20005>. To adjust for case-mix for 30-day periods of care beginning on and after January 1, 2020, the HH PPS uses a 432-category case-mix classification system to assign patients to a home health resource group (HHRG) using patient characteristics and other clinical information from Medicare claims and the Outcome and Assessment Information Set (OASIS) assessment instrument. These 432 HHRGs represent the different payment groups based on five main case-mix categories under the PDGM, as shown in figure 1. Each HHRG has an associated case-mix weight that is used in calculating the payment for a 30-day period of care. For periods of care with visits less than the low-utilization payment adjustment (LUPA) threshold for the HHRG, Medicare pays national per-visit rates based on the discipline(s) providing the services. Medicare also adjusts the national standardized 30-day period payment rate for certain intervening events that are subject to a partial payment adjustment. For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

Under this case-mix methodology, case-mix weights are generated for each of the different PDGM payment groups by regressing resource use for each of the five categories (admission source, timing, clinical grouping, functional impairment level, and comorbidity adjustment) using a fixed effects model. A detailed description of each of the case-mix variables under the PDGM have been described previously, and we refer readers to the CY 2021 HH PPS final rule (85 FR 70303 through 70305).

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FIGURE 1: CASE-MIX VARIABLES IN THE PDGM

B. Monitoring the Effects of the Implementation of PDGM

1. Routine PDGM Monitoring

CMS routinely analyzes Medicare home health benefit utilization, including but not limited to, overall total 30-day periods of care and average periods of care per HHA user; distribution of the type of visits in a 30-day period of care; the percentage of periods that receive the LUPA; estimated costs; the percentage of 30-day periods of care by clinical group, comorbidity adjustment, admission source, timing, and functional impairment level; and the proportion of 30-day periods of care with and without any therapy visits, nursing visits, and/or aide/social worker visits. For the

monitoring included in this proposed rule, we examine simulated data for CYs 2018 and 2019 and actual data for CYs 2020, 2021, 2022, and 2023 for 30-day periods of care. For CYs 2018 and 2019, because the HH PPS accounted for care in 60-day episodes, before the transition to 30-day periods of care beginning in 2020, this actual data was simulated to reflect 30-day periods of care. We refer readers to the CY 2022 HH PPS final rule (86 FR 35881) for further discussion about simulated data for CYs 2018 and 2019. In this proposed rule, we are also including monitoring of home health visits using telecommunications technology and remote patient monitoring, which we began collecting on claims submitted voluntarily

beginning January 1, 2023, and which was required beginning July 1, 2023.

a. Utilization

Table 2 shows the overall utilization of home health. The data indicate the average number of 30-day periods of care per unique HHA user is similar per 30-day periods of care between CY 2022 and CY 2023. The data also show a decreasing trend in the overall number of 30-day periods of care between CY 2018 and CY 2023. Table 2 shows utilization of visits per 30-day period of care by home health discipline over time. Table 2 shows the proportion of 30-day periods of care that are LUPAs and the average number of visits per discipline of those LUPA 30-day periods of care over time. The data show a

decreasing trend in the average number of visits per 30-day period and average number of visits per discipline for LUPA 30-day periods of care between CY 2018 and CY 2023.

TABLE 2: OVERALL UTILIZATION OF HOME HEALTH SERVICES, CYs 2018-2023

Volume of Periods and Number of Beneficiaries	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	CY 2021	CY 2022	CY 2023
30-Day Periods of Care	9,336,898	8,744,171	8,423,688	9,269,971	8,593,266	8,133,377
Unique Beneficiaries	2,980,385	2,802,560	2,850,916	3,017,464	2,831,138	2,668,884
Average Number of 30-Day Periods per Unique Beneficiary	3.13	3.12	2.95	3.07	3.04	3.05

Source: CY 2018 and CY 2019 simulated PDGM data with behavioral assumptions came from the Home Health LDS. CY 2020 data was accessed from the Chronic Conditions Warehouse (CCW) Virtual Research Data Center (VRDC) on July 12, 2021. CY 2021 data was accessed from the CCW VRDC on July 14, 2022. CY 2022 data was accessed from the CCW VRDC on July 13, 2023. CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, partial episode payments (PEPs), and outliers).

TABLE 3: UTILIZATION OF VISITS PER 30-DAY PERIODS OF CARE BY HOME HEALTH DISCIPLINE, CYs 2018-2023

Discipline	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	CY 2021	CY 2022	CY 2023
Skilled Nursing	4.53	4.49	4.35	4.05	3.90	3.86
Physical Therapy	3.30	3.33	2.70	2.74	2.77	2.78
Occupational Therapy	1.02	1.07	0.79	0.78	0.77	0.76
Speech Therapy	0.21	0.21	0.16	0.15	0.14	0.14
Home Health Aide	0.72	0.67	0.54	0.48	0.43	0.41
Social Worker	0.08	0.08	0.06	0.05	0.05	0.05
Total (all disciplines)	9.86	9.85	8.59	8.25	8.06	8.00

Source: CY 2018 and CY 2019 simulated PDGM data with behavior assumptions came from the Home Health LDS. CY 2020 data was accessed from the Chronic Conditions Warehouse (CCW) Virtual Research Data Center (VRDC) on July 12, 2021. CY 2021 data was accessed from the CCW VRDC on July 14, 2022. CY 2022 data was accessed from the CCW VRDC on July 13, 2023. CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers). There are approximately 540,000 60-day episodes that started in 2019 and ended in 2020 that are not included in the analysis.

TABLE 4: THE PROPORTION OF 30-DAY PERIODS OF CARE THAT ARE LUPAs AND THE AVERAGE NUMBER OF VISITS BY HOME HEALTH DISCIPLINE FOR LUPA HOME HEALTH PERIODS, CYs 2018-2023

	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	CY 2021	CY 2022	CY 2023
Total LUPA % of Overall 30-day Periods	6.7%	6.8%	8.7%	7.9%	7.8%	6.8%
Discipline (Average # visits for LUPA home health periods)						
Skilled Nursing	1.15	1.14	1.19	1.12	1.08	0.99
Physical Therapy	0.43	0.46	0.53	0.55	0.60	0.51
Occupational Therapy	0.07	0.07	0.08	0.08	0.09	0.07
Speech Therapy	0.02	0.02	0.02	0.02	0.02	0.02
Home Health Aide	0.01	0.01	0.01	0.01	0.01	0.01
Social Worker	0.01	0.01	0.01	0.01	0.01	0.01
Total	1.69	1.71	1.84	1.79	1.81	1.61

Source: CY 2018 and CY 2019 simulated PDGM data with behavioral assumptions came from the Home Health LDS. CY 2020 data was accessed from the Chronic Conditions Warehouse (CCW) Virtual Research Data Center (VRDC) on July 12, 2021. CY 2021 data was accessed from the CCW VRDC on July 14, 2022. CY 2022 data was accessed from the CCW VRDC on July 13, 2023. CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers). There are approximately 540,000 60-day episodes that started in 2019 and ended in 2020 that are not included in the analysis.

b. Analysis of 2022 Cost Report Data for 30-Day Periods of Care

In the CY 2024 HH PPS proposed rule (88 FR 43664), we provided a summary of analysis on FY 2021 HHA cost report data, as this was the most recent and complete cost report data at the time of rulemaking, and CY 2022 claims to estimate 30-day period of care costs. Our analysis showed that the CY 2022 national, standardized 30-day period payment rate of \$2,031.64 was approximately 45 percent more than the

estimated CY 2022 estimated 30-day period cost of \$1,402.27.

Using this same process in this proposed rule to compare home health payment to costs, we examined 2022 HHA Medicare cost reports, as this is the most recent and complete cost report data at the time of rulemaking, and CY 2023 home health claims, to estimate 30-day period of care costs. We excluded LUPAs and visits with partial episode payments (PEPs) when calculating the average number of visits. The 2022 average NRS costs per visit is \$4.38. To update the estimated 30-day

period of care costs, we begin with the 2022 average costs per visit with NRS for each discipline and multiply that amount by the CY 2023 home health payment update factor of 1.04. That amount for each discipline is then multiplied by the 2023 average number of visits by discipline to determine the 2023 Estimated 30-day Period Costs. Table 5 shows the estimated average costs for 30-day periods of care by discipline with NRS and the total estimated 30-day period of care costs with NRS for CY 2023.

TABLE 5: ESTIMATED AVERAGE COSTS FOR 30-DAY PERIODS OF CARE IN CY 2023

Discipline	2022 Average Costs per visit with NRS	2023 Market Basket Update Factor	2023 Average Number of Visits	2023 Estimated 30- Day Period Costs
Skilled Nursing	\$176.50	1.04	4.08	\$748.92
Physical Therapy	\$176.71	1.04	2.95	\$542.15
Occupational Therapy	\$172.48	1.04	0.81	\$145.30
Speech Pathology	\$200.12	1.04	0.15	\$31.22
Medical Social Services	\$302.77	1.04	0.05	\$15.74
Home Health Aides	\$95.94	1.04	0.44	\$43.90
Total				\$1,527.23

Source: 2022 Medicare cost report data obtained on February 1, 2024. Home health visit information came from 30-day periods with a through date in CY2023 (Obtained from the CCW VRDC on March 19, 2024).

The CY 2023 national standardized 30-day period payment rate was \$2,010.69, which is approximately 32 percent more than the estimated CY 2023 30-day period average facility cost of \$1,527.23. In its March 2024 Report to Congress, MedPAC assumed costs will increase by only 0.55 percent, the average of the increases in costs per 30-day period for 2021 and 2022.¹ Furthermore, MedPAC noted that for more than a decade, payments under the HH PPS have significantly exceeded

HHAs' costs. MedPAC also noted an increase of 4.0 percent in the costs per 30-day period for freestanding HHAs in 2022, a reversal of the trend for 2021, where costs per 30-day period decreased by 2.9 percent. This increase in 2022 was due to higher costs per visit, but it was offset by a reduction in the number of in-person visits per 30-day period. As shown in table 5 in this proposed rule, HHAs have reduced visits under the PDGM in CY 2022.

c. Clinical Groupings and Comorbidities

Each 30-day period of care is grouped into one of 12 clinical groups, which describe the primary reason for which a patient is receiving home health services under the Medicare home health benefit. The clinical grouping is based on the principal diagnosis reported on the home health claim. Table 6 shows the distribution of the 12 clinical groups over time.

TABLE 6: DISTRIBUTION OF 30-DAY PERIODS OF CARE BY THE 12 PDGM CLINICAL GROUPS, CYs 2018-2023

Clinical Grouping	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	CY 2021	CY 2022	CY 2023
Behavioral Health	1.7%	1.5%	2.3%	2.4%	2.3%	2.2%
Complex Nursing	2.6%	2.5%	3.5%	3.3%	3.2%	3.1%
MMTA – Cardiac	16.5%	16.1%	18.9%	18.5%	17.9%	17.5%
MMTA – Endocrine	17.3%	17.4%	7.2%	6.9%	6.8%	7.0%
MMTA – GI/GU	2.2%	2.3%	4.7%	4.7%	4.9%	5.0%
MMTA – Infectious	2.9%	2.7%	4.8%	4.6%	4.6%	4.7%
MMTA – Other	4.7%	4.7%	3.1%	3.6%	3.5%	3.7%
MMTA – Respiratory	4.3%	4.1%	7.8%	8.0%	7.8%	7.2%
MMTA – Surgical Aftercare	1.8%	1.8%	3.6%	3.4%	3.4%	3.5%
MS Rehab	17.1%	17.3%	19.4%	19.8%	20.8%	21.2%
Neuro Rehab	14.4%	14.5%	10.5%	10.9%	11.0%	10.9%
Wounds	14.5%	15.1%	14.2%	13.9%	13.7%	14.0%

Source: CY 2018 and CY 2019 simulated PDGM data with behavioral assumptions came from the Home Health LDS. Analysis of PDGM claims data for CY 2020 through CY 2023. CY 2020 data was accessed from the Chronic Conditions Warehouse (CCW) Virtual Research Data Center (VRDC) on July 12, 2021. CY 2021 data was accessed from the CCW VRDC on July 14, 2022. CY 2022 data was accessed from the CCW VRDC on July 13, 2023. CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers). The average case mix weight for each clinical group includes all 30-day periods regardless of other adjustments (for example admission source, timing, comorbidities, etc.).

Thirty-day periods of care will receive a comorbidity adjustment category based on the presence of certain secondary diagnoses reported on home health claims. These diagnoses are based on a home health specific list of clinically and statistically significant

secondary diagnosis subgroups with similar resource use. We refer readers to section II.B.4.c. of this proposed rule and the CY 2020 final rule with comment period (84 FR 60493) for further information on the comorbidity adjustment categories. Home health 30-

day periods of care can receive a low or a high comorbidity adjustment, or no comorbidity adjustment. Table 7 shows the distribution of 30-day periods of care by comorbidity adjustment category for all 30-day periods.

¹ Report to Congress, Medicare Payment Policy. Home Health Care Services, Chapter 7. MedPAC.

March 2024 ([https://www.medpac.gov/wp-content/](https://www.medpac.gov/wp-content/uploads/2024/03/Ch7_Mar24_MedPAC_Report_To_Congress_SEC.pdf)

[uploads/2024/03/Ch7_Mar24_MedPAC_Report_To_Congress_SEC.pdf](https://www.medpac.gov/wp-content/uploads/2024/03/Ch7_Mar24_MedPAC_Report_To_Congress_SEC.pdf)).

TABLE 7: DISTRIBUTION OF 30-DAY PERIODS OF CARE BY COMORBIDITY ADJUSTMENT CATEGORY FOR 30-DAY PERIODS, CYs 2018-2023

Comorbidity Adjustment	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	CY 2021	CY 2022	CY 2023
None	55.6%	52.0%	49.1%	49.6%	37.3%	30.7%
Low	35.3%	38.0%	36.9%	36.9%	47.8%	52.6%
High	9.2%	10.0%	14.0%	13.5%	14.9%	16.7%

Source: CY 2018 and CY 2019 simulated PDGM data with behavioral assumptions came from the Home Health LDS. CY 2020 data was accessed from the Chronic Conditions Warehouse (CCW) Virtual Research Data Center (VRDC) on July 12, 2021. CY 2021 data was accessed from the CCW VRDC on July 14, 2022. CY 2022 data was accessed from the CCW VRDC on July 13, 2023. CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers). There are approximately 540,000 60-day episodes that started in 2019 and ended in 2020 that are not included in the analysis.

d. Admission Source and Timing

Each 30-day period of care is classified into one of two admission source categories—community or institutional—depending on what healthcare setting was utilized in the 14 days prior to receiving home health care. Thirty-day periods of care for beneficiaries with any inpatient acute care hospitalizations, inpatient psychiatric facility (IPF) stays, skilled nursing facility (SNF) stays, inpatient rehabilitation facility (IRF) stays, or long-term care hospital (LTCH) stays within 14 days prior to a home health

admission will be designated as institutional admissions. The institutional admission source category will also include patients that had an acute care hospital stay during a previous 30-day period of care and within 14 days prior to the subsequent, contiguous 30-day period of care and for which the patient was not discharged from home health and readmitted.

Thirty-day periods of care are classified as “early” or “late” depending on when they occur within a sequence of 30-day periods of care. The first 30-day period of care is classified as early

and all subsequent 30-day periods of care in the sequence (second or later) are classified as late. A subsequent 30-day period of care would not be considered early unless there is a gap of more than 60 days between the end of one previous period of care and the start of another. Information regarding the timing of a 30-day period of care comes from Medicare home health claims data and not the OASIS assessment to determine if a 30-day period of care is “early” or “late”. Table 8 shows the distribution of 30-day periods of care by admission source and timing.

TABLE 8: DISTRIBUTION OF 30-DAY PERIODS OF CARE BY ADMISSION SOURCE AND PERIOD TIMING, CYs 2018-2023

Admission Source	Period Timing	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	CY 2021	CY 2022	CY 2023
Community	Early	13.5%	13.8%	12.4%	11.6%	11.7%	11.7%
Community	Late	61.1%	60.9%	61.8%	63.7%	63.1%	63.2%
Institutional	Early	18.6%	18.4%	20.0%	18.6%	19.2%	19.2%
Institutional	Late	6.8%	6.9%	5.8%	6.1%	6.0%	6.0%

Source: CY 2018 and CY 2019 simulated PDGM data with behavioral assumptions came from the Home Health LDS. CY 2020 data was accessed from the Chronic Conditions Warehouse (CCW) Virtual Research Data Center (VRDC) on July 12, 2021. CY 2021 data was accessed from the CCW VRDC on July 14, 2022. CY 2022 data was accessed from the CCW VRDC on July 13, 2023. CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers). There are approximately 540,000 60-day episodes that started in 2019 and ended in 2020 that are not included in the analysis.

e. Functional Impairment Level

Each 30-day period of care is placed into one of three functional impairment levels (low, medium, or high) based on responses to certain OASIS functional items associated with grooming, bathing, dressing, ambulating, transferring, and risk for hospitalization. The specific OASIS items that are used for the functional impairment level are

found in table 8 in the CY 2020 HH PPS final rule with comment period (84 FR 60490).² Responses to these OASIS items are grouped together into response categories with similar resource use and

² CMS continues to use the M1800–1860 items to determine functional impairment level for case mix purposes while we continue to analyze the relationship between the analogous GG items (required as standardized patient assessment data) and the M1800 items used for payment.

each response category has associated points. A more detailed description as to how these response categories were established can be found in the technical report, “Overview of the Home Health Groupings Model” posted on the HHA web page.³ The sum of these points results in a functional

³ <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/HH-PDGM>.

impairment score used to group 30-day periods of care into a functional impairment level with similar resource use. The scores associated with the functional impairment levels vary by clinical group to account for differences in resource utilization. A patient's

functional impairment level will remain the same for the first and second 30-day periods of care unless there is a significant change in condition that warrants an "other follow-up" assessment prior to the second 30-day period of care. For each 30-day period

of care, the Medicare claims processing system will look for occurrence code 50 on the claim to correspond to the M0090 date of the applicable assessment. Table 9 shows the distribution of 30-day periods by functional impairment level.

TABLE 9: DISTRIBUTION OF 30-DAY PERIODS OF CARE BY FUNCTIONAL IMPAIRMENT LEVEL, CYs 2018-2023

Functional Impairment Level	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	CY 2021	CY 2022	CY 2023
Low	33.9%	31.9%	25.7%	23.2%	28.1%	29.8%
Medium	34.9%	35.5%	32.7%	32.6%	33.1%	31.8%
High	31.2%	32.6%	41.7%	44.2%	38.8%	38.3%

Source: CY 2018 and CY 2019 simulated PDGM data with behavioral assumptions came from the Home Health LDS. CY 2020 PDGM data was accessed from the CCW VRDC on July 12, 2021. CY 2021 PDGM data was accessed from the CCW VRDC on July 14, 2022. CY 2022 PDGM data was accessed from the CCW VRDC on January 20, 2023. CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers). There are approximately 540,000 60-day episodes that started in 2019 and ended in 2020 that are not included in the analysis.

f. Therapy Visits

Beginning in CY 2020, section 1895(b)(4)(B)(ii) of the Act eliminated the use of therapy thresholds in calculating payments for CY 2020 and subsequent years. Prior to implementation of the PDGM, HHAs could receive an adjustment to payment based on the number of therapy visits provided during a 60-day episode of care. We examined the proportion of actual 30-day periods of care with and without therapy visits. To be covered as skilled therapy, the services must require the skills of a qualified therapist

(that is, PT, OT, or SLP) or qualified therapist assistant and must be reasonable and necessary for the treatment of the patient's illness or injury.⁴ As shown in table 10, we monitor the number of visits per 30-day period of care by each home health discipline. Any 30-day period of care can include both therapy and non-therapy visits. If any 30-day period of care consisted of only visits for PT, OT, and/or SLP, then this 30-day period of care is considered "therapy only". If any 30-day period of care consisted of only visits for skilled nursing, home health

aide, or social worker, then this 30-day period of care is considered "no therapy". If any 30-day period of care consisted of at least one therapy visit and one non-therapy, then this 30-day period of care is considered "therapy + non-therapy". Table 10 shows the proportion of 30-day periods of care with only therapy visits, at least one therapy visit and one non-therapy visit, and no therapy visits. Figure 2 shows the proportion of 30-day periods of care by the number of therapy visits (excluding zero) provided during 30-day periods of care.

TABLE 10: PROPORTION OF 30-DAY PERIODS OF CARE WITH ONLY THERAPY, AT LEAST ONE THERAPY VISIT, AND NO THERAPY VISITS FOR CYs 2018-2023

30-day Period Visit Type	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	CY 2021	CY 2022	CY 2023
Therapy Only	13.5%	14.4%	15.2%	17.8%	19.3%	20.1%
Therapy + Non-Therapy	48.2%	48.4%	42.2%	42.3%	42.7%	42.8%
No Therapy	38.3%	37.2%	42.6%	39.9%	38.0%	37.1%
Total 30-day periods	9,336,898	8,744,171	8,423,688	8,962,690	8,593,266	8,133,377

Source: CY 2018 and CY 2019 simulated PDGM data with behavioral assumptions came from the Home Health LDS. CY 2020 PDGM data was accessed from the CCW VRDC on July 12, 2021. CY 2021 PDGM data was accessed from the CCW VRDC on July 14, 2022. CY 2022 PDGM data was accessed from the CCW VRDC on January 20, 2023. CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

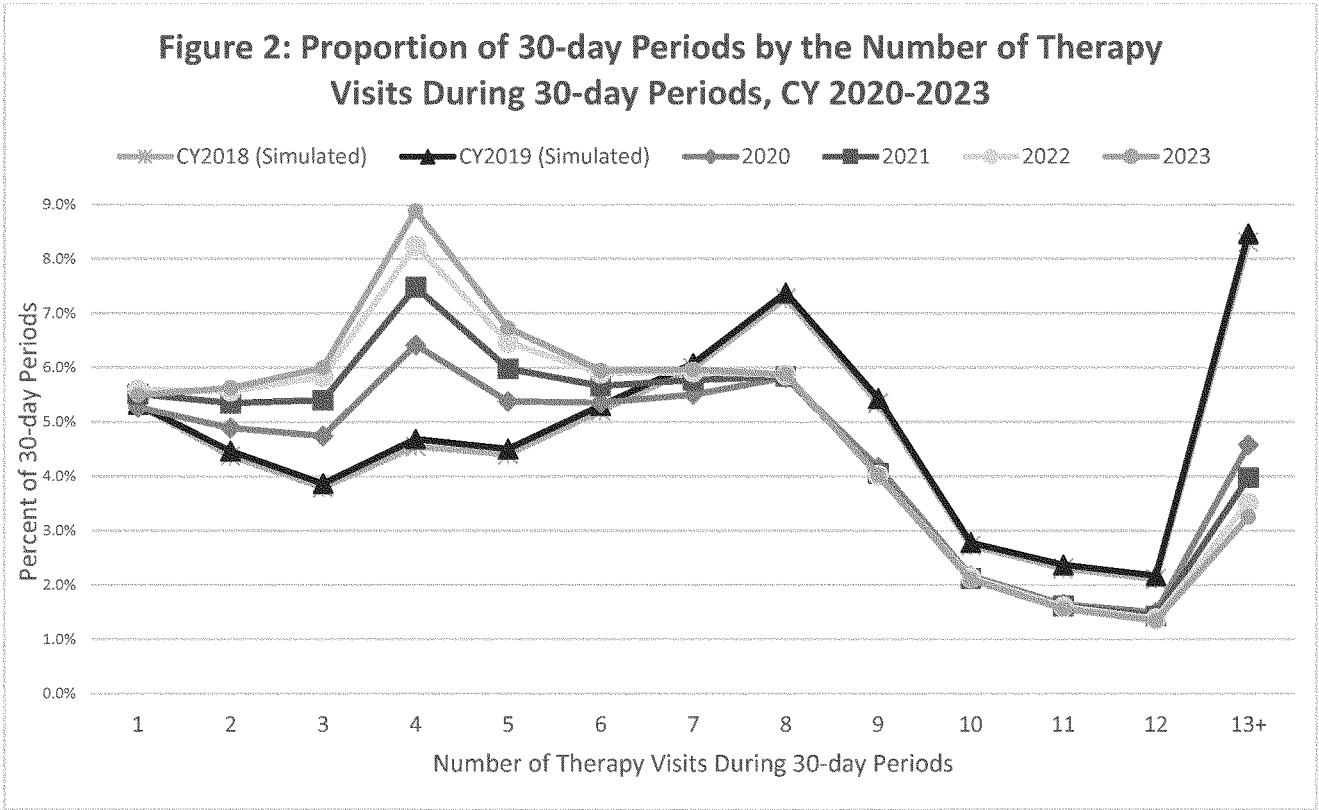
Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers). There are approximately 540,000 60-day episodes that started in 2019 and ended in 2020 that are not included in the analysis.

⁴ Medicare Benefit Policy Manual, Chapter 7 Home Health Services, Section 40.2 Skilled

Therapy Services (<https://www.cms.gov/>)

Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c07.pdf).

FIGURE 2: PROPORTION OF 30-DAY PERIODS OF CARE BY THE NUMBER OF THERAPY VISITS DURING 30-DAY PERIODS, CYs 2018-2023



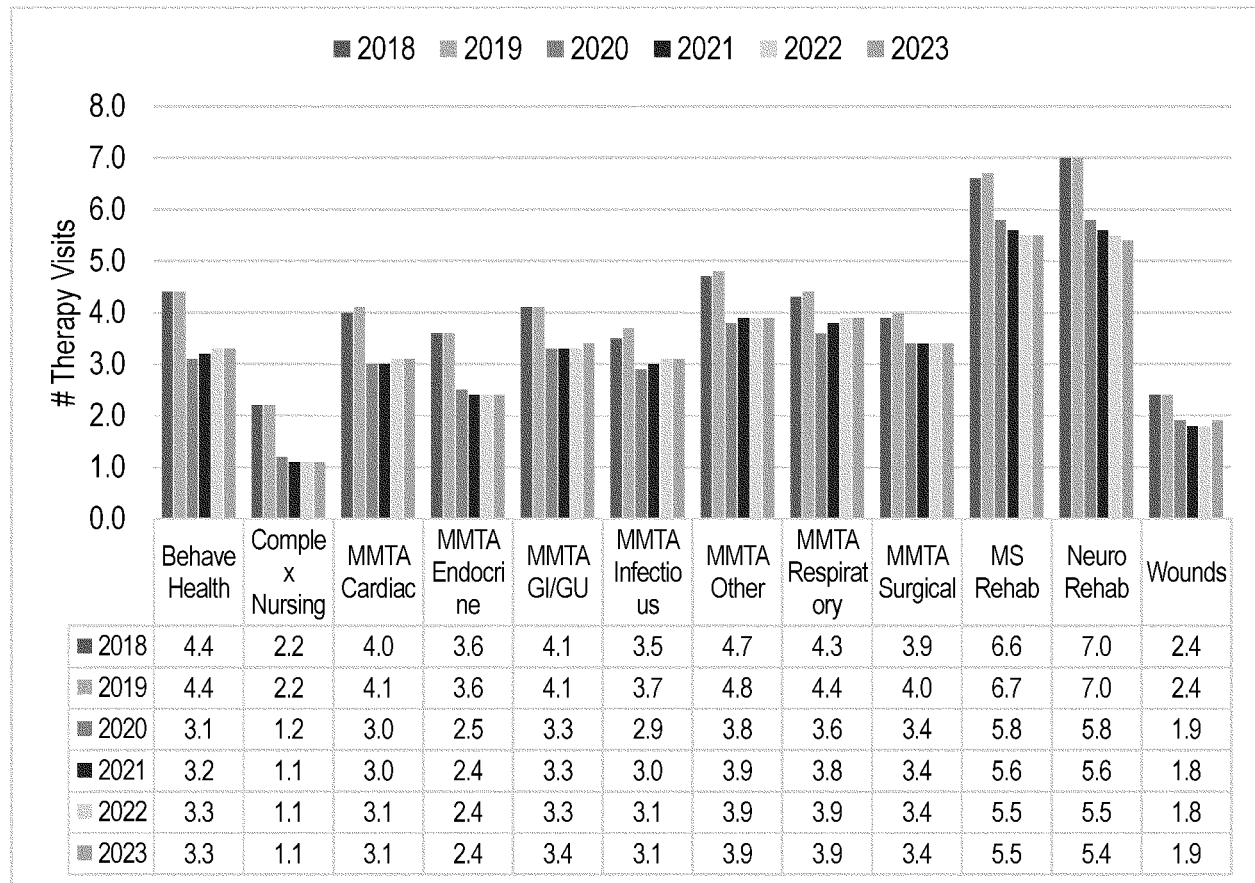
Source: CY 2018 and CY 2019 simulated PDGM data with behavioral assumptions came from the Home Health LDS. CY 2020 PDGM data was accessed from the CCW VRDC on July 12, 2021. CY 2021 PDGM data was accessed from the CCW VRDC on July 14, 2022. CY 2022 PDGM data was accessed from the CCW VRDC on January 20, 2023. CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers). There are approximately 540,000 60-day episodes that started in 2019 and ended in 2020 that are not included in the analysis. Thirty-day periods with ≥ 13 therapy visits were combined into one category for illustrative purposes only.

Both table 10 and figure 2, as previously discussed, indicate there have been changes in the distribution of both therapy and non-therapy visits in CY 2023 compared to CY 2022. For

example, the percent of 30-day periods with one through seven therapy visits during a 30-day period increased in CY 2023 compared to CY 2022. Comparing therapy utilization from before the

PDGM (CYs 2018 and 2019) to after the implementation of the PDGM (CYs 2020–2023), we have also seen a decline in therapy visits across all clinical groups, as shown in figure 2.

TABLE 11: AVERAGE THERAPY VISITS PER 30-DAY PERIOD BY CLINICALGROUP, CYs 2018-2023

Source: CY 2018 and CY 2019 simulated PDGM data with behavioral assumptions came from the Home Health LDS. CY 2020 data was accessed from the Chronic Conditions Warehouse (CCW) Virtual Research Data Center (VRDC) on July 12, 2021. CY 2021 data was accessed from the CCW VRDC on July 14, 2022. CY 2022 data was accessed from the CCW VRDC on July 13, 2023. CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers).

We also examined the proportion of 30-day periods of care with and without skilled nursing, social work, or home health aide visits. Table 12 shows the

number of 30-day periods of care with only skilled nursing visits, at least one skilled nursing visit and one other visit type (therapy or non-therapy), and no

skilled nursing visits. Table 12 shows the number of 30-day periods of care with and without home health aide and/or social worker visits.

TABLE 12: PROPORTION OF 30-DAY PERIODS OF CARE WITH ONLY SKILLED NURSING, SKILLED NURSING + OTHER VISIT TYPE, AND NO SKILLED NURSING VISITS FOR CYs 2018-2023

30-day Period Visit Type	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	CY 2021	CY 2022	CY 2023
Skilled Nursing Only	33.8%	33.1%	38.5%	36.2%	34.7%	34.1%
Skilled Nursing + Other	51.6%	51.5%	45.3%	44.9%	45.0%	44.7%
No Skilled Nursing	14.7%	15.5%	16.2%	18.9%	20.4%	21.2%
Total 30-day periods	9,336,898	8,744,171	8,423,688	8,962,690	8,593,266	8,133,377

Source: CY 2018 and CY 2019 simulated PDGM data with behavioral assumptions came from the Home Health LDS. CY 2020 PDGM data was accessed from the CCW VRDC on July 12, 2021. CY 2021 PDGM data was accessed from the CCW VRDC on July 14, 2022. CY 2022 PDGM data was accessed from the CCW VRDC on January 20, 2023. CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers). There are approximately 540,000 60-day episodes that started in 2019 and ended in 2020 that are not included in the analysis.

TABLE 13: PROPORTION OF 30-DAY PERIODS OF CARE WITH AND WITHOUT HOME HEALTH AIDE AND/OR SOCIAL WORKER VISITS FOR CYs 2018-2023

30-day Period Visit Type	CY 2018 (Simulated)	CY 2019 (Simulated)	CY 2020	CY 2021	CY 2022	CY 2023
Any HH aide and/or social worker	16.6%	15.9%	13.2%	12.2%	11.3%	10.8%
No HH aide and/or social worker	83.4%	84.1%	86.8%	87.8%	88.7%	89.2%
Total 30-day periods	9,336,898	8,744,171	8,423,688	8,962,690	8,593,266	8,133,377

Source: CY 2018 and CY 2019 simulated PDGM data with behavioral assumptions came from the Home Health LDS. CY 2020 data was accessed from the Chronic Conditions Warehouse (CCW) Virtual Research Data Center (VRDC) on July 12, 2021. CY 2021 data was accessed from the CCW VRDC on July 14, 2022. CY 2022 data was accessed from the CCW VRDC on July 13, 2023. CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers). There are approximately 540,000 60-day episodes that started in 2019 and ended in 2020 that are not included in the analysis.

g. Home Health Services Using Telecommunications Technology

As discussed in the CY 2023 final rule (87 FR 66858), we began collecting data on the use of telecommunications technology used during a home health period using three new G-codes reported on home health claims. Collecting data on services furnished via telecommunications technology on claims allows CMS to analyze the characteristics of patients using services provided remotely and have a broader understanding of the social determinants that affect who benefits most from these services, including what barriers may potentially exist for certain subsets of patients. The monitoring discussion illustrates which services are most frequently furnished

via telecommunication technology and generally how long remote patient monitoring is utilized.

We began collecting this information from HHAs on January 1, 2023, on a voluntary basis and have required this information to be reported on claims starting on July 1, 2023 (87 FR 66858). The three new G-codes help identify when home health services are furnished using synchronous telemedicine rendered via a real-time two-way audio and video telecommunications system (G320); synchronous telemedicine rendered via telephone or other real-time interactive audio-only telecommunications system (G0321); and the collection of physiologic data digitally stored and/or transmitted by the patient to the home

health agency, that is, remote patient monitoring (G0322). We capture the usage and length of remote patient monitoring using the start date of the remote patient monitoring and the number of days of monitoring indicated on the claim. We also looked at the disciplines most often providing remote patient monitoring. We examined the utilization of telecommunications technology device during a home health period and remote patient monitoring by looking at home health claims that included the three G-codes. Tables 14 and 15 shows that the use of telecommunications services reported on CY 2023 home health claims are low (roughly 1 percent of all CY 2023 claims) and are mainly associated with skilled nursing.

TABLE 14: UTILIZATION OF TELECOMMUNICATIONS TECHNOLOGY PER 30-DAY PERIODS OF CARE BY HOME HEALTH DISCIPLINE AS INDICATED BY G0320/G0321, CY 2023

	Claims with at Least 1 Service Using Telecommunication	Number of Services Using Telecommunication	Unique Beneficiaries with at Least 1 Service Using Telecommunication	Unique Providers with at Least 1 Service Using Telecommunication
Skilled Nursing	63,049	128,566	48,450	1,221
PT	13,412	21,614	11,167	523
OT	2,761	3,996	2,336	262
SLP	740	1,176	558	107
Aide	5	6	5	1
MSS	1,812	2,052	1,691	195

Source: CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers).

TABLE 15: UTILIZATION OF REMOTE MONITORING PER 30-DAY PERIODS OF CARE BY HOME HEALTH DISCIPLINE AS INDICATED BY G0322, CY 2023

	Claims with at Least 1 Day of Remote Patient Monitoring	Number of Remote Patient Monitoring Days	Unique Beneficiaries with at Least 1 Day of Remote Patient Monitoring	Unique Providers with at Least 1 Day of Remote Patient Monitoring
Skilled Nursing	19,084	337,194	11,615	494
PT	380	6,072	296	82
OT	20	188	20	15
SLP	53	966	41	7
Aide	6	123	6	4
MSS	271	4,480	145	2

Source: CY 2023 data was accessed from the CCW VRDC on March 19, 2024.

Note: All 30-day periods of care claims were included (for example LUPAs, PEPs, and outliers).

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We will continue to monitor the provision of home health services, including any changes in the number and duration of home health visits, composition of the disciplines providing such services, telecommunications technology used during home health periods, and overall home health payments to determine if refinements to the case-mix adjustment methodology or other policies may be needed in the future.

C. Proposed CY 2025 Payment Adjustments Under the HH PPS

1. Proposed Behavior Assumption Adjustments Under the HH PPS

a. Background

As discussed in section II.A.1. of this proposed rule, starting in CY 2020, the Secretary was statutorily required by section 1895(b)(2)(B) of the Act, to change the unit of payment under the HH PPS from a 60-day episode of care to a 30-day period of care. CMS was also required to make assumptions about behavior changes that could occur as a result of the implementation of the 30-day unit of payment and the case-mix adjustment factors that eliminated the use of therapy thresholds. In the CY 2019 HH PPS final rule with comment period (83 FR 56455), we finalized three behavior change assumptions which were also described in the CY 2022 and 2023 HH PPS rules (86 FR 35890, 87 FR 37614, and 87 FR 66795 through 66796).

In the CY 2020 HH PPS final rule with comment period (84 FR 60519), we included these behavioral change assumptions in the calculation of the 30-day budget neutral payment amount for CY 2020, finalizing a negative 4.36 percent behavior change assumption adjustment (“assumed behaviors”). We did not propose any changes for CYs 2021 and 2022 relating to the behavior assumptions finalized in the CY 2019 HH PPS final rule with comment period, or to the negative 4.36 percent behavior change assumption adjustment, finalized in the CY 2020 HH PPS final rule with comment period.

In the CY 2023 HH PPS final rule (87 FR 66796), we stated, based on our annual monitoring at that time, the three

assumed behavior changes did occur as a result of the implementation of the PDGM and that other behaviors, such as changes in the provision of therapy and changes in functional impairment levels also occurred. We also reminded readers that in the CY 2020 HH PPS final rule with comment period (84 FR 60513) we stated we interpret actual behavior changes to encompass both behavior changes that were previously outlined as assumed by CMS, and other behavior changes not identified at the time the budget-neutral 30-day payment rate for CY 2020 was established. In the CY 2023 HH PPS final rule (87 FR 66796) we provided supporting evidence that indicated the number of therapy visits declined in CYs 2020 and 2021, as well as a slight decline in therapy visits beginning in CY 2019 after the finalization of the removal of therapy thresholds, but prior to implementation of the PDGM. In section II.B.1. of this proposed rule, our analysis continues to show overall the actual 30-day periods are similar to the simulated 30-day periods and there continues to be a decline in therapy visits, indicating that HHAs changed their behavior to reduce therapy visits. Although the analysis demonstrates evidence of individual behavior changes (for example, in the volume of visits for LUPAs, therapy sessions, etc.), we use the entirety of the behaviors in order to calculate estimated aggregate expenditures. The law instructs us to ensure that estimated aggregate expenditures under the PDGM are equal to the estimated aggregate expenditures that otherwise would have been made under the prior system.

Section 4142(a) of the CAA, 2023, required CMS to present, to the extent practicable, a description of the actual behavior changes occurring under the HH PPS from CYs 2020–2026. This subsection of the CAA, 2023, also required CMS to provide datasets underlying the simulated 60-day episodes and discuss and provide time for stakeholders to provide input and

ask questions on the payment rate development for CY 2023. CMS complied with these requirements by posting online both the supplemental limited data set (LDS) and descriptive files and the description of actual behavior changes that affected CY 2023 payment rate development. Additionally, on March 29, 2023, CMS conducted a webinar entitled *Medicare Home Health Prospective Payment System (HH PPS) Calendar Year (CY) 2023 Behavior Change Recap, 60-Day Episode Construction Overview, and Payment Rate Development*. The webinar was open to the public and discussed the actual behavior changes that occurred upon implementation of the PDGM, our approach used to construct simulated 60-day episodes using 30-day periods, payment rate development for CY 2023, and information on the supplemental data files containing information on the simulated 60-day episodes and actual 30-day periods used in calculating the permanent adjustment to the payment rate. Materials from the webinar, including the presentation and the CY 2023 descriptive statistics from the supplemental LDS files, containing information on the number of simulated 60-day episodes and actual 30-day periods in CY 2021 that were used to construct the permanent adjustment to the payment rate, as well as information such as the number of episodes and periods by case-mix group, case-mix weights, and simulated payments, can be found on the Home Health Patient-Driven Groupings Model web page at <https://www.cms.gov/medicare/medicare-fee-for-service-payment/homehealthpps/hh-pdgm>.

b. Method to Annually Determine the Impact of Differences Between Assumed Behavior Changes and Actual Behavior Changes on Estimated Aggregate Expenditures

In the CY 2023 HH PPS final rule (87 FR 66804), we finalized the

methodology to evaluate the impact of the differences between assumed and actual behavior changes on estimated aggregate expenditures. In the CY 2024 HH PPS final rule (88 FR 77687 through 77688) we provided an overview of the methodology with detailed instructions for each step. The overall methodology as finalized remains the same for evaluating the impact of behavior changes as required by law; however, due to an update of the Outcome and Assessment Information Set (OASIS) instrument, we need to update two minor technical parts and are proposing to add new assumptions in the first step (creating simulated 60-day episodes from 30-day periods). These new assumptions are described in this section.

Section 1895(b)(3)(B)(v) of the Act requires HHAs to report certain quality data. As described in regulation at 42 CFR 484.250(a), this data is required to be reported using the OASIS instrument. Under the prior 153-group system (and the first three years for assessments associated with the PDGM completed prior to CY 2023), HHAs submitted the OASIS–D version. However, OMB approved an updated version of the OASIS instrument, OASIS–E, on November 30, 2022, effective January 1, 2023. Thus, OASIS–E is the current version of the OASIS instrument used. The valid OMB control number for this information collection is 0938–1279.

There are 13 items from the OASIS–D used in the 153-group system that are included in the OASIS–E; however, the responses for these items are now only recorded at the start of care (SOC) or resumption of care (ROC) assessments in the OASIS–E and not at all for follow-up assessments as shown in the following figure 3.

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FIGURE 3: ITEMS ASKED ON SOC/ROC AND NOT FOLLOW-UP ON OASIS-E

SOC/ROC
M1311. Current Number of Unhealed Pressure Ulcers/Injuries at Each Stage
M1322. Current Number of Stage 1 Pressure Injuries Intact skin with non-blanchable redness of a localized area usually over a bony prominence. Darkly pigmented skin may not have a visible blanching; in dark skin tones only, it may appear with persistent blue or purple hues.
M1324. Stage of Most Problematic Unhealed Pressure Ulcer/Injury that is Stageable Excludes pressure ulcer/injury that cannot be staged due to a non-removable dressing/device, coverage of wound bed by slough and/or eschar, or deep tissue injury
M1330. Does this patient have a Stasis Ulcer?
M1332. Current Number of Stasis Ulcer(s) that are Observable
M1334. Status of Most Problematic Stasis Ulcer that is Observable
M1340. Does this patient have a Surgical Wound?
M1342. Status of Most Problematic Surgical Wound that is Observable
M1400. When is the patient dyspneic or noticeably Short of Breath?
M1610. Urinary Incontinence or Urinary Catheter Presence
M1620. Bowel Incontinence Frequency
M1630. Ostomy for Bowel Elimination Does this patient have an ostomy for bowel elimination that (within the last 14 days): a) was related to an inpatient facility stay; or b) necessitated a change in medical <u>or</u> treatment regimen?
M2030. Management of Injectable Medications <u>Patient's current ability</u> to prepare and take <u>all</u> prescribed injectable medications reliably and safely, including administration of correct dosage at the appropriate time/intervals. <u>Excludes</u> IV medications.

Note: We only show the assessment prompt for these 13 items. Each item listed has associated responses which can be found in the OASIS Manual located at <https://www.cms.gov/medicare/quality/home-health/oasis-user-manuals>.

Three items in the OASIS-E differ slightly from the OASIS-D by incorporating more specific questions and responses than in the OASIS-D.

These three items, as shown in figure 4, ask about therapies (M1030), vision (M1200), and the frequency of pain interfering with activity (M1242).

Additionally, these three items are only asked at SOC/ROC and not follow-up.

FIGURE 4: OASIS-D ITEMS THAT DIFFER FROM OASIS-E

(M1030) Therapies the patient receives at home: (Mark all that apply.)

☐ 1 - Intravenous or infusion therapy (excludes TPN)

☐ 2 - Parenteral nutrition (TPN or lipids)

☐ 3 - Enteral nutrition (nasogastric, gastrostomy, jejunostomy, or any other artificial entry into the alimentary canal)

☐ 4 - None of the above

(M1200) Vision (with corrective lenses if the patient usually wears them):	
Enter Code	0 Normal vision: sees adequately in most situations; can see medication labels, newsprint.
☐	1 Partially impaired: cannot see medication labels or newsprint, but <u>can</u> see obstacles in path, and the surrounding layout; can count fingers at arm's length.
	2 Severely impaired: cannot locate objects without hearing or touching them, or patient nonresponsive.
(M1242) Frequency of Pain Interfering with patient's activity or movement:	
Enter Code	0 Patient has no pain
☐	1 Patient has pain that does not interfere with activity or movement
	2 Less often than daily
	3 Daily, but not constantly
	4 All of the time

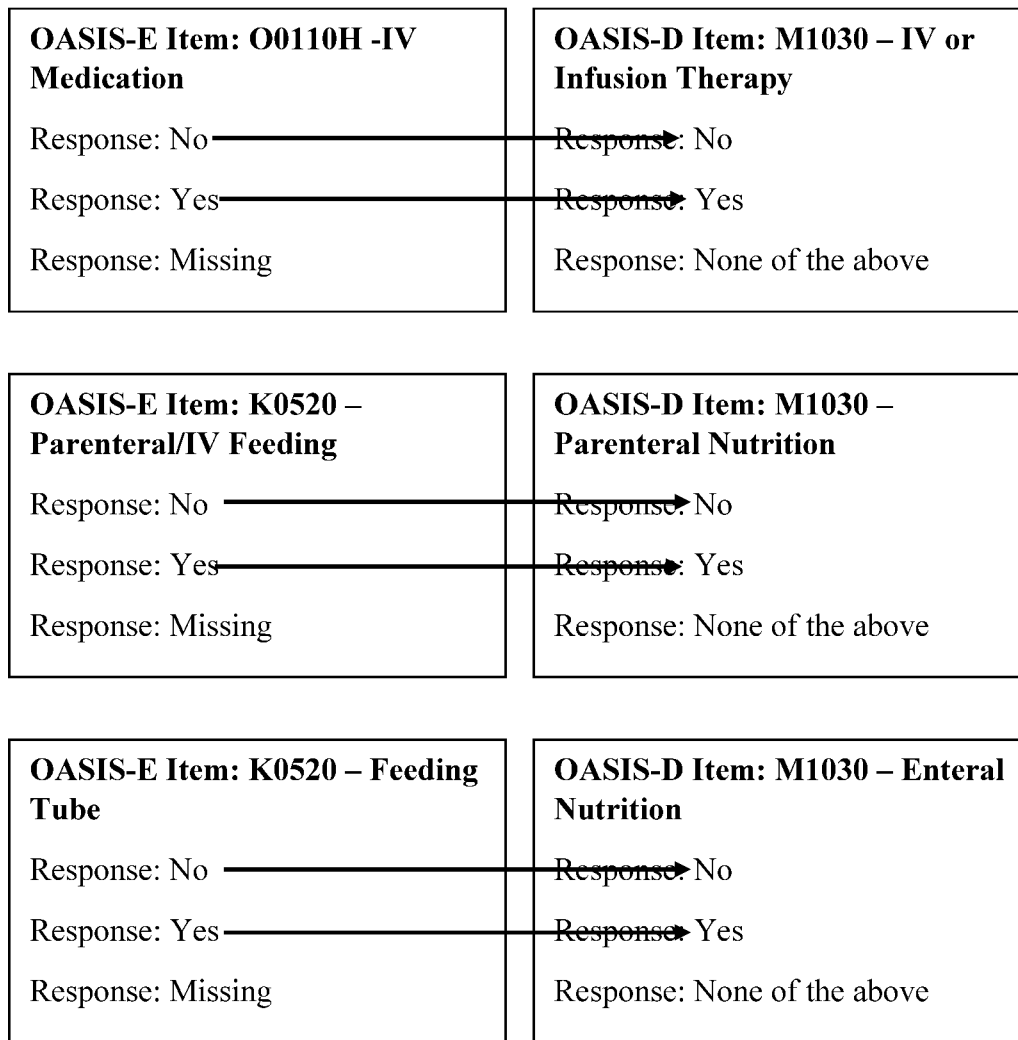
The differences in these three items from what is included in OASIS-E necessitate a mapping methodology to impute the OASIS-D responses using OASIS-E to create simulated 60-day episodes under the 153-group case mix system from 30-day periods under the PDGM. For each of the three items, we considered the clinical relationship between the responses in the OASIS-E items that differ from the OASIS-D items. CMS also considered the response distribution between the OASIS-D and OASIS-E items when creating the mapping of the responses.

CMS believes the following two proposals on assumptions are the most appropriate to address the changes from the OASIS-D to the OASIS-E to continue to create simulated 60-day episodes from 30-day periods.

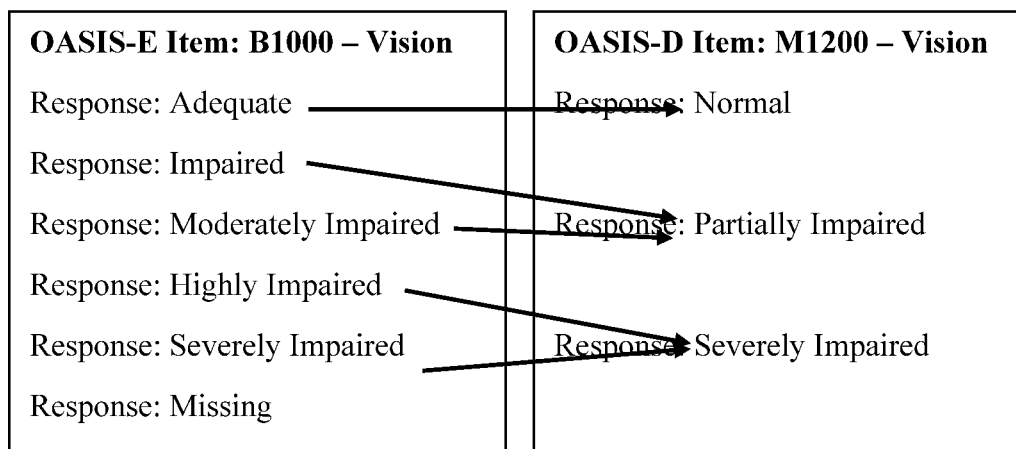
- If the simulated 60-day episode matches to a SOC or ROC assessment then we are proposing not to impute the 13 items. If the simulated 60-day episode matches to a follow-up assessment, then we are proposing to look back for the most recent 30-day period that is linked to a SOC or ROC assessment and impute the 13 responses for follow-up using the responses at the most recent SOC or ROC assessment. We would limit the look back period to the beginning of the calendar year that precedes the calendar year for the claim. For example, a simulated 60-day episode with a follow-up assessment on June 1, 2023, would have a look-back period for a 30-day period linked to a SOC or ROC assessment that began on or after January 1, 2022. If we cannot find a SOC or ROC assessment in that

time period, we are proposing to exclude the claim from analysis because we would not have sufficient timely data to impute responses.

- If the simulated 60-day episode matches to an OASIS-D assessment, then we are proposing to use the OASIS-D for responses. If the simulated 60-day episode matches to an OASIS-E assessment, we are proposing to apply the following mapping for the therapies, vision, and pain items to impute responses as these responses are required for accurate payment calculation under the prior 153-group system. We are also proposing to apply the look-back period as described in the assumption earlier when necessary.

FIGURE 5: THERAPIES MAPPING FROM OASIS-E TO OASIS-D

Note, if an OASIS-E assessment has a response of “no” to all three items (O0110H—IV medication, K0520—Parenteral/IV feeding, and K0520—Feeding Tube), as shown in figure 5, then the mapping for M1030 would be a response of “none of the above”.

FIGURE 6: VISION MAPPING FROM OASIS-E TO OASIS-D

On the OASIS–D there was one pain item (M1242—Frequency of Pain Interfering with patient’s activity or movement) used for payment policy. There are three pain related items on the OASIS–E (J0510—pain effect on sleep, J0520—pain interference with therapy activities, and J0530—pain interference with day-to-day activities) that

correspond to the one OASIS–D pain item used for calculating payments. Therefore, we believe using the response from J0510, J0520, or J0530 that reflects the maximum severity would be the most appropriate for mapping back to the OASIS–D. For example, if J0510 (pain effect on sleep) has a response of “rarely”, J0520 (pain

interference with therapy activities) has a response of “frequently”, and J0530 has a response of “occasionally”, then we would use the response from J0520 (“frequently”) for mapping as this is the most severe response. Figure 7 shows the proposed mapping based on the maximum severity response for any of the three pain items.

FIGURE 7: PAIN MAPPING FROM OASIS-E to OASIS-D

OASIS-E Item: Max of J0510, J0520, and J0530	OASIS-D Item: M1242 Frequency of Pain
Max Response: No pain	Response: No pain
Max Response: Rarely or not at all	Response: Does not interfere
Max Response: Occasionally	Response: Less often than daily
Max Response: Frequently	Response: Daily, not constantly
Max Response: Almost constantly	Response: All of the time
Unable to answer	

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As this overall methodology was previously finalized in the CY 2023 HH PPS final rule (87 FR 66804) and we are just proposing technical updates based on the updated OASIS instrument, CMS will continue to ensure that estimated aggregate expenditures under the PDGM are equal to the estimated aggregate expenditures that otherwise would have been made under the prior system for assessing behavior changes as required by law. We refer readers to the CY 2024 HH PPS final rule (88 FR 77687 through 77688) for an overview of the methodology with detailed instructions for each step. We are soliciting comments on these new proposed assumptions related to mapping of the OASIS–E items.

c. Calculating Permanent and Temporary Payment Adjustments

To offset prospectively for such increases or decreases in estimated aggregate expenditures as a result of the impact of differences between assumed behavior changes and actual behavior changes, in any given year, we calculate a permanent prospective adjustment by calculating the percent change between the actual 30-day base payment rate and the recalculated 30-day base payment rate. This percent change is converted

into an adjustment factor and applied in the annual rate update process.

To offset retrospectively for such increases or decreases in estimated aggregate expenditures as a result of the impact of differences between assumed behavior changes and actual behavior changes in any given year, we calculate a temporary prospective adjustment by calculating the dollar amount difference between the estimated aggregate expenditures from all 30-day periods using the recalculated 30-day base payment rate, and the aggregate expenditures for all 30-day periods using the actual 30-day base payment rate for the same year. In other words, when determining the temporary retrospective dollar amount, we use the full dataset of actual 30-day periods using both the actual and recalculated 30-day base payment rates to ensure that the utilization and distribution of claims are the same. In accordance with section 1895(b)(3)(D)(iii) of the Act, the temporary adjustment is to be applied on a prospective basis and shall apply only with respect to the year for which such temporary increase or decrease is made. Therefore, after we determine the dollar amount to be reconciled in any given year, we calculate a temporary adjustment factor to be applied to the base payment rate for that year. The

temporary adjustment factor is based on an estimated number of 30-day periods in the next year using historical data trends, and as applicable, we control for a permanent adjustment factor, case-mix weight recalibration neutrality factor, wage index budget neutrality factor, and the home health payment update. The temporary adjustment factor is applied last. We refer readers to the CY 2024 HH PPS final rule (88 FR 77689 through 77694) for analysis for CYs 2020 through 2022 claims. Additionally, at the end of this section we provide a summary table for the permanent adjustment and temporary dollar amounts calculated for each year.

d. CY 2023 Preliminary Claims Results

We will continue the practice of using the most recent complete home health claims data available at the time of rulemaking. While the CY 2023 analysis presented in this proposed rule is the most complete data available at the time of this proposed rule, it is considered preliminary and, as more data become available from the latter half of CY 2023, we will update our results in the final rule. The CY 2025 final rule will utilize the CY 2023 finalized data for determining any permanent adjustment needed to the CY 2025 payment rate. However, while the claims data and the

permanent and temporary adjustment results will be considered complete, any adjustments to future payment rates may be subject to additional considerations such as permanent adjustments taken in previous years.

The claims data used in rulemaking is released twice each year in the HH PPS Limited Data Set (LDS) file, one for the proposed and one for the final. Accordingly, the HH PPS LDS file released with this proposed rule includes two files: the actual CY 2023 30-day periods and the CY 2023 simulated 60-day episodes.

We remind readers a data use agreement (DUA) is required to purchase the CY 2025 proposed HH PPS LDS file. Access will be granted for both the 30-day periods and the simulated 60-day episodes under one DUA. Visit the HH PPS LDS web page for more information.⁵ In addition, the proposed CY 2025 Home Health Descriptive Statistics from the LDS Files spreadsheet is available on the HH PPS Regulations and Notices webpage,⁶ does not require a DUA, and is available at no cost to interested parties. The spreadsheet contains information on the number of simulated 60-day episodes and actual 30-day periods in CY 2023 that were used to determine the adjustments. The spreadsheet also provides information such as the number of episodes and periods by case-mix group, case-mix weights, and simulated payments.

e. Applying the Methodology to CY 2023 Data To Determine the CY 2025 Permanent and Temporary Adjustments

Using the methodology finalized in the CY 2023 HH PPS final rule and described most recently in the CY 2024 HH PPS final rule (88 FR 77687 through

77688), as well as the two new assumptions related to the OASIS–E mapping, we simulated 60-day episodes using actual CY 2023 30-day periods to determine what the permanent and temporary payment adjustments should be to offset for such increases or decreases in estimated aggregate expenditures as a result of the impact of differences between assumed behavior changes and actual behavior changes.

Using the preliminary CY 2023 dataset, we began with 8,133,377 30-day periods of care and dropped 452,253 30-day periods of care that had claim occurrence code 50 date after October 31, 2023. We also excluded 866,293 30-day periods of care that had claim occurrence code 50 date before January 1, 2023, to ensure the 30-day period would not be part of a simulated 60-day episode that began in CY 2022. Applying the additional exclusions and assumptions as described in the finalized methodology (87 FR 66804), an additional 12,906 30-day periods were excluded.

Additionally, we excluded 166,441 simulated 60-day episodes of care where no OASIS information was available in the CCW VRDC, a recent SOC/ROC OASIS was not available, or the episode could not be grouped to a HIPPS due to a missing primary diagnosis or other reason. Our simulated 60-day episodes of care produced a distribution of two 30-day periods of care (68.9 percent) and single 30-day periods of care (31.1 percent) that was similar to what we found when we simulated two 30-day periods of care for implementation of the PDGM. After all exclusions and assumptions were applied, the final dataset for this proposed rule included 6,494,947 actual 30-day periods of care and 3,845,954 simulated 60-day episodes of care for CY 2023.

Using the preliminary dataset for CY 2023 (6,494,947 actual 30-day periods which made up the 3,845,954 simulated 60-day episodes) we determined the estimated aggregate expenditures under

the pre-PDGM HH PPS were lower than the actual estimated aggregate expenditures under the PDGM HH PPS. This indicates that aggregate expenditures under the PDGM were higher than if the 153-group payment system was still in place in CY 2023 and therefore, we determined the CY 2023 30-day base payment rate should have been \$1,873.17 based on actual behavior, as shown in table 16. As stated in the CY 2024 final rule (88 FR 77693) we determined for CYs 2020 through CY 2022 a total of –5.779 percent permanent adjustment was needed (after accounting for the –3.925 percent applied to the CY 2023 payment rate). In order to determine behavior changes for only CY 2023, we simulated what the CY 2023 base payment rate would have been if the full –5.779 percent adjustment that we determined using CY 2022 claims data had been implemented.

Using the recalculated CY 2022 base payment rate of \$1,839.10 (88 FR 77693), multiplied by the CY 2023 case-mix weights recalibration neutrality factor (0.9904), the CY 2023 wage index budget neutrality factor (1.0001) and the CY 2023 home health payment update factor (1.040), the CY 2023 base payment rate for assumed behavior would have been \$1,894.49. For the CY 2023 annual permanent adjustment, we calculated the percent change between the two payment rates for only CY 2023 (assuming the –5.779 percent adjustment was already taken). For the temporary adjustment we calculated the difference in aggregate expenditures in dollars for all CY 2023 PDGM 30-day claims using the actual payment rate (\$2,010.69) and recalculated payment (\$1,873.17). This difference is shown as the retrospective dollar amount needed to offset payment in a future year. Our results for the CY 2023 annual (single year) permanent and temporary adjustment calculations using CY 2023 preliminary claims data are shown in table 16.

⁵ https://www.cms.gov/research-statistics-data-and-systems/files-for-order/limiteddatasets/home_health_pps_lds.

⁶ <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/Home-Health-Prospective-Payment-System-Regulations-and-Notices>.

TABLE 16: CY 2023 PROPOSED PERMANENT AND TEMPORARY ADJUSTMENT CALCULATIONS

	Budget-neutral 30-day Payment Rate with Assumed Behavior Changes	Budget-neutral 30-day Payment Rate with Actual Behavior Changes	CY 2023 Only Adjustment
Base Payment Rate	\$1,894.49*	\$1,873.17	Permanent -1.125%
Aggregate Expenditures	\$15,982,282,880*	\$15,016,399,156	Temporary -\$965,883,723

Source: CY 2023 Home Health Claims Data, Periods that end in CY 2023 accessed on the CCW March 19, 2024

Notes: *The \$1,894.49 is equal to the recalculated budget neutral 30-day base payment rate of \$1,839.10 for CY 2022 (shown in table 16) multiplied by the CY 2023 recalibration factor (0.9904), wage index budget neutrality factor (1.0001) and the CY 2023 home health payment update (1.040).

**The estimated aggregate expenditures for assumed behavior (\$16 billion), uses the actual CY 2023 payment rate of \$2,010.69 as this is what CMS actually paid in CY 2023.

As shown in table 16, a permanent prospective adjustment of – 1.125 percent to the CY 2025 30-day payment

rate (assuming the – 5.779 percent adjustment was already taken) for CY 2023 would be required to offset for

such increases in estimated aggregate expenditures in future years. To illustrate this calculation:

$$\frac{(\$1,873.17 - \$1,894.49)}{|\$1,894.49|} = -1.125 \%$$

Additionally, we determined that our initial estimate of the base payment rate (\$2,010.69) resulted in excess expenditures of approximately \$966 million in CY 2023. This would require a temporary adjustment, where the dollar amount (\$966 million) would be converted to a factor when implemented, to offset for such increases in estimated aggregate expenditures for CY 2023.

f. Proposed CY 2025 Permanent Adjustment and Temporary Adjustment Calculations

In the preceding section we describe how we annually analyzed CY 2023 preliminary data to determine the effects of actual behavior change on estimated aggregate expenditures. Again, that analysis included simulations that assumed that the full

payment adjustment (– 5.779 percent) was already taken. We note that CMS did not implement the full payment adjustment, so the calculations set forth later in this section reflect the lagging adjustments that are still needed.

That is, the calculation in this section includes any of the remaining adjustments not applied in previous years (that is, CYs 2020 to 2022), as well as the adjustment needed to account for CY 2023 claims. In calculating the full permanent adjustment needed to the CY 2025 30-day payment rate, we compare estimated aggregate expenditures under the PDGM and the prior system. Unlike the annual adjustments described in table 16, we do not assume the full adjustment from prior years had been taken.

As discussed in section II.C.1.d. of this proposed rule, using the

preliminary dataset for CY 2023 (6,494,947 actual 30-day periods which made up the 3,845,954 simulated 60-day episodes) we determined the CY 2023 30-day base payment rate should have been \$1,873.17 based on actual behavior, rather than the actual CY 2023 30-day base payment rate (\$2,010.69) based on assumed behaviors. The percent change, as shown in table 17, between the actual CY 2023 base payment rate of \$2,010.69 (based on assumed behaviors and included a – 3.925 percent adjustment applied to the CY 2023 payment rate) and the CY 2023 recalculated base payment rate of \$1,873.17 (based on actual behaviors) is the total permanent adjustment need for CYs 2020 through 2023.

**TABLE 17: TOTAL PERMANENT ADJUSTMENT
FOR CYs 2020, 2021, 2022, and 2023**

Actual CY 2023 Base Payment Rate (Assumed Behavior)	Recalculated CY 2023 Base Payment Rate (Actual Behavior)	Total Permanent Prospective Adjustment
\$2,010.69	\$1,873.17	-6.839%*

Source: CY 2023 Home Health Claims Data, Periods that end in CY 2023 accessed on the CCW March 19, 2024.

*This is the total permanent adjustment based on CY 2023 data which includes the previous permanent adjustment of -3.925% applied. However, as described later, we recognize for CY 2025 we must account for adjustment made in CY 2024.

As shown in table 17, a permanent prospective adjustment of -6.839 percent to the CY 2025 30-day payment

rate for CYs 2020 through 2023 would be required to offset for such increases in estimated aggregate expenditures in

future years. To illustrate this calculation:

$$\frac{(\$1,873.17 - \$2,010.69)}{|\$2,010.69|} = -6.839 \%$$

As we stated in the CY 2024 HH PPS final rule (88 FR 77697), applying a -2.890 percent permanent adjustment to the CY 2024 30-day payment rate would not adjust the rate fully to account for differences in behavior changes on estimated aggregate expenditures in CYs 2020, 2021, and 2022. Using CY 2023 claims data, as shown in table 17, a permanent prospective adjustment of -6.839 percent to the CY 2025 30-day payment rate would be required to offset for such increases in estimated aggregate expenditures for CYs 2020 through 2023. We remind readers adjustment factors are multiplied in this payment system and therefore, individual numbers (that is, percentages) cannot be added or subtracted together to determine the final adjustment. Therefore, we cannot determine the CY 2025 proposed permanent adjustment, which would include estimated aggregate expenditures in CY 2023, by simply subtracting the -2.890 percent applied in CY 2024 from the total permanent adjustment of -6.839 percent.

Instead, we account for the permanent adjustment applied in CY 2024 of -2.890 percent when we calculate the

CY 2025 permanent adjustment by solving the following equation $(1 - 0.0289) \times (1 - x) = (1 - 0.06839)$. To illustrate this calculation we used the following approach.

$$\begin{aligned} x &= 1 - \left(\frac{1 - 0.06839}{1 - 0.0289} \right) \\ x &= 1 - 0.95933 \\ x &= 0.04067 \end{aligned}$$

We are required by law⁷ to annually analyze data from CY 2020 through CY 2026 and offset any increases or decreases in estimated aggregate expenditures at a time and manner determined appropriate. We now have 4 years of claims data under the PDGM, as well as 1 year with a partial permanent adjustment applied. In previous years' rules, we provided the permanent adjustment calculated for each discrete year of claims.

Permanent Adjustments Calculated:

CY 2020 Claims = -6.52% (87 FR 66805)
CY 2021 Claims = -1.42% (87 FR 66806)
CY 2022 Claims = -1.767% (88 FR 77692)

⁷ Sections 1895(b)(3)(D)(i) and 1895(b)(3)(D)(ii) of the Act.

CY 2023 Claims = -1.125% (Table 16)

Permanent Adjustments Applied:

CY 2023 Rate = -3.925% (88 FR 66808)

CY 2024 Rate = 2.890% (88 FR 77697)

Accounting for the previous permanent adjustments applied to the 30-day payment rate in CYs 2023 and 2024, we can simulate the permanent adjustment calculation with the simulated annual permanent adjustment percentage shown previously for CY 2025:

$$\begin{aligned} &(1 - 0.0652)(1 - 0.0142)(1 - 0.01767) \\ &\quad (1 - 0.01125) = \\ &\quad (1 - 0.03925)(1 - 0.0289)(1 - x). \end{aligned}$$

Solving, $x = 4.067\%$.

In table 18 we provide the base payment rate for assumed behaviors (simulates all prior adjustments were taken), the recalculated base payment rate for actual behaviors, the annual permanent adjustments calculated (assuming prior adjustments had been taken), the cumulative permanent adjustments calculated in each year, the final permanent adjustments implemented in rulemaking, and the temporary adjustment dollar amount based on actual payment rates.

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**TABLE 18: SUMMARY OF PERMANENT ADJUSTMENTS
FOR CYs 2020 – 2026**

Claims Analysis Year	Base Payment Rate for Assumed Behaviors (Actual Amount Paid to HHAs in the Claims Analysis Year)	Base Payment Rate that Reflects Actual Behavior Changes (As Determined After Later Claims Analysis)	Total Permanent Adjustment Between Assumed and Actual Behavior Rates*	Permanent Adjustment CMS Finalized and Implemented in Rulemaking
CY 2020	\$1,864.03	\$1,742.52	-6.52%	n/a
CY 2021	\$1,901.12	\$1,751.90	-7.85%	-3.925% applied to CY 2023 rates
CY 2022	\$2,031.64	\$1,839.10	-5.78%	-2.890% applied to CY 2024 rates
CY 2023	\$2,010.69	\$1,873.17	Proposed -4.067%	-4.067% proposed to be applied to CY 2025 rates
CY 2024	\$2,038.13	TBD	TBD	TBD
CY 2025	TBD	TBD	TBD	TBD
CY 2026	TBD	TBD	TBD	TBD

Notes: With the prospective payment systems, the claims data analyzed differ from the rulemaking cycle. For example, CY 2020 claims are used in CY 2022 rulemaking.

*The total permanent adjustment accounts for prior adjustments that were finalized and implemented through rulemaking.

**TABLE 19: SUMMARY OF ANTICIPATED TEMPORARY ADJUSTMENTS
CALCULATED FOR CYs 2020 – 2026**

Claims Analysis Year	Dollar Amount
CY 2020	-\$873,073,121
CY 2021	-\$1,211,002,953
CY 2022	-\$1,405,447,290
CY 2023 (as of proposed rule)	-\$965,883,723
CY 2024	TBD
CY 2025	TBD
CY 2026	TBD
Total	-\$4,455,407,087

Source: CY 2020 Home Health Claims Data, Periods that begin and end in CY 2020 accessed on the CCW July 12, 2021. CY 2021 Home Health Claims Data, Periods that end in CY 2021 accessed on the CCW July 15, 2022. CY 2022 Home Health Claims Data, Periods that end in CY 2022 accessed on CCW July 15, 2023. CY 2023 Home Health Claims Data, Periods that end in CY 2023 accessed on CCW March 19, 2024.

Note: The anticipated temporary adjustments of approximately \$4.5 billion would require temporary adjustment(s) to offset for such increases in estimated aggregate expenditures. The dollar amount would be converted to a factor when implemented in future rulemaking.

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In both the CY 2023 and 2024 final rules (87 FR 66790, 88 FR 77696), we acknowledged that the full permanent adjustment may be burdensome for some providers. In those final rules, we finalized only half of the permanent adjustment percentages (–3.925 percent in CY 2023 and –2.890 percent in CY 2024). However, in this proposed rule, we are proposing to apply the full

current remaining permanent adjustment of –4.067 percent in CY 2025, as this would satisfy the statutory requirements at section 1895(b)(3)(D) of the Act to offset any increases or decreases on the impact of differences between assumed behavior and actual behavior changes on estimated aggregate expenditures, reduce the need for any future large permanent adjustments, and help slow the accrual of the temporary

payment adjustment amount. In addition, we explained in the CY 2023 HH PPS final rule (87 FR 66808) and the CY 2024 HH PPS final rule (88 FR 77697) that when we applied a reduced permanent adjustment in CY 2023 and CY 2024, that we would need to continue to implement a reduction in future years to satisfy the statutory requirements. Therefore, we believe that CMS has been clear through notice and

comment rulemaking that the remainder of these permanent adjustments would be applied, thereby giving HHAs adequate notice to prepare for this year's proposed rate reduction. Accordingly, we are proposing to apply the full remaining permanent adjustment of –4.067 percent to the CY 2025 home health base payment rate, noting that we will update this percentage using more complete claims data in the final rule.

We stated in the CY 2023 HH PPS final rule (87 FR 66804), the CY 2024 HH PPS proposed rule (88 FR 43674) and in this proposed rule, that after we determine the total dollar amount to be reconciled, we will calculate a temporary adjustment factor to be applied to the base payment rate for the year in which it is implemented. That is, the temporary adjustment dollar amount (currently estimated at \$4.5 billion) will be converted to a factor to be applied to the payment rate in a time and manner determined appropriate. As we noted in the CY 2023 HH PPS proposed rule (87 FR 37682) and CY 2024 HH PPS proposed rule (88 FR 43678), we recognize that implementing both the permanent and temporary adjustments in the same year may adversely affect HHAs. Given that the magnitude of both the temporary and permanent adjustments together for CY 2025 rate setting may result in a significant reduction of the payment rate, we are not proposing to take the temporary adjustment in CY 2025. In future year rulemaking, we will propose a temporary adjustment factor to the national, standardized base payment rate in a time and manner determined appropriate. As noted previously, we will update these permanent and temporary adjustments in the final rule to reflect more complete claims data for CY 2023. We solicit comments on the proposal to apply a –4.067 percent permanent adjustment to the CY 2025 base payment rate.

D. Proposed CY 2025 Home Health Low Utilization Payment Adjustment (LUPA) Thresholds, Functional Impairment Levels, Comorbidity Sub-Groups, Case-Mix Weights, and Reassignment of Specific ICD–10–CM Codes Under the PDGM

1. Proposed CY 2025 PDGM LUPA Thresholds

Under the HH PPS, LUPAs are paid when a certain visit threshold for a payment group during a 30-day period of care is not met. In the CY 2019 HH PPS final rule with comment period (83 FR 56492), we finalized a policy setting the LUPA thresholds at the 10th percentile of visits or two visits,

whichever is higher, for each payment group. This means the LUPA threshold for each 30-day period of care varies depending on the PDGM payment group to which it is assigned. If the LUPA threshold for the payment group is met under the PDGM, the 30-day period of care will be paid the full 30-day period case-mix adjusted payment amount (subject to any partial payment adjustment or outlier adjustments). If a 30-day period of care does not meet the PDGM LUPA visit threshold, then payment will be made using the per-visit payment amounts as described in section II.C.4.f.2 of this proposed rule. For example, if the LUPA visit threshold is four, and a 30-day period of care has four or more visits, it is paid the full 30-day period payment amount; if the period of care has three or fewer visits, payment is made using the per-visit payment amounts.

In the CY 2019 HH PPS final rule with comment period (83 FR 56492), we finalized our policy that the LUPA thresholds for each PDGM payment group would be reevaluated every year based on the most current utilization data available at the time of rulemaking. However, as CY 2020 was the first year of the new case-mix adjustment methodology, we stated in the CY 2021 HH PPS final rule (85 FR 70305, 70306) that we would maintain the LUPA thresholds that were finalized and shown in table 17 of the CY 2020 HH PPS final rule with comment period (84 FR 60522) for CY 2021 payment purposes. We stated that at that time, we did not have sufficient CY 2020 data to reevaluate the LUPA thresholds for CY 2021.

In the CY 2022 HH PPS final rule with comment period (86 FR 62249), we finalized the proposal to recalibrate the PDGM case-mix weights, functional impairment levels, and comorbidity subgroups while maintaining the LUPA thresholds for CY 2022. We stated that because there are several factors that contribute to how the case-mix weight is set for a particular case-mix group (such as the number of visits, length of visits, types of disciplines providing visits, and non-routine supplies) and the case-mix weight is derived by comparing the average resource use for the case-mix group relative to the average resource use across all groups, we believe the COVID–19 PHE would have impacted utilization within all case-mix groups similarly. Therefore, the impact of any reduction in resource use caused by the PHE on the calculation of the case-mix weight would be minimized since the impact would be accounted for both in the numerator and denominator of the

formula used to calculate the case-mix weight. However, in contrast, the LUPA thresholds are based on the number of overall visits in a particular case-mix group (the threshold is the 10th percentile of visits or 2 visits, whichever is greater) instead of a relative value (like what is used to generate the case-mix weight) that would control for the impacts of the COVID–19 PHE. We noted that visit patterns and some of the decrease in overall visits in CY 2020 may not be representative of visit patterns in CY 2022. Therefore, to mitigate any potential future and significant short-term variability in the LUPA thresholds due to the COVID–19 PHE, we finalized the proposal to maintain the LUPA thresholds finalized and displayed in table 17 in the CY 2020 HH PPS final rule with comment period (84 FR 60522) for CY 2022 payment purposes.

For CY 2024, we proposed to update the LUPA thresholds using CY 2022 Medicare home health claims (as of March 17, 2023) linked to OASIS assessment data. We believed that CY 2022 data will be more indicative of visit patterns in CY 2024 rather than continuing to use the LUPA thresholds derived from the CY 2018 data pre-PDGM. Therefore, we finalized a policy to update the LUPA thresholds for CY 2024 using data from CY 2022.

For CY 2025, we are proposing to update the LUPA thresholds using CY 2023 home health claims utilization data (as of March 19, 2024), in accordance with our policy to annually recalibrate the case-mix weights and update the LUPA thresholds, functional impairment levels and comorbidity subgroups. After reviewing the CY 2023 home health claims utilization data, we determined that LUPA visit patterns in 2023 were similar to visits in 2021. The proposed LUPA thresholds for the CY 2025 PDGM payment groups with the corresponding Health Insurance Prospective Payment System (HIPPS) codes and the case-mix weights are listed in table 20. We solicit public comments on the proposed updates to the LUPA thresholds for CY 2025. The proposed LUPA thresholds will be updated based on more complete CY 2023 claims data in the final rule.

2. Proposed CY 2025 Functional Impairment Levels

Under the PDGM, the functional impairment level is determined by responses to certain OASIS items associated with activities of daily living and risk of hospitalization; that is, responses to OASIS items M1800–M1860 and M1033. A home health period of care receives points based on

each of the responses associated with these functional OASIS items, which are then converted into a table of points corresponding to increased resource use. The sum of all these points results in a functional impairment score which is used to group home health periods into a functional level with similar resource use. That is, the higher the points, the more the response is associated with increased resource use, or increased impairment. The three functional impairment levels of low, medium, and high were designed so that approximately one-third of home health periods from each clinical group falls within each level. This means home

health periods in the low impairment level have responses for the functional OASIS items that are associated with the lowest resource use, on average. Home health periods in the high impairment level have responses for the functional OASIS items that are associated with the highest resource use on average.

For CY 2025, we propose to use CY 2023 claims data to update the functional points and functional impairment levels by clinical group. The CY 2018 HH PPS proposed rule (82 FR 35320) and the technical report from December 2016, posted on the Home Health PPS Archive web page located at:

<https://www.cms.gov/medicare/home-health-pps/home-health-pps-archive>, provides a more detailed explanation as to the construction of these functional impairment levels using the OASIS items. We are proposing to use the same methodology previously finalized to update the functional impairment levels for CY 2025. The updated OASIS functional points table and the table of functional impairment levels by clinical group for CY 2025 are listed in tables 20 and 21, respectively. We solicit public comments on the updates to functional points and the functional impairment levels by clinical group.

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TABLE 20: PROPOSED OASIS POINTS TABLE FOR CY 2025

	Responses	Points (2023)	Percent of Periods in 2023 with this Response Category
M1800: Grooming	0 or 1	0	25.4%
	2 or 3	3	74.6%
M1810: Current Ability to Dress Upper Body	0 or 1	0	19.5%
	2 or 3	5	80.5%
M1820: Current Ability to Dress Lower Body	0 or 1	0	9.3%
	2	3	65.3%
	3	11	25.4%
M1830: Bathing	0 or 1	0	2.3%
	2	3	10.0%
	3 or 4	10	49.6%
	5 or 6	18	38.0%
M1840: Toilet Transferring	0 or 1	0	61.0%
	2, 3 or 4	5	39.0%
M1850: Transferring	0	0	1.2%
	1	1	18.8%
	2, 3, 4 or 5	4	80.0%
M1860: Ambulation/Locomotion	0 or 1	0	3.1%
	2	6	13.8%
	3	2	65.2%
	4, 5 or 6	18	17.8%
M1033: Risk of Hospitalization	Three or fewer items marked (Excluding responses 8, 9 or 10)	0	58.9%
	Four or more items marked (Excluding responses 8, 9 or 10)	12	41.1%

Source: CY 2023 Home Health Claims Data, Periods that end in CY 2023 accessed from the CCW on March 19, 2024.

Note: For item M1860, the point values for response 2 is worth more than the point values for response 3. There may be times in which the resource use for certain OASIS items associated with functional impairment will result in a seemingly inverse relationship to the response reported. However, this is the result of the direct association between the responses reported on the OASIS items and actual resource use.

TABLE 21: PROPOSED THRESHOLDS FOR FUNCTIONAL LEVELS BY CLINICAL GROUP, FOR CY 2025

Clinical Group	Level of Impairment	Points (2023)
MMTA – Other	Low	0-28
	Medium	29-43
	High	44+
Behavioral Health	Low	0-28
	Medium	29-44
	High	45+
Complex Nursing Interventions	Low	0-29
	Medium	30-52
	High	53+
Musculoskeletal Rehabilitation	Low	0-29
	Medium	30-43
	High	44+
Neuro Rehabilitation	Low	0-33
	Medium	34-49
	High	50+
Wound	Low	0-32
	Medium	33-48
	High	49+
MMTA - Surgical Aftercare	Low	0-27
	Medium	28-40
	High	41+
MMTA - Cardiac and Circulatory	Low	0-27
	Medium	28-40
	High	41+
MMTA – Endocrine	Low	0-27
	Medium	28-40
	High	41+
MMTA - Gastrointestinal tract and Genitourinary system	Low	0-32
	Medium	33-47
	High	48+
MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases	Low	0-31
	Medium	32-44
	High	45+
MMTA – Respiratory	Low	0-32
	Medium	33-44
	High	45+

Source: CY 2023 Home Health Claims Data, Periods that end in CY 2023 accessed from the CCW on March 19, 2024.

3. Proposed CY 2025 Comorbidity Subgroups

Thirty-day periods of care receive a comorbidity adjustment category based on the presence of certain secondary

diagnoses reported on home health claims. These diagnoses are based on a home-health specific list of clinically and statistically significant secondary diagnosis subgroups with similar resource use, meaning the diagnoses

have at least as high as the median resource use and are reported in more than 0.1 percent of 30-day periods of care. Home health 30-day periods of care can receive a comorbidity

adjustment under the following circumstances:

- *High comorbidity adjustment:*

There are two or more secondary diagnoses on the home health-specific comorbidity subgroup interaction list that are associated with higher resource use when both are reported together compared to when they are reported separately. That is, the two diagnoses may interact with one another, resulting in higher resource use.

- *Low comorbidity adjustment:* There is a reported secondary diagnosis on the home health-specific comorbidity subgroup list that is associated with higher resource use.

- *No comorbidity adjustment:* A 30-day period of care receives no comorbidity adjustment if no secondary

diagnoses exist or do not meet the criteria for a low or high comorbidity adjustment.

In the CY 2019 HH PPS final rule with comment period (83 FR 56406), we stated that we would continue to examine the relationship of reported comorbidities on resource utilization and make the appropriate payment refinements to help ensure that payment is in alignment with the actual costs of providing care. For CY 2025, we propose to use the same methodology used to establish the comorbidity subgroups to update the comorbidity subgroups using CY 2023 home health data with linked OASIS data (as of March 19, 2024).

For CY 2025, we propose to update the comorbidity subgroups to include 22

low comorbidity adjustment subgroups as identified in table 22 and 90 high comorbidity adjustment interaction subgroups as identified in table 23. The proposed CY 2025 low comorbidity adjustment subgroups and the high comorbidity adjustment interaction subgroups including those diagnoses within each of these comorbidity adjustments will also be posted on the HHA Center web page at <https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center>.

We invite comments on the proposed updates to the low comorbidity adjustment subgroups and the high comorbidity adjustment interactions for CY 2025.

TABLE 22: LOW COMORBIDITY ADJUSTMENT SUBGROUPS FOR CY 2025

Low Comorbidity Subgroup	Description
Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae
Circulatory 10	Varicose Veins and Lymphedema
Circulatory 2	Hemolytic, Aplastic, and Other Anemias
Circulatory 9	Other Venous Embolism and Thrombosis
Endocrine 3	Type 1, Type 2, and Other Specified Diabetes
Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease
Gastrointestinal 2	Intestinal Obstruction and Ileus
Heart 10	Dysrhythmias, includes Atrial Fibrillation and Atrial Flutter
Heart 11	Heart Failure
Neoplasms 1	Malignant Neoplasms of Lip, Oral Cavity and Pharynx, includes Head and Neck Cancers
Neoplasms 17	Secondary neoplasms of respiratory and GI systems.
Neoplasms 18	Secondary Neoplasms of Urinary and Reproductive Systems, Skin, Brain, and Bone
Neoplasms 2	Malignant Neoplasms of Digestive Organs, includes Gastrointestinal Cancers
Neoplasms 20	Non-Hodgkin's Lymphoma
Neurological 10	Diabetes with neuropathy
Neurological 11	Disease of the Macula and Blindness/Low Vision
Neurological 12	Nondiabetic neuropathy
Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
Skin 4	Stages Two-Four and unstageable pressure ulcers by site

Source: CY 2023 Home Health Claims Data, Periods that end in CY 2022 accessed on the CCW March 19, 2024.

TABLE 23: HIGH COMORBIDITY ADJUSTMENT INTERACTIONS FOR CY 2025

Comorbidity Subgroup Interaction	Comorbidity Group	Description	Comorbidity Group	Description
1	Behavioral 2	Mood Disorders, includes Depression and Bipolar Disorder	Circulatory 10	Varicose Veins and Lymphedema
2	Behavioral 2	Mood Disorders, includes Depression and Bipolar Disorder	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
3	Behavioral 2	Mood Disorders, includes Depression and Bipolar Disorder	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
4	Behavioral 2	Mood Disorders, includes Depression and Bipolar Disorder	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
5	Behavioral 4	Psychotic, major depressive, and dissociative disorders, includes unspecified dementia, eating disorder and intellectual disabilities	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
6	Behavioral 4	Psychotic, major depressive, and dissociative disorders, includes unspecified dementia, eating disorder and intellectual disabilities	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
7	Behavioral 5	Phobias, Other Anxiety and Obsessive Compulsive Disorders	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
8	Behavioral 5	Phobias, Other Anxiety and Obsessive Compulsive Disorders	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
9	Behavioral 5	Phobias, Other Anxiety and Obsessive Compulsive Disorders	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
10	Behavioral 5	Phobias, Other Anxiety and Obsessive Compulsive Disorders	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
11	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Circulatory 7	Atherosclerosis, includes Peripheral Vascular Disease, Aortic Aneurysms and Hypotension
12	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Circulatory 9	Other Venous Embolism and Thrombosis
13	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Endocrine 3	Type 1, Type 2, and Other Specified Diabetes
14	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Heart 10	Dysrhythmias, includes Atrial Fibrillation and Atrial Flutter

Comorbidity Subgroup Interaction	Comorbidity Group	Description	Comorbidity Group	Description
15	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Neurological 10	Diabetes with neuropathy
16	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Neurological 12	Nondiabetic neuropathy
17	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Respiratory 2	Whooping cough
18	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
19	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
20	Circulatory 1	Nutritional, Enzymatic, and Other Heredity Anemias	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
21	Circulatory 1	Nutritional, Enzymatic, and Other Heredity Anemias	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
22	Circulatory 1	Nutritional, Enzymatic, and Other Heredity Anemias	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
23	Circulatory 10	Varicose Veins and Lymphedema	Circulatory 4	Hypertensive Chronic Kidney Disease
24	Circulatory 10	Varicose Veins and Lymphedema	Endocrine 1	Hypothyroidism
25	Circulatory 10	Varicose Veins and Lymphedema	Endocrine 5	Obesity, and Disorders of Metabolism and Fluid Balance
26	Circulatory 10	Varicose Veins and Lymphedema	Heart 11	Heart Failure
27	Circulatory 10	Varicose Veins and Lymphedema	Heart 12	Other Heart Diseases
28	Circulatory 10	Varicose Veins and Lymphedema	Musculoskeletal 3	Joint Pain
29	Circulatory 10	Varicose Veins and Lymphedema	Renal 3	Other disorders of the kidney and ureter, excluding chronic kidney disease and ESRD
30	Circulatory 10	Varicose Veins and Lymphedema	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
31	Circulatory 10	Varicose Veins and Lymphedema	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
32	Circulatory 2	Hemolytic, Aplastic, and Other Anemias	Gastrointestinal 2	Intestinal Obstruction and Ileus

Comorbidity Subgroup Interaction	Comorbidity Group	Description	Comorbidity Group	Description
33	Circulatory 2	Hemolytic, Aplastic, and Other Anemias	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
34	Circulatory 4	Hypertensive Chronic Kidney Disease	Circulatory 9	Other Venous Embolism and Thrombosis
35	Circulatory 4	Hypertensive Chronic Kidney Disease	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
36	Circulatory 4	Hypertensive Chronic Kidney Disease	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
37	Circulatory 4	Hypertensive Chronic Kidney Disease	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
38	Circulatory 7	Atherosclerosis, includes Peripheral Vascular Disease, Aortic Aneurysms and Hypotension	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
39	Circulatory 7	Atherosclerosis, includes Peripheral Vascular Disease, Aortic Aneurysms and Hypotension	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
40	Circulatory 9	Other Venous Embolism and Thrombosis	Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease
41	Circulatory 9	Other Venous Embolism and Thrombosis	Renal 3	Other disorders of the kidney and ureter, excluding chronic kidney disease and ESRD
42	Endocrine 1	Hypothyroidism	Neoplasms 2	Malignant Neoplasms of Digestive Organs, includes Gastrointestinal Cancers
43	Endocrine 1	Hypothyroidism	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
44	Endocrine 1	Hypothyroidism	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
45	Endocrine 3	Type 1, Type 2, and Other Specified Diabetes	Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease
46	Endocrine 3	Type 1, Type 2, and Other Specified Diabetes	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
47	Endocrine 3	Type 1, Type 2, and Other Specified Diabetes	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers

Comorbidity Subgroup Interaction	Comorbidity Group	Description	Comorbidity Group	Description
48	Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
49	Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
50	Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
51	Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
52	Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
53	Endocrine 5	Obesity, and Disorders of Metabolism and Fluid Balance	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
54	Endocrine 5	Obesity, and Disorders of Metabolism and Fluid Balance	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
55	Endocrine 5	Obesity, and Disorders of Metabolism and Fluid Balance	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
56	Gastrointestinal 4	Alcoholic Liver Disease, Chronic Hepatitis, Fibrosis and Cirrhosis of the Liver	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
57	Heart 10	Dysrhythmias, includes Atrial Fibrillation and Atrial Flutter	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
58	Heart 10	Dysrhythmias, includes Atrial Fibrillation and Atrial Flutter	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
59	Heart 10	Dysrhythmias, includes Atrial Fibrillation and Atrial Flutter	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
60	Heart 11	Heart Failure	Neoplasms 18	Secondary Neoplasms of Urinary and Reproductive Systems, Skin, Brain, and Bone
61	Heart 11	Heart Failure	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
62	Heart 11	Heart Failure	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia

Comorbidity Subgroup Interaction	Comorbidity Group	Description	Comorbidity Group	Description
63	Heart 11	Heart Failure	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
64	Heart 11	Heart Failure	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
65	Heart 12	Other Heart Diseases	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
66	Heart 12	Other Heart Diseases	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
67	Heart 8	Other Pulmonary Heart Diseases	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
68	Heart 9	Valve Disorders	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
69	Infectious 1	C-diff, MRSA, E-coli	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
70	Infectious 1	C-diff, MRSA, E-coli	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
71	Infectious 1	C-diff, MRSA, E-coli	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
72	Musculoskeletal 3	Joint Pain	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
73	Musculoskeletal 3	Joint Pain	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
74	Musculoskeletal 3	Joint Pain	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
75	Musculoskeletal 4	Lumbar Spinal Stenosis	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
76	Neurological 10	Diabetes with neuropathy	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
77	Neurological 10	Diabetes with neuropathy	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
78	Neurological 10	Diabetes with neuropathy	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers

Comorbidity Subgroup Interaction	Comorbidity Group	Description	Comorbidity Group	Description
79	Neurological 10	Diabetes with neuropathy	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
80	Neurological 12	Nondiabetic neuropathy	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
81	Neurological 12	Nondiabetic neuropathy	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
82	Neurological 4	Alzheimer's disease and related dementias	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
83	Neurological 5	Spinal Muscular Atrophy, Systemic Atrophy, and Motor Neuron Disease	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
84	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia	Neurological 8	Epilepsy
85	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia	Renal 3	Other disorders of the kidney and ureter, excluding chronic kidney disease and ESRD
86	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia	Respiratory 5	Chronic Obstructive Pulmonary Disease, and Asthma, and Bronchiectasis
87	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
88	Renal 1	Chronic kidney disease and ESRD	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
89	Renal 1	Chronic kidney disease and ESRD	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
90	Renal 1	Chronic kidney disease and ESRD	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
90	Renal 3	Other disorders of the kidney and ureter, excluding chronic kidney disease and ESRD	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
90	Renal 3	Other disorders of the kidney and ureter, excluding chronic kidney disease and ESRD	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
90	Renal 3	Other disorders of the kidney and ureter, excluding chronic kidney disease and ESRD	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
90	Respiratory 5	Chronic Obstructive Pulmonary Disease, and Asthma, and Bronchiectasis	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
90	Respiratory 9	Respiratory Failure and Atelectasis	Skin 4	Stages Two-Four and unstageable pressure ulcers by site

Comorbidity Subgroup Interaction	Comorbidity Group	Description	Comorbidity Group	Description
90	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
90	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers	Skin 4	Stages Two-Four and unstageable pressure ulcers by site

Source: CY 2023 Home Health Claims Data, Periods that end in CY 2023 accessed from the CCW March 19, 2024.

4. Proposed CY 2025 PDGM Case-Mix Weights

As finalized in the CY 2019 HH PPS final rule with comment period (83 FR 56502), the PDGM places patients into meaningful payment categories based on patient and other characteristics, such as timing, admission source, clinical grouping using the reported principal diagnosis, functional impairment level, and comorbid conditions. The PDGM case-mix methodology results in 432 unique case-mix groups called home health resource groups (HHRGs). We also finalized a policy in the CY 2019 HH PPS final rule with comment period (83 FR 56515) to annually recalibrate the PDGM case-mix weights using a fixed effects model with the most recent and complete utilization data available at the time of annual rulemaking. Annual recalibration of the PDGM case-mix weights ensures that the case-mix weights reflect, as accurately as possible, current home health resource use and changes in utilization patterns. To generate the proposed recalibrated CY 2025 case-mix weights, we used CY 2023 home health claims data with linked OASIS data (as of March 19, 2024). These data are the most current and complete data available at this time. We believe that recalibrating the case-mix weights using data from CY 2023 would be reflective of PDGM utilization and patient resource use for CY 2025. The proposed recalibrated case-mix weights will be updated based on more complete CY 2023 claims data in the final rule.

The claims data provide visit-level data and data on whether non-routine supplies (NRS) were provided during the period and the total charges of NRS. We determine the case-mix weight for each of the 432 different PDGM payment groups by regressing resource use on a series of indicator variables for each of the categories using a fixed effects model as described in the following steps:

Step 1: Estimate a regression model to assign a functional impairment level to each 30-day period. The regression model estimates the relationship between a 30-day period's resource use and the functional status and risk of hospitalization items included in the PDGM, which are obtained from certain

OASIS items. We refer readers to table 18 for further information on the OASIS items used for the functional impairment level under the PDGM. We measure resource use with the cost-per-minute + NRS approach that uses information from 2022 home health cost reports. We use 2022 home health cost report data because it is the most complete cost report data available at the time of rulemaking. Other variables in the regression model include the 30-day period's admission source, clinical group, and 30-day period timing. We also include home health agency level fixed effects in the regression model. After estimating the regression model using 30-day periods, we divide the coefficients that correspond to the functional status and risk of hospitalization items by 10 and round to the nearest whole number. Those rounded numbers are used to compute a functional score for each 30-day period by summing together the rounded numbers for the functional status and risk of hospitalization items that are applicable to each 30-day period. Next, each 30-day period is assigned to a functional impairment level (low, medium, or high) depending on the 30-day period's total functional score. Each clinical group has a separate set of functional thresholds used to assign 30-day periods into a low, medium or high functional impairment level. We set those thresholds so that we assign roughly a third of 30-day periods within each clinical group to each functional impairment level (low, medium, or high).

Step 2: A second regression model estimates the relationship between a 30-day period's resource use and indicator variables for the presence of any of the comorbidities and comorbidity interactions that were originally examined for inclusion in the PDGM. Like the first regression model, this model also includes home health agency level fixed effects and includes control variables for each 30-day period's admission source, clinical group, timing, and functional impairment level. After we estimate the model, we assign comorbidities to the low comorbidity adjustment if any comorbidities have a coefficient that is statistically significant (p-value of 0.05

or less) and which have a coefficient that is larger than the 50th percentile of positive and statistically significant comorbidity coefficients. If two comorbidities in the model and their interaction term have coefficients that sum together to exceed \$150 and the interaction term is statistically significant (p-value of 0.05 or less), we assign the two comorbidities together to the high comorbidity adjustment.

Step 3: After Step 2, each 30-day period is assigned to a clinical group, admission source category, episode timing category, functional impairment level, and comorbidity adjustment category. For each combination of those variables (which represent the 432 different payment groups that comprise the PDGM), we then calculate the 10th percentile of visits across all 30-day periods within a particular payment group. If a 30-day period's number of visits is less than the 10th percentile for their payment group, the 30-day period is classified as a Low Utilization Payment Adjustment (LUPA). If a payment group has a 10th percentile of visits that is less than two, we set the LUPA threshold for that payment group to be equal to two. That means if a 30-day period has one visit, it is classified as a LUPA and if it has two or more visits, it is not classified as a LUPA.

Step 4: Take all non-LUPA 30-day periods and regress resource use on the 30-day period's clinical group, admission source category, episode timing category, functional impairment level, and comorbidity adjustment category. The regression includes fixed effects at the level of the home health agency. After we estimate the model, the model coefficients are used to predict each 30-day period's resource use. To create the case-mix weight for each 30-day period, the predicted resource use is divided by the overall resource use of the 30-day periods used to estimate the regression.

The case-mix weight is then used to adjust the base payment rate to determine each 30-day period's payment. Table 24 shows the coefficients of the payment regression used to generate the weights, and the coefficients divided by average resource use.

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TABLE 24: COEFFICIENT OF PAYMENT REGRESSION AND COEFFICIENT DIVIDED BY AVERAGE RESOURCE USE

Variable	Coefficient	Percentage of 30-Day Periods for this Model	Coefficient Divided by Average Resource Use
Clinical Group and Functional Impairment Level (MMTA - Other - Low is excluded)			
MMTA - Other - Medium Functional	\$147.20	1.2%	0.0900
MMTA - Other - High Functional	\$309.24	1.3%	0.1890
MMTA - Surgical Aftercare - Low Functional	-\$43.89	1.2%	-0.0268
MMTA - Surgical Aftercare - Medium Functional	\$148.94	1.2%	0.0910
MMTA - Surgical Aftercare - High Functional	\$361.87	1.1%	0.2212
MMTA - Cardiac and Circulatory - Low Functional	-\$13.84	6.1%	-0.0085
MMTA - Cardiac and Circulatory - Medium Functional	\$128.54	5.9%	0.0786
MMTA - Cardiac and Circulatory - High Functional	\$318.95	6.1%	0.1950
MMTA - Endocrine - Low Functional	\$438.50	2.6%	0.2680
MMTA - Endocrine - Medium Functional	\$559.02	2.3%	0.3417
MMTA - Endocrine - High Functional	\$665.69	2.2%	0.4069
MMTA - Gastrointestinal tract and Genitourinary system - Low Functional	-\$42.67	1.7%	-0.0261
MMTA - Gastrointestinal tract and Genitourinary system - Medium Functional	\$152.74	1.6%	0.0934
MMTA - Gastrointestinal tract and Genitourinary system - High Functional	\$299.33	1.7%	0.1830
MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases - Low Functional	-\$20.70	1.6%	-0.0127
MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases - Medium Functional	\$142.78	1.6%	0.0873
MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases - High Functional	\$357.80	1.5%	0.2187
MMTA - Respiratory - Low Functional	-\$0.70	2.8%	-0.0004
MMTA - Respiratory - Medium Functional	\$160.36	2.2%	0.0980
MMTA - Respiratory - High Functional	\$331.15	2.4%	0.2024
Behavioral Health - Low Functional	-\$75.29	0.8%	-0.0460
Behavioral Health - Medium Functional	\$118.73	0.8%	0.0726
Behavioral Health - High Functional	\$282.70	0.7%	0.1728
Complex - Low Functional	-\$77.00	0.9%	-0.0471
Complex - Medium Functional	\$133.21	0.9%	0.0814
Complex - High Functional	\$110.59	0.9%	0.0676
MS Rehab - Low Functional	\$62.94	7.3%	0.0385
MS Rehab - Medium Functional	\$192.17	7.2%	0.1175
MS Rehab - High Functional	\$421.31	7.1%	0.2575
Neuro - Low Functional	\$199.52	3.2%	0.1220
Neuro - Medium Functional	\$384.96	3.1%	0.2353
Neuro - High Functional	\$612.70	3.2%	0.3745
Wound - Low Functional	\$599.73	5.3%	0.3666
Wound - Medium Functional	\$759.02	4.1%	0.4639
Wound - High Functional	\$946.38	4.8%	0.5785

Variable	Coefficient	Percentage of 30-Day Periods for this Model	Coefficient Divided by Average Resource Use
Admission Source with Timing (Community Early is excluded)			
Community - Late	-\$571.81	63.5%	-0.3495
Institutional - Early	\$343.60	19.1%	0.2100
Institutional - Late	\$214.04	6.0%	0.1308
Comorbidity Adjustment (No Comorbidity Adjustment - is excluded)			
Comorbidity Adjustment - Has at least one comorbidity from comorbidity list, no interaction from interaction list	\$100.30		
Comorbidity Adjustment - Has at least one interaction from interaction list	\$344.21		
Constant	\$1,505.94		
Average Resource Use	\$1,636.01		
Number of 30-day Periods	7,365,273		
Adjusted R-Squared	0.3156		

Source: CY 2023 Home Health Claims Data, Periods that end in CY 2023 accessed on the CCW March 19, 2024.

The case-mix weights proposed for CY 2025 are listed in table 25 and will also be posted on the HHA Center web

page⁸ upon display of this proposed rule.

⁸ HHA Center web page: <https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center>.

TABLE 25: CASE-MIX WEIGHTS AND LUPA THRESHOLDS FOR EACH HHRG PAYMENT GROUP

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Recalibrated Weight for 2025	LUPA Visit Threshold (LUPAs have fewer visits than the threshold)
1FC11	Behavioral Health - High	Early - Community	0	1.0933	4
1FC21	Behavioral Health - High	Early - Community	1	1.1546	4
1FC31	Behavioral Health - High	Early - Community	2	1.3037	4
2FC11	Behavioral Health - High	Early - Institutional	0	1.3033	3
2FC21	Behavioral Health - High	Early - Institutional	1	1.3646	4
2FC31	Behavioral Health - High	Early - Institutional	2	1.5137	4
3FC11	Behavioral Health - High	Late - Community	0	0.7438	2
3FC21	Behavioral Health - High	Late - Community	1	0.8051	2
3FC31	Behavioral Health - High	Late - Community	2	0.9542	2
4FC11	Behavioral Health - High	Late - Institutional	0	1.2241	3
4FC21	Behavioral Health - High	Late - Institutional	1	1.2854	3
4FC31	Behavioral Health - High	Late - Institutional	2	1.4345	4
1FA11	Behavioral Health - Low	Early - Community	0	0.8745	3
1FA21	Behavioral Health - Low	Early - Community	1	0.9358	3
1FA31	Behavioral Health - Low	Early - Community	2	1.0849	3
2FA11	Behavioral Health - Low	Early - Institutional	0	1.0845	3
2FA21	Behavioral Health - Low	Early - Institutional	1	1.1458	3
2FA31	Behavioral Health - Low	Early - Institutional	2	1.2949	3
3FA11	Behavioral Health - Low	Late - Community	0	0.5250	2
3FA21	Behavioral Health - Low	Late - Community	1	0.5863	2
3FA31	Behavioral Health - Low	Late - Community	2	0.7354	2
4FA11	Behavioral Health - Low	Late - Institutional	0	1.0053	2
4FA21	Behavioral Health - Low	Late - Institutional	1	1.0666	3
4FA31	Behavioral Health - Low	Late - Institutional	2	1.2157	2
1FB11	Behavioral Health - Medium	Early - Community	0	0.9931	4
1FB21	Behavioral Health - Medium	Early - Community	1	1.0544	4
1FB31	Behavioral Health - Medium	Early - Community	2	1.2035	4
2FB11	Behavioral Health - Medium	Early - Institutional	0	1.2031	3
2FB21	Behavioral Health - Medium	Early - Institutional	1	1.2644	4
2FB31	Behavioral Health - Medium	Early - Institutional	2	1.4135	4
3FB11	Behavioral Health - Medium	Late - Community	0	0.6435	2
3FB21	Behavioral Health - Medium	Late - Community	1	0.7049	2
3FB31	Behavioral Health - Medium	Late - Community	2	0.8539	2
4FB11	Behavioral Health - Medium	Late - Institutional	0	1.1239	3
4FB21	Behavioral Health - Medium	Late - Institutional	1	1.1852	3
4FB31	Behavioral Health - Medium	Late - Institutional	2	1.3343	3
1DC11	Complex - High	Early - Community	0	0.9881	2
1DC21	Complex - High	Early - Community	1	1.0494	2
1DC31	Complex - High	Early - Community	2	1.1985	2
2DC11	Complex - High	Early - Institutional	0	1.1981	3
2DC21	Complex - High	Early - Institutional	1	1.2594	3
2DC31	Complex - High	Early - Institutional	2	1.4085	3
3DC11	Complex - High	Late - Community	0	0.6386	2
3DC21	Complex - High	Late - Community	1	0.6999	2
3DC31	Complex - High	Late - Community	2	0.8490	2

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Recalibrated Weight for 2025	LUPA Visit Threshold (LUPAs have fewer visits than the threshold)
4DC11	Complex - High	Late - Institutional	0	1.1189	2
4DC21	Complex - High	Late - Institutional	1	1.1802	2
4DC31	Complex - High	Late - Institutional	2	1.3293	2
1DA11	Complex - Low	Early - Community	0	0.8734	2
1DA21	Complex - Low	Early - Community	1	0.9347	2
1DA31	Complex - Low	Early - Community	2	1.0838	2
2DA11	Complex - Low	Early - Institutional	0	1.0834	3
2DA21	Complex - Low	Early - Institutional	1	1.1448	3
2DA31	Complex - Low	Early - Institutional	2	1.2938	4
3DA11	Complex - Low	Late - Community	0	0.5239	2
3DA21	Complex - Low	Late - Community	1	0.5852	2
3DA31	Complex - Low	Late - Community	2	0.7343	2
4DA11	Complex - Low	Late - Institutional	0	1.0043	2
4DA21	Complex - Low	Late - Institutional	1	1.0656	2
4DA31	Complex - Low	Late - Institutional	2	1.2146	3
1DB11	Complex - Medium	Early - Community	0	1.0019	2
1DB21	Complex - Medium	Early - Community	1	1.0632	2
1DB31	Complex - Medium	Early - Community	2	1.2123	2
2DB11	Complex - Medium	Early - Institutional	0	1.2119	3
2DB21	Complex - Medium	Early - Institutional	1	1.2733	3
2DB31	Complex - Medium	Early - Institutional	2	1.4223	4
3DB11	Complex - Medium	Late - Community	0	0.6524	2
3DB21	Complex - Medium	Late - Community	1	0.7137	2
3DB31	Complex - Medium	Late - Community	2	0.8628	2
4DB11	Complex - Medium	Late - Institutional	0	1.1327	3
4DB21	Complex - Medium	Late - Institutional	1	1.1941	3
4DB31	Complex - Medium	Late - Institutional	2	1.3431	3
1HC11	MMTA - Cardiac - High	Early - Community	0	1.1154	4
1HC21	MMTA - Cardiac - High	Early - Community	1	1.1768	4
1HC31	MMTA - Cardiac - High	Early - Community	2	1.3258	4
2HC11	MMTA - Cardiac - High	Early - Institutional	0	1.3255	4
2HC21	MMTA - Cardiac - High	Early - Institutional	1	1.3868	4
2HC31	MMTA - Cardiac - High	Early - Institutional	2	1.5359	4
3HC11	MMTA - Cardiac - High	Late - Community	0	0.7659	2
3HC21	MMTA - Cardiac - High	Late - Community	1	0.8272	2
3HC31	MMTA - Cardiac - High	Late - Community	2	0.9763	3
4HC11	MMTA - Cardiac - High	Late - Institutional	0	1.2463	3
4HC21	MMTA - Cardiac - High	Late - Institutional	1	1.3076	3
4HC31	MMTA - Cardiac - High	Late - Institutional	2	1.4567	4
1HA11	MMTA - Cardiac - Low	Early - Community	0	0.9120	4
1HA21	MMTA - Cardiac - Low	Early - Community	1	0.9733	4
1HA31	MMTA - Cardiac - Low	Early - Community	2	1.1224	3
2HA11	MMTA - Cardiac - Low	Early - Institutional	0	1.1221	3
2HA21	MMTA - Cardiac - Low	Early - Institutional	1	1.1834	4
2HA31	MMTA - Cardiac - Low	Early - Institutional	2	1.3325	4
3HA11	MMTA - Cardiac - Low	Late - Community	0	0.5625	2
3HA21	MMTA - Cardiac - Low	Late - Community	1	0.6238	2
3HA31	MMTA - Cardiac - Low	Late - Community	2	0.7729	2

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Recalibrated Weight for 2025	LUPA Visit Threshold (LUPAs have fewer visits than the threshold)
4HA11	MMTA - Cardiac - Low	Late - Institutional	0	1.0429	3
4HA21	MMTA - Cardiac - Low	Late - Institutional	1	1.1042	3
4HA31	MMTA - Cardiac - Low	Late - Institutional	2	1.2533	3
1HB11	MMTA - Cardiac - Medium	Early - Community	0	0.9991	4
1HB21	MMTA - Cardiac - Medium	Early - Community	1	1.0604	4
1HB31	MMTA - Cardiac - Medium	Early - Community	2	1.2095	4
2HB11	MMTA - Cardiac - Medium	Early - Institutional	0	1.2091	4
2HB21	MMTA - Cardiac - Medium	Early - Institutional	1	1.2704	4
2HB31	MMTA - Cardiac - Medium	Early - Institutional	2	1.4195	4
3HB11	MMTA - Cardiac - Medium	Late - Community	0	0.6495	2
3HB21	MMTA - Cardiac - Medium	Late - Community	1	0.7109	2
3HB31	MMTA - Cardiac - Medium	Late - Community	2	0.8599	2
4HB11	MMTA - Cardiac - Medium	Late - Institutional	0	1.1299	4
4HB21	MMTA - Cardiac - Medium	Late - Institutional	1	1.1912	3
4HB31	MMTA - Cardiac - Medium	Late - Institutional	2	1.3403	3
11C11	MMTA - Endocrine - High	Early - Community	0	1.3274	4
11C21	MMTA - Endocrine - High	Early - Community	1	1.3887	4
11C31	MMTA - Endocrine - High	Early - Community	2	1.5378	4
21C11	MMTA - Endocrine - High	Early - Institutional	0	1.5374	4
21C21	MMTA - Endocrine - High	Early - Institutional	1	1.5987	4
21C31	MMTA - Endocrine - High	Early - Institutional	2	1.7478	4
31C11	MMTA - Endocrine - High	Late - Community	0	0.9779	3
31C21	MMTA - Endocrine - High	Late - Community	1	1.0392	3
31C31	MMTA - Endocrine - High	Late - Community	2	1.1883	3
41C11	MMTA - Endocrine - High	Late - Institutional	0	1.4582	4
41C21	MMTA - Endocrine - High	Late - Institutional	1	1.5195	4
41C31	MMTA - Endocrine - High	Late - Institutional	2	1.6686	4
11A11	MMTA - Endocrine - Low	Early - Community	0	1.1885	4
11A21	MMTA - Endocrine - Low	Early - Community	1	1.2498	4
11A31	MMTA - Endocrine - Low	Early - Community	2	1.3989	4
21A11	MMTA - Endocrine - Low	Early - Institutional	0	1.3985	3
21A21	MMTA - Endocrine - Low	Early - Institutional	1	1.4599	4
21A31	MMTA - Endocrine - Low	Early - Institutional	2	1.6089	4
31A11	MMTA - Endocrine - Low	Late - Community	0	0.8390	3
31A21	MMTA - Endocrine - Low	Late - Community	1	0.9003	3
31A31	MMTA - Endocrine - Low	Late - Community	2	1.0494	3
41A11	MMTA - Endocrine - Low	Late - Institutional	0	1.3194	4
41A21	MMTA - Endocrine - Low	Late - Institutional	1	1.3807	3
41A31	MMTA - Endocrine - Low	Late - Institutional	2	1.5297	4
11B11	MMTA - Endocrine - Medium	Early - Community	0	1.2622	5
11B21	MMTA - Endocrine - Medium	Early - Community	1	1.3235	4
11B31	MMTA - Endocrine - Medium	Early - Community	2	1.4726	4
21B11	MMTA - Endocrine - Medium	Early - Institutional	0	1.4722	4
21B21	MMTA - Endocrine - Medium	Early - Institutional	1	1.5335	4
21B31	MMTA - Endocrine - Medium	Early - Institutional	2	1.6826	4
31B11	MMTA - Endocrine - Medium	Late - Community	0	0.9127	3
31B21	MMTA - Endocrine - Medium	Late - Community	1	0.9740	3
31B31	MMTA - Endocrine - Medium	Late - Community	2	1.1231	3

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Recalibrated Weight for 2025	LUPA Visit Threshold (LUPAs have fewer visits than the threshold)
4IB11	MMTA - Endocrine - Medium	Late - Institutional	0	1.3930	4
4IB21	MMTA - Endocrine - Medium	Late - Institutional	1	1.4543	4
4IB31	MMTA - Endocrine - Medium	Late - Institutional	2	1.6034	4
1JC11	MMTA - GI/GU - High	Early - Community	0	1.1035	3
1JC21	MMTA - GI/GU - High	Early - Community	1	1.1648	3
1JC31	MMTA - GI/GU - High	Early - Community	2	1.3139	2
2JC11	MMTA - GI/GU - High	Early - Institutional	0	1.3135	4
2JC21	MMTA - GI/GU - High	Early - Institutional	1	1.3748	3
2JC31	MMTA - GI/GU - High	Early - Institutional	2	1.5239	3
3JC11	MMTA - GI/GU - High	Late - Community	0	0.7539	2
3JC21	MMTA - GI/GU - High	Late - Community	1	0.8153	2
3JC31	MMTA - GI/GU - High	Late - Community	2	0.9643	2
4JC11	MMTA - GI/GU - High	Late - Institutional	0	1.2343	3
4JC21	MMTA - GI/GU - High	Late - Institutional	1	1.2956	3
4JC31	MMTA - GI/GU - High	Late - Institutional	2	1.4447	3
1JA11	MMTA - GI/GU - Low	Early - Community	0	0.8944	2
1JA21	MMTA - GI/GU - Low	Early - Community	1	0.9557	2
1JA31	MMTA - GI/GU - Low	Early - Community	2	1.1048	2
2JA11	MMTA - GI/GU - Low	Early - Institutional	0	1.1044	3
2JA21	MMTA - GI/GU - Low	Early - Institutional	1	1.1657	3
2JA31	MMTA - GI/GU - Low	Early - Institutional	2	1.3148	3
3JA11	MMTA - GI/GU - Low	Late - Community	0	0.5449	2
3JA21	MMTA - GI/GU - Low	Late - Community	1	0.6062	2
3JA31	MMTA - GI/GU - Low	Late - Community	2	0.7553	2
4JA11	MMTA - GI/GU - Low	Late - Institutional	0	1.0252	3
4JA21	MMTA - GI/GU - Low	Late - Institutional	1	1.0865	3
4JA31	MMTA - GI/GU - Low	Late - Institutional	2	1.2356	3
1JB11	MMTA - GI/GU - Medium	Early - Community	0	1.0139	3
1JB21	MMTA - GI/GU - Medium	Early - Community	1	1.0752	3
1JB31	MMTA - GI/GU - Medium	Early - Community	2	1.2242	2
2JB11	MMTA - GI/GU - Medium	Early - Institutional	0	1.2239	3
2JB21	MMTA - GI/GU - Medium	Early - Institutional	1	1.2852	4
2JB31	MMTA - GI/GU - Medium	Early - Institutional	2	1.4343	4
3JB11	MMTA - GI/GU - Medium	Late - Community	0	0.6643	2
3JB21	MMTA - GI/GU - Medium	Late - Community	1	0.7257	2
3JB31	MMTA - GI/GU - Medium	Late - Community	2	0.8747	2
4JB11	MMTA - GI/GU - Medium	Late - Institutional	0	1.1447	3
4JB21	MMTA - GI/GU - Medium	Late - Institutional	1	1.2060	3
4JB31	MMTA - GI/GU - Medium	Late - Institutional	2	1.3551	3
1KC11	MMTA - Infectious - High	Early - Community	0	1.1392	2
1KC21	MMTA - Infectious - High	Early - Community	1	1.2005	2
1KC31	MMTA - Infectious - High	Early - Community	2	1.3496	2
2KC11	MMTA - Infectious - High	Early - Institutional	0	1.3492	3
2KC21	MMTA - Infectious - High	Early - Institutional	1	1.4105	3
2KC31	MMTA - Infectious - High	Early - Institutional	2	1.5596	3
3KC11	MMTA - Infectious - High	Late - Community	0	0.7897	2
3KC21	MMTA - Infectious - High	Late - Community	1	0.8510	2
3KC31	MMTA - Infectious - High	Late - Community	2	1.0001	2

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Recalibrated Weight for 2025	LUPA Visit Threshold (LUPAs have fewer visits than the threshold)
4KC11	MMTA - Infectious - High	Late - Institutional	0	1.2700	3
4KC21	MMTA - Infectious - High	Late - Institutional	1	1.3313	3
4KC31	MMTA - Infectious - High	Late - Institutional	2	1.4804	3
1KA11	MMTA - Infectious - Low	Early - Community	0	0.9078	2
1KA21	MMTA - Infectious - Low	Early - Community	1	0.9692	2
1KA31	MMTA - Infectious - Low	Early - Community	2	1.1182	2
2KA11	MMTA - Infectious - Low	Early - Institutional	0	1.1179	3
2KA21	MMTA - Infectious - Low	Early - Institutional	1	1.1792	3
2KA31	MMTA - Infectious - Low	Early - Institutional	2	1.3283	3
3KA11	MMTA - Infectious - Low	Late - Community	0	0.5583	2
3KA21	MMTA - Infectious - Low	Late - Community	1	0.6196	2
3KA31	MMTA - Infectious - Low	Late - Community	2	0.7687	2
4KA11	MMTA - Infectious - Low	Late - Institutional	0	1.0387	3
4KA21	MMTA - Infectious - Low	Late - Institutional	1	1.1000	3
4KA31	MMTA - Infectious - Low	Late - Institutional	2	1.2491	3
1KB11	MMTA - Infectious - Medium	Early - Community	0	1.0078	3
1KB21	MMTA - Infectious - Medium	Early - Community	1	1.0691	2
1KB31	MMTA - Infectious - Medium	Early - Community	2	1.2182	2
2KB11	MMTA - Infectious - Medium	Early - Institutional	0	1.2178	3
2KB21	MMTA - Infectious - Medium	Early - Institutional	1	1.2791	3
2KB31	MMTA - Infectious - Medium	Early - Institutional	2	1.4282	3
3KB11	MMTA - Infectious - Medium	Late - Community	0	0.6583	2
3KB21	MMTA - Infectious - Medium	Late - Community	1	0.7196	2
3KB31	MMTA - Infectious - Medium	Late - Community	2	0.8686	2
4KB11	MMTA - Infectious - Medium	Late - Institutional	0	1.1386	3
4KB21	MMTA - Infectious - Medium	Late - Institutional	1	1.1999	3
4KB31	MMTA - Infectious - Medium	Late - Institutional	2	1.3490	3
1AC11	MMTA - Other - High	Early - Community	0	1.1095	4
1AC21	MMTA - Other - High	Early - Community	1	1.1708	4
1AC31	MMTA - Other - High	Early - Community	2	1.3199	3
2AC11	MMTA - Other - High	Early - Institutional	0	1.3195	4
2AC21	MMTA - Other - High	Early - Institutional	1	1.3808	4
2AC31	MMTA - Other - High	Early - Institutional	2	1.5299	4
3AC11	MMTA - Other - High	Late - Community	0	0.7600	2
3AC21	MMTA - Other - High	Late - Community	1	0.8213	2
3AC31	MMTA - Other - High	Late - Community	2	0.9704	2
4AC11	MMTA - Other - High	Late - Institutional	0	1.2403	3
4AC21	MMTA - Other - High	Late - Institutional	1	1.3017	3
4AC31	MMTA - Other - High	Late - Institutional	2	1.4507	3
1AA11	MMTA - Other - Low	Early - Community	0	0.9205	3
1AA21	MMTA - Other - Low	Early - Community	1	0.9818	3
1AA31	MMTA - Other - Low	Early - Community	2	1.1309	4
2AA11	MMTA - Other - Low	Early - Institutional	0	1.1305	3
2AA21	MMTA - Other - Low	Early - Institutional	1	1.1918	3
2AA31	MMTA - Other - Low	Early - Institutional	2	1.3409	3
3AA11	MMTA - Other - Low	Late - Community	0	0.5710	2
3AA21	MMTA - Other - Low	Late - Community	1	0.6323	2
3AA31	MMTA - Other - Low	Late - Community	2	0.7814	2

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4AA11	MMTA - Other - Low	Late - Institutional	0	1.0513	3
4AA21	MMTA - Other - Low	Late - Institutional	1	1.1126	3
4AA31	MMTA - Other - Low	Late - Institutional	2	1.2617	3
1AB11	MMTA - Other - Medium	Early - Community	0	1.0105	4
1AB21	MMTA - Other - Medium	Early - Community	1	1.0718	4
1AB31	MMTA - Other - Medium	Early - Community	2	1.2209	3
2AB11	MMTA - Other - Medium	Early - Institutional	0	1.2205	4
2AB21	MMTA - Other - Medium	Early - Institutional	1	1.2818	4
2AB31	MMTA - Other - Medium	Early - Institutional	2	1.4309	4
3AB11	MMTA - Other - Medium	Late - Community	0	0.6610	2
3AB21	MMTA - Other - Medium	Late - Community	1	0.7223	2
3AB31	MMTA - Other - Medium	Late - Community	2	0.8713	2
4AB11	MMTA - Other - Medium	Late - Institutional	0	1.1413	3
4AB21	MMTA - Other - Medium	Late - Institutional	1	1.2026	3
4AB31	MMTA - Other - Medium	Late - Institutional	2	1.3517	4
1LC11	MMTA - Respiratory - High	Early - Community	0	1.1229	4
1LC21	MMTA - Respiratory - High	Early - Community	1	1.1842	3
1LC31	MMTA - Respiratory - High	Early - Community	2	1.3333	3
2LC11	MMTA - Respiratory - High	Early - Institutional	0	1.3329	4
2LC21	MMTA - Respiratory - High	Early - Institutional	1	1.3942	4
2LC31	MMTA - Respiratory - High	Early - Institutional	2	1.5433	4
3LC11	MMTA - Respiratory - High	Late - Community	0	0.7734	2
3LC21	MMTA - Respiratory - High	Late - Community	1	0.8347	2
3LC31	MMTA - Respiratory - High	Late - Community	2	0.9838	2
4LC11	MMTA - Respiratory - High	Late - Institutional	0	1.2537	4
4LC21	MMTA - Respiratory - High	Late - Institutional	1	1.3150	3
4LC31	MMTA - Respiratory - High	Late - Institutional	2	1.4641	3
1LA11	MMTA - Respiratory - Low	Early - Community	0	0.9201	3
1LA21	MMTA - Respiratory - Low	Early - Community	1	0.9814	3
1LA31	MMTA - Respiratory - Low	Early - Community	2	1.1305	3
2LA11	MMTA - Respiratory - Low	Early - Institutional	0	1.1301	3
2LA21	MMTA - Respiratory - Low	Early - Institutional	1	1.1914	3
2LA31	MMTA - Respiratory - Low	Early - Institutional	2	1.3405	4
3LA11	MMTA - Respiratory - Low	Late - Community	0	0.5706	2
3LA21	MMTA - Respiratory - Low	Late - Community	1	0.6319	2
3LA31	MMTA - Respiratory - Low	Late - Community	2	0.7809	2
4LA11	MMTA - Respiratory - Low	Late - Institutional	0	1.0509	3
4LA21	MMTA - Respiratory - Low	Late - Institutional	1	1.1122	3
4LA31	MMTA - Respiratory - Low	Late - Institutional	2	1.2613	3
1LB11	MMTA - Respiratory - Medium	Early - Community	0	1.0185	4
1LB21	MMTA - Respiratory - Medium	Early - Community	1	1.0798	3
1LB31	MMTA - Respiratory - Medium	Early - Community	2	1.2289	3
2LB11	MMTA - Respiratory - Medium	Early - Institutional	0	1.2285	4
2LB21	MMTA - Respiratory - Medium	Early - Institutional	1	1.2898	4
2LB31	MMTA - Respiratory - Medium	Early - Institutional	2	1.4389	4
3LB11	MMTA - Respiratory - Medium	Late - Community	0	0.6690	2
3LB21	MMTA - Respiratory - Medium	Late - Community	1	0.7303	2
3LB31	MMTA - Respiratory - Medium	Late - Community	2	0.8794	2

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4LB11	MMTA - Respiratory - Medium	Late - Institutional	0	1.1493	3
4LB21	MMTA - Respiratory - Medium	Late - Institutional	1	1.2107	3
4LB31	MMTA - Respiratory - Medium	Late - Institutional	2	1.3597	3
1GC11	MMTA - Surgical Aftercare - High	Early - Community	0	1.1417	3
1GC21	MMTA - Surgical Aftercare - High	Early - Community	1	1.2030	3
1GC31	MMTA - Surgical Aftercare - High	Early - Community	2	1.3521	3
2GC11	MMTA - Surgical Aftercare - High	Early - Institutional	0	1.3517	4
2GC21	MMTA - Surgical Aftercare - High	Early - Institutional	1	1.4130	4
2GC31	MMTA - Surgical Aftercare - High	Early - Institutional	2	1.5621	4
3GC11	MMTA - Surgical Aftercare - High	Late - Community	0	0.7922	2
3GC21	MMTA - Surgical Aftercare - High	Late - Community	1	0.8535	2
3GC31	MMTA - Surgical Aftercare - High	Late - Community	2	1.0026	2
4GC11	MMTA - Surgical Aftercare - High	Late - Institutional	0	1.2725	3
4GC21	MMTA - Surgical Aftercare - High	Late - Institutional	1	1.3338	4
4GC31	MMTA - Surgical Aftercare - High	Late - Institutional	2	1.4829	4
1GA11	MMTA - Surgical Aftercare - Low	Early - Community	0	0.8937	2
1GA21	MMTA - Surgical Aftercare - Low	Early - Community	1	0.9550	2
1GA31	MMTA - Surgical Aftercare - Low	Early - Community	2	1.1041	2
2GA11	MMTA - Surgical Aftercare - Low	Early - Institutional	0	1.1037	3
2GA21	MMTA - Surgical Aftercare - Low	Early - Institutional	1	1.1650	3
2GA31	MMTA - Surgical Aftercare - Low	Early - Institutional	2	1.3141	3
3GA11	MMTA - Surgical Aftercare - Low	Late - Community	0	0.5442	2
3GA21	MMTA - Surgical Aftercare - Low	Late - Community	1	0.6055	2
3GA31	MMTA - Surgical Aftercare - Low	Late - Community	2	0.7545	2
4GA11	MMTA - Surgical Aftercare - Low	Late - Institutional	0	1.0245	2
4GA21	MMTA - Surgical Aftercare - Low	Late - Institutional	1	1.0858	3
4GA31	MMTA - Surgical Aftercare - Low	Late - Institutional	2	1.2349	3
1GB11	MMTA - Surgical Aftercare - Medium	Early - Community	0	1.0115	3
1GB21	MMTA - Surgical Aftercare - Medium	Early - Community	1	1.0728	3
1GB31	MMTA - Surgical Aftercare - Medium	Early - Community	2	1.2219	3
2GB11	MMTA - Surgical Aftercare - Medium	Early - Institutional	0	1.2216	3
2GB21	MMTA - Surgical Aftercare - Medium	Early - Institutional	1	1.2829	4
2GB31	MMTA - Surgical Aftercare - Medium	Early - Institutional	2	1.4319	4
3GB11	MMTA - Surgical Aftercare - Medium	Late - Community	0	0.6620	2
3GB21	MMTA - Surgical Aftercare - Medium	Late - Community	1	0.7233	2
3GB31	MMTA - Surgical Aftercare - Medium	Late - Community	2	0.8724	2
4GB11	MMTA - Surgical Aftercare - Medium	Late - Institutional	0	1.1424	3
4GB21	MMTA - Surgical Aftercare - Medium	Late - Institutional	1	1.2037	3
4GB31	MMTA - Surgical Aftercare - Medium	Late - Institutional	2	1.3528	4
1EC11	MS Rehab - High	Early - Community	0	1.1780	4
1EC21	MS Rehab - High	Early - Community	1	1.2393	4
1EC31	MS Rehab - High	Early - Community	2	1.3884	4
2EC11	MS Rehab - High	Early - Institutional	0	1.3880	5
2EC21	MS Rehab - High	Early - Institutional	1	1.4493	5
2EC31	MS Rehab - High	Early - Institutional	2	1.5984	5
3EC11	MS Rehab - High	Late - Community	0	0.8285	2
3EC21	MS Rehab - High	Late - Community	1	0.8898	2
3EC31	MS Rehab - High	Late - Community	2	1.0389	3

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4EC11	MS Rehab - High	Late - Institutional	0	1.3088	4
4EC21	MS Rehab - High	Late - Institutional	1	1.3702	4
4EC31	MS Rehab - High	Late - Institutional	2	1.5192	4
1EA11	MS Rehab - Low	Early - Community	0	0.9590	4
1EA21	MS Rehab - Low	Early - Community	1	1.0203	4
1EA31	MS Rehab - Low	Early - Community	2	1.1694	4
2EA11	MS Rehab - Low	Early - Institutional	0	1.1690	5
2EA21	MS Rehab - Low	Early - Institutional	1	1.2303	5
2EA31	MS Rehab - Low	Early - Institutional	2	1.3794	5
3EA11	MS Rehab - Low	Late - Community	0	0.6095	2
3EA21	MS Rehab - Low	Late - Community	1	0.6708	2
3EA31	MS Rehab - Low	Late - Community	2	0.8198	2
4EA11	MS Rehab - Low	Late - Institutional	0	1.0898	4
4EA21	MS Rehab - Low	Late - Institutional	1	1.1511	4
4EA31	MS Rehab - Low	Late - Institutional	2	1.3002	4
1EB11	MS Rehab - Medium	Early - Community	0	1.0380	5
1EB21	MS Rehab - Medium	Early - Community	1	1.0993	5
1EB31	MS Rehab - Medium	Early - Community	2	1.2483	4
2EB11	MS Rehab - Medium	Early - Institutional	0	1.2480	5
2EB21	MS Rehab - Medium	Early - Institutional	1	1.3093	5
2EB31	MS Rehab - Medium	Early - Institutional	2	1.4584	5
3EB11	MS Rehab - Medium	Late - Community	0	0.6884	2
3EB21	MS Rehab - Medium	Late - Community	1	0.7498	2
3EB31	MS Rehab - Medium	Late - Community	2	0.8988	2
4EB11	MS Rehab - Medium	Late - Institutional	0	1.1688	4
4EB21	MS Rehab - Medium	Late - Institutional	1	1.2301	4
4EB31	MS Rehab - Medium	Late - Institutional	2	1.3792	4
1BC11	Neuro - High	Early - Community	0	1.2950	4
1BC21	Neuro - High	Early - Community	1	1.3563	4
1BC31	Neuro - High	Early - Community	2	1.5054	4
2BC11	Neuro - High	Early - Institutional	0	1.5050	5
2BC21	Neuro - High	Early - Institutional	1	1.5663	5
2BC31	Neuro - High	Early - Institutional	2	1.7154	4
3BC11	Neuro - High	Late - Community	0	0.9455	2
3BC21	Neuro - High	Late - Community	1	1.0068	3
3BC31	Neuro - High	Late - Community	2	1.1559	3
4BC11	Neuro - High	Late - Institutional	0	1.4258	4
4BC21	Neuro - High	Late - Institutional	1	1.4871	4
4BC31	Neuro - High	Late - Institutional	2	1.6362	4
1BA11	Neuro - Low	Early - Community	0	1.0424	4
1BA21	Neuro - Low	Early - Community	1	1.1038	4
1BA31	Neuro - Low	Early - Community	2	1.2528	3
2BA11	Neuro - Low	Early - Institutional	0	1.2525	4
2BA21	Neuro - Low	Early - Institutional	1	1.3138	4
2BA31	Neuro - Low	Early - Institutional	2	1.4629	4
3BA11	Neuro - Low	Late - Community	0	0.6929	2
3BA21	Neuro - Low	Late - Community	1	0.7542	2
3BA31	Neuro - Low	Late - Community	2	0.9033	2

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4BA11	Neuro - Low	Late - Institutional	0	1.1733	3
4BA21	Neuro - Low	Late - Institutional	1	1.2346	3
4BA31	Neuro - Low	Late - Institutional	2	1.3837	3
1BB11	Neuro - Medium	Early - Community	0	1.1558	4
1BB21	Neuro - Medium	Early - Community	1	1.2171	4
1BB31	Neuro - Medium	Early - Community	2	1.3662	4
2BB11	Neuro - Medium	Early - Institutional	0	1.3658	5
2BB21	Neuro - Medium	Early - Institutional	1	1.4271	5
2BB31	Neuro - Medium	Early - Institutional	2	1.5762	5
3BB11	Neuro - Medium	Late - Community	0	0.8063	2
3BB21	Neuro - Medium	Late - Community	1	0.8676	2
3BB31	Neuro - Medium	Late - Community	2	1.0167	2
4BB11	Neuro - Medium	Late - Institutional	0	1.2866	4
4BB21	Neuro - Medium	Late - Institutional	1	1.3479	4
4BB31	Neuro - Medium	Late - Institutional	2	1.4970	4
1CC11	Wound - High	Early - Community	0	1.4990	4
1CC21	Wound - High	Early - Community	1	1.5603	4
1CC31	Wound - High	Early - Community	2	1.7094	4
2CC11	Wound - High	Early - Institutional	0	1.7090	5
2CC21	Wound - High	Early - Institutional	1	1.7703	4
2CC31	Wound - High	Early - Institutional	2	1.9194	4
3CC11	Wound - High	Late - Community	0	1.1494	3
3CC21	Wound - High	Late - Community	1	1.2108	3
3CC31	Wound - High	Late - Community	2	1.3598	3
4CC11	Wound - High	Late - Institutional	0	1.6298	4
4CC21	Wound - High	Late - Institutional	1	1.6911	4
4CC31	Wound - High	Late - Institutional	2	1.8402	4
1CA11	Wound - Low	Early - Community	0	1.2871	4
1CA21	Wound - Low	Early - Community	1	1.3484	4
1CA31	Wound - Low	Early - Community	2	1.4975	4
2CA11	Wound - Low	Early - Institutional	0	1.4971	4
2CA21	Wound - Low	Early - Institutional	1	1.5584	4
2CA31	Wound - Low	Early - Institutional	2	1.7075	4
3CA11	Wound - Low	Late - Community	0	0.9376	2
3CA21	Wound - Low	Late - Community	1	0.9989	3
3CA31	Wound - Low	Late - Community	2	1.1480	3
4CA11	Wound - Low	Late - Institutional	0	1.4179	3
4CA21	Wound - Low	Late - Institutional	1	1.4792	4
4CA31	Wound - Low	Late - Institutional	2	1.6283	4
1CB11	Wound - Medium	Early - Community	0	1.3844	4
1CB21	Wound - Medium	Early - Community	1	1.4457	4
1CB31	Wound - Medium	Early - Community	2	1.5948	4
2CB11	Wound - Medium	Early - Institutional	0	1.5945	4
2CB21	Wound - Medium	Early - Institutional	1	1.6558	5
2CB31	Wound - Medium	Early - Institutional	2	1.8049	4
3CB11	Wound - Medium	Late - Community	0	1.0349	3
3CB21	Wound - Medium	Late - Community	1	1.0962	3
3CB31	Wound - Medium	Late - Community	2	1.2453	3

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Recalibrated Weight for 2025	LUPA Visit Threshold (LUPAs have fewer visits than the threshold)
4CB11	Wound - Medium	Late - Institutional	0	1.5153	4
4CB21	Wound - Medium	Late - Institutional	1	1.5766	4
4CB31	Wound - Medium	Late - Institutional	2	1.7257	4

Source: CY 2023 Home Health Claims Data, Periods that end in CY 2023 accessed on the CCW March 19, 2024.

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Changes to the PDGM case-mix weights are implemented in a budget

neutral manner by multiplying the CY 2025 national standardized 30-day

period payment rate by a case-mix budget neutrality factor. Typically, the case-mix weight budget neutrality factor is also calculated using the most recent, complete home health claims data available. For CY 2025, we will continue the practice of using the most recent complete home health claims data at the time of rulemaking, which is CY 2023 data. The case-mix budget neutrality factor is calculated as the ratio of 30-day base payment rates such that total payments when the CY 2025 PDGM case-mix weights (developed using CY 2023 home health claims data) are applied to CY 2023 utilization (claims) data are equal to total payments when CY 2024 PDGM case-mix weights (developed using CY 2022 home health claims data) are applied to CY 2023 utilization data. This produces a case-mix budget neutrality factor for CY 2025 of 1.0035.

We invite public comments on the CY 2025 proposed case-mix weights and proposed case-mix weight budget neutrality factor.

5. Suggested Reassignment of Specific ICD-10-CM Codes Under the PDGM

a. Background

The 2009 final rule, “HIPAA Administrative Simplification: Modifications to Medical Data Code Set Standards To Adopt ICD-10-CM and ICD-10-PCS” (74 FR 3328, January 16, 2009), set October 1, 2013, as the compliance date for all covered entities under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to use the International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM) and the International Classification of Diseases, 10th Revision, Procedure Coding System (ICD-10-PCS) medical data code sets. The ICD-10-CM diagnosis codes are granular and specific and provide HHAs a better opportunity to report codes that best reflect the patient’s conditions that support the need for home health services. However, as stated in the CY 2019 HH PPS final rule with comment period (83 FR 56473), because the ICD-10-CM is comprehensive, it also contains many codes that may not support the need for home health services. For example, diagnosis codes that indicate death as the outcome are Medicare covered codes but are not relevant to home health. In addition, diagnosis and procedure coding guidelines may specify the sequence of ICD-10-CM coding conventions. For example, the underlying condition must be listed first (for example, Parkinson’s disease must

be listed prior to Dementia if both codes were listed on a claim). Therefore, not all the ICD-10-CM diagnosis codes are appropriate as principal diagnosis codes for grouping home health periods into clinical groups or to be placed into a comorbidity subgroup when listed as a secondary diagnosis. As such, each ICD-10-CM diagnosis code is assigned, including those diagnosis codes designated as “not assigned” (NA), to a clinical group and comorbidity subgroup within the HH PPS grouper software (HHGS). We reminded readers the ICD-10-CM diagnosis code list is updated each fiscal year with an effective date of October 1st and therefore, the HH PPS is generally subject to a minimum of two HHGS releases, one in October and one in January of each year, to ensure that claims are submitted with the most current code set available. Likewise, there may be new ICD-10-CM diagnosis codes created (for example, codes for emergency use) or a new or revised edit in the Medicare Code Editor (MCE) so an update to the HHGS may occur on the first of each quarter (January, April, July, October). We encourage readers to check the HHGS routinely at these times, as we do not anticipate posting changes to the home health web page.

b. Methodology for ICD-10-CM Diagnosis Code Assignments

Although it is not our intent to review all ICD-10-CM diagnosis codes each year, we recognize that occasionally some ICD-10-CM diagnosis codes may require changes to their assigned clinical group and/or comorbidity subgroup. For example, there may be an update to the MCE unacceptable principal diagnosis list, or we receive public comments from interested parties requesting specific changes. Any addition or removal of a specific diagnosis code to the ICD-10-CM code set (for example, three new diagnosis codes, Z28.310, Z28.311 and Z28.39, for reporting COVID-19 vaccination status were effective April 1, 2022) or minor tweaks to a descriptor of an existing ICD-10-CM diagnosis code generally could be implemented as appropriate and may not be discussed in rulemaking.

We rely on the expert opinion of our clinical reviewers (for example, nurse consultants and medical officers) and current ICD-10-CM coding guidelines to determine if the ICD-10-CM diagnosis codes under review for reassignment are significantly similar or different to the existing clinical group and/or comorbidity subgroup assignment. As we stated in the CY 2018

HH PPS proposed rule (82 FR 35313), the intent of the clinical groups is to reflect the reported principal diagnosis, clinical relevance, and coding guidelines and conventions. Therefore, for the purposes of assignment of ICD-10-CM diagnosis codes into the PDGM clinical groups we would not conduct additional statistical analysis as such decisions are clinically based and the clinical groups are part of the overall case-mix weights.

As we noted in the CY 2019 HH PPS final rule with comment period (83 FR 56486), the home health-specific comorbidity list is based on the principles of patient assessment by body systems and their associated diseases, conditions, and injuries to develop larger categories of conditions that identified clinically relevant relationships associated with increased resource use, meaning the diagnoses have at least as high as the median resource use and are reported in more than 0.1 percent of 30-day periods of care. If specific ICD-10-CM diagnosis codes are to be reassigned to a different comorbidity subgroup (including NA), we will first evaluate the clinical characteristics (as discussed previously for clinical groups) and if the ICD-10-CM diagnosis code does not meet the clinical criteria, then no reassignment will occur. However, if an ICD-10-CM diagnosis code does meet the clinical criteria for a comorbidity subgroup reassignment, then we will evaluate the resource consumption associated with the ICD-10-CM diagnosis codes, the current assigned comorbidity subgroup, and the proposed (reassigned) comorbidity subgroup. This analysis is to ensure that any reassignment of an ICD-10-CM diagnosis code (if reported as secondary) in any given year would not significantly alter the overall resource use of a specific comorbidity subgroup. For resource consumption, we use non-LUPA 30-day periods to evaluate the total number of 30-day periods for the comorbidity subgroup(s) and the ICD-10-CM diagnosis code, the average number of visits per 30-day periods for the comorbidity subgroup(s) and the ICD-10-CM diagnosis code, and the average resource use for the comorbidity subgroup(s) and the ICD-10-CM diagnosis code. The average resource use measures the costs associated with visits performed during a home health period and was previously described in the CY 2019 HH PPS final rule with comment period (83 FR 56450).

c. Request for ICD-10-CM Diagnosis Code Reassignments to a PDGM Clinical Group or Comorbidity Subgroup—Renal 3 Comorbidity Subgroup

We received questions from interested parties regarding the ICD-10-CM diagnosis codes N30.00– (acute cystitis) and the ICD-10-CM diagnosis code N39.0 (urinary tract infection, site not specified). Specifically, CMS received a request to reassign N30.00 to the same clinical and comorbidity group as N39.0. The ICD-10-CM diagnosis codes N30.00– (acute cystitis) are currently assigned to clinical group J (MMTA—Gastrointestinal tract and Genitourinary system) when listed as a primary diagnosis and not assigned to a comorbidity subgroup when listed as a secondary diagnosis. The ICD-10-CM diagnosis code N39.0 (urinary tract infection, site not specified) is currently assigned to clinical group J (MMTA—Gastrointestinal tract and Genitourinary system) when listed as a primary diagnosis and assigned to the renal 3 comorbidity subgroup when listed as a secondary diagnosis.

We reviewed the ICD-10-CM diagnosis codes related to cystitis (N30.–) and determined all 14 of the codes are not assigned to a comorbidity subgroup when listed as a secondary diagnosis. Our clinical reviewers advised that cystitis, including N30.00– (acute cystitis), is to report inflammation of the urinary bladder; whereas N39.0 (urinary tract infection, site not specified) is to report the presence of the infectious microorganisms in the urinary tract system. In addition, we evaluated resource consumption related to the comorbidity subgroup renal 3, as well as diagnosis codes N30.00– (acute cystitis) and N39.0 (urinary tract infection, site not specified) and found that acute cystitis on average has a lower resource use than urinary tract infection. As described earlier, based on clinical review and resources use analysis, the ICD-10-CM diagnosis codes N30.00– (acute cystitis) are currently assigned to the most appropriate comorbidity group, not assigned. Therefore, we are not proposing a reassignment of N30.00– (acute cystitis) at this time.

E. Proposed CY 2025 Home Health Payment Rate Updates

1. Proposed CY 2025 Home Health Market Basket Update for HHAs

Section 1895(b)(3)(B) of the Act requires that the standard prospective payment amounts for home health be increased by a factor equal to the applicable home health market basket update for those HHAs that submit

quality data as required by the Secretary. In the CY 2024 HH PPS final rule (88 FR 77726), we finalized a rebasing of the home health market basket to reflect 2021 cost report data. We also finalized a policy for CY 2024 and subsequent years that the labor-related share would be 74.9 percent and the non-labor-related share would be 25.1 percent. A detailed description of how we rebased the HHA market basket and labor-related share is available in the CY 2024 HH PPS final rule (88 FR 77726 through 77742).

In the CY 2015 HH PPS final rule (79 FR 38384), we finalized our methodology for calculating and applying the multifactor productivity adjustment. As we explained in that rule, section 1895(b)(3)(B)(vi) of the Act, requires that, in CY 2015 (and in subsequent calendar years, except CY 2018 (under section 411(c) of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10, enacted April 16, 2015)), the market basket percentage under the HH PPS as described in section 1895(b)(3)(B) of the Act be annually adjusted by changes in economy-wide productivity. Section 1886(b)(3)(B)(xi)(II) of the Act defines the productivity adjustment to be equal to the 10-year moving average of change in annual economy-wide private nonfarm business multifactor productivity (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, calendar year, cost reporting period, or other annual period). The Bureau of Labor Statistics (BLS) publishes the official measures of productivity for the United States economy. We note that previously the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act was published by BLS as private nonfarm business multifactor productivity. Beginning with the November 18, 2021, release of productivity data, BLS replaced the term “multifactor productivity” with “total factor productivity” (TFP). BLS noted that this is a change in terminology only and will not affect the data or methodology. As a result of the BLS name change, the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act is now published by BLS as “private nonfarm business total factor productivity”. We refer readers to <https://www.bls.gov> for the BLS historical published TFP data. A complete description of IGI’s TFP projection methodology is available on the CMS website at <https://www.cms.gov/data-research/statistics->

trends-and-reports/medicare-program-rates-statistics/market-basket-research-and-information.

The proposed home health update percentage for CY 2025 is based on the estimated home health market basket percentage increase, specified at section 1895(b)(3)(B)(iii) of the Act, of 3.0 percent (based on IHS Global Inc.’s first quarter 2024 forecast with historical data through fourth-quarter 2023). The estimated CY 2025 home health market basket percentage increase of 3.0 percent is then reduced by a productivity adjustment, in accordance with section 1895(b)(3)(B)(vi) of the Act. Based on IGI’s first quarter 2024 forecast, the proposed productivity adjustment is currently estimated to be 0.5 percentage point for CY 2025. Therefore, the proposed productivity-adjusted CY 2025 home health market basket update is 2.5 percent (3.0 percent market basket percentage increase, reduced by a 0.5 percentage point productivity adjustment). Furthermore, we propose that if more recent data subsequently become available (for example, a more recent estimate of the market basket and/or productivity adjustment), we would use such data, if appropriate, to determine the CY 2025 market basket percentage increase and productivity adjustment in the final rule.

Section 1895(b)(3)(B)(v) of the Act requires that the home health percentage update be decreased by 2 percentage points for those HHAs that do not submit quality data as required by the Secretary. For HHAs that do not submit the required quality data for CY 2025, the proposed home health payment update percentage is 0.5 percent (2.5 percent minus 2 percentage points).

We invite public comment on our proposals for the CY 2025 home health market basket percentage increase and productivity adjustment.

2. Proposed Adoption of the CBSA Delineations for Wage Index

In general, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses.

On February 28, 2013, OMB issued Bulletin No. 13–01, announcing revisions to the delineations of MSAs, Micropolitan Statistical Areas, and CBSAs, and guidance on uses of the delineation of these areas. In the CY 2015 HH PPS final rule (79 FR 66085 through 66087), we adopted OMB’s area delineations using a 1-year transition.

On August 15, 2017, OMB issued Bulletin No. 17–01 in which it announced that one Micropolitan Statistical Area, Twin Falls, Idaho, now qualifies as a Metropolitan Statistical Area. The new CBSA (46300) comprises the principal city of Twin Falls, Idaho in Jerome County, Idaho and Twin Falls County, Idaho. The CY 2025 HH PPS wage index value for CBSA 46300, Twin Falls, Idaho, will be 0.8555. Bulletin No. 17–01 is available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/bulletins/2017/b-17-01.pdf.

On April 10, 2018, OMB issued OMB Bulletin No. 18–03, which superseded the August 15, 2017, OMB Bulletin No. 17–01. On September 14, 2018, OMB issued OMB Bulletin No. 18–04 which superseded the April 10, 2018, OMB Bulletin No. 18–03. These bulletins established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of OMB Bulletin No. 18–04 may be obtained at: <https://www.bls.gov/bls/omb-bulletin-18-04-revised-delineations-of-metropolitan-statistical-areas.pdf>.

On March 6, 2020, OMB issued Bulletin No. 20–01, which provided updates to and superseded OMB Bulletin No. 18–04 that was issued on September 14, 2018. The attachments to OMB Bulletin No. 20–01 provided detailed information on the update to statistical areas since September 14, 2018, and were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2017, and July 1, 2018. (For a copy of this bulletin, we refer readers to <https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf>.) In OMB Bulletin No. 20–01, OMB announced one new Micropolitan Statistical Area, one new component of an existing Combined Statistical Area and changes to New England City and Town Area (NECTA) delineations. In the CY 2021 HH PPS final rule (85 FR 70298), we stated that if appropriate, we would propose any updates from OMB Bulletin No. 20–01 in future rulemaking. After reviewing OMB Bulletin No. 20–01, we have determined that the changes in Bulletin 20–01 encompassed delineation changes that would not affect the Medicare home health wage index for CY 2022. Specifically, the updates consisted of changes to NECTA delineations and the re-designation of a single rural county

into a newly created Micropolitan Statistical Area. The Medicare home health wage index does not utilize NECTA definitions, and, as most recently discussed in the CY 2021 HH PPS final rule (85 FR 70298) we include hospitals located in Micropolitan Statistical areas in each State's rural wage index. In other words, these OMB updates did not affect any geographic areas for purposes of the HH PPS wage index calculation.

In the CY 2021 HH PPS final rule (85 FR 70298), we finalized our proposal to adopt the revised OMB delineations with a 5-percent cap on wage index decreases in CY 2021. As described in the CY 2023 HH PPS final rule (87 FR 66851 through 66853), we finalized a policy that the CY HH PPS wage index would include a 5-percent cap on wage index decreases for CY 2023 and each subsequent year. Specifically, we finalized for CY 2023 and subsequent years, the application of a permanent 5-percent cap on any decrease to a geographic area's wage index from its wage index in the prior year, regardless of the circumstances causing the decline. That is, we finalized a policy requiring that a geographic area's wage index for CY 2023 would not be less than 95 percent of its final wage index for CY 2022, regardless of whether the geographic area is part of an updated CBSA, and that for subsequent years, a geographic area's wage index would not be less than 95 percent of its wage index calculated in the prior CY. Previously this methodology was applied to all the counties that make up a CBSA or statewide rural area. However, as discussed in section II.E.2. of this proposed rule, if we adopt the proposed revised OMB delineations, we are also proposing that this methodology would also be applied to individual counties.

On July 21, 2023, OMB issued Bulletin No. 23–01, which updates and supersedes OMB Bulletin No. 20–01, issued on March 6, 2020. OMB Bulletin No. 23–01 establishes revised delineations for the MSAs, Micropolitan Statistical Areas, Combined Statistical Areas, and Metropolitan Divisions, collectively referred to as Core Based Statistical Areas (CBSAs). According to OMB, the delineations reflect the 2020 Standards for Delineating Core Based Statistical Areas (CBSAs) (the “2020 Standards”), which appeared in the **Federal Register** (86 FR 37770 through 37778) on July 16, 2021, and application of those standards to Census Bureau population and journey-to-work data (for example, 2020 Decennial Census, American Community Survey, and Census Population Estimates Program data). A copy of OMB Bulletin No. 23–

01 is available online at: <https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf>.

The July 21, 2023, OMB Bulletin No. 23–01 contains a number of significant changes. For example, there are new CBSAs, urban counties that have become rural, rural counties that have become urban, and existing CBSAs that have been split apart. We believe it is important for the HH PPS wage index to use the latest OMB delineations available in order to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. We further believe that using the most current OMB delineations would increase the integrity of the HH PPS wage index by creating a more accurate representation of geographic variation in wage levels. We are proposing to implement the new OMB delineations as described in the July 21, 2023, OMB Bulletin No. 23–01 for the HH PPS wage index effective beginning in CY 2025. This proposal is also consistent with the proposals to adopt the revised OMB delineations in the IPPS and other post-acute care payment systems.

a. Micropolitan Statistical Areas

As discussed in the CY 2006 HH PPS proposed rule (70 FR 40788) and final rule (70 FR 68132), CMS considered how to use the Micropolitan statistical area definitions in the calculation of the wage index. At the time, OMB defined a “Micropolitan Statistical Area” as a “CBSA” associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000 (75 FR 37252). We referred to these as Micropolitan Areas. After extensive impact analysis, consistent with the treatment of these areas under the IPPS as discussed in the FY 2005 IPPS final rule (69 FR 49029 through 49032), we determined the best course of action would be to treat Micropolitan Areas as “rural” and include them in the calculation of each state's home health rural wage index (see 70 FR 40788 and 70 FR 68132). Thus, the HH PPS statewide rural wage index is determined using IPPS hospital data from hospitals located in non-Metropolitan Statistical Areas (MSAs). In the CY 2021 HH PPS final rule (85 FR 70298), we finalized a policy to continue to treat Micropolitan Areas as “rural” and to include Micropolitan Areas in the calculation of each state's rural wage index.

The OMB “2020 Standards” continue to define a “Micropolitan Statistical Area” as a CBSA with at least one urban area that has a population of at least

10,000, but less than 50,000. The Micropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county, or counties as measured through commuting (86 FR 37778). Overall, there are the same number of Micropolitan Areas (542) under the new OMB delineations based on the 2020 Census as there were using the 2010 Census. We note, however, that a number of urban counties have switched status and have joined or become Micropolitan Areas, and some counties that once were part of a Micropolitan Area, and thus were treated as rural, have become urban based on the 2020 Decennial Census data. We believe that the best course of

action would be to continue our established policy and include Micropolitan Areas in each state’s rural wage index as these areas continue to be defined as having relatively small urban cores (populations of 10,000 to 49,999). Therefore, in conjunction with our proposal to implement the new OMB labor market delineations beginning in CY 2025, and consistent with the treatment of Micropolitan Areas under the IPPS, we are also proposing to continue to treat Micropolitan Areas as “rural” and to include Micropolitan Areas in the calculation of each state’s rural wage index.

b. Change to County-Equivalents in the State of Connecticut

In a June 6, 2022, Notice (87 FR 34235–34240), the Census Bureau announced that it was implementing the

State of Connecticut’s request to replace the eight counties in the State with nine new “Planning Regions.” Planning regions are included in OMB Bulletin No. 23–01 and now serve as county-equivalents within the CBSA system. We have evaluated the change and are proposing to adopt the planning regions as county equivalents for wage index purposes. We believe it is necessary to adopt this migration from counties to planning region county-equivalents in order to maintain consistency with our established policy of adopting the most recent OMB updates. We are providing the following crosswalk in table 26 for counties located in Connecticut with the current and proposed Federal Information Processing Series (FIPS) county and county-equivalent codes and CBSA assignments.

TABLE 26: CROSSWALK OF CONNECTICUT COUNTY EQUIVALENTS

FIPS County Code	County	Old CBSA or Non-urban Area	New FIPS County Code	FY 2025 Planning Region	New CBSA or Non-urban Area
09001	FAIRFIELD	14860	09190	WESTERN CONNECTICUT	14860
09001	FAIRFIELD	14860	09120	GREATER BRIDGEPORT	14860
09003	HARTFORD	25540	09110	CAPITOL	25540
09005	LITCHFIELD	99907	09160	NORTHWEST HILLS	99907
09007	MIDDLESEX	25540	09130	LOWER CONNECTICUT RIVER VALLEY	25540
09009	NEW HAVEN	35300	09140	NAUGATUCK VALLEY	47930
09009	NEW HAVEN	35300	09170	SOUTH CENTRAL CONNECTICUT	35300
09011	NEW LONDON	35980	09180	SOUTHEASTERN CONNECTICUT	35980
09013	TOLLAND	25540	09110	CAPITOL	25540
09015	WINDHAM	49340	09150	NORTHEASTERN CONNECTICUT	99907

c. Urban Counties That Would Become Rural

Under the revised OMB statistical area delineations (based upon OMB

Bulletin No. 23–01), a total of 53 counties (and county equivalents) that are currently considered urban would be considered rural beginning in CY 2025. Table 27 lists the 53 counties that

would become rural if we adopt as final our proposal to implement the revised OMB delineations.

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TABLE 27: URBAN COUNTIES THAT WOULD CHANGE TO RURAL STATUS

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name
01129	WASHINGTON	AL	33660	Mobile, AL
05025	CLEVELAND	AR	38220	Pine Bluff, AR
05047	FRANKLIN	AR	22900	Fort Smith, AR-OK
05069	JEFFERSON	AR	38220	Pine Bluff, AR
05079	LINCOLN	AR	38220	Pine Bluff, AR
10005	SUSSEX	DE	41540	Salisbury, MD-DE
13171	LAMAR	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA
16077	POWER	ID	38540	Pocatello, ID
17057	FULTON	IL	37900	Peoria, IL
17077	JACKSON	IL	16060	Carbondale-Marion, IL
17087	JOHNSON	IL	16060	Carbondale-Marion, IL
17183	VERMILION	IL	19180	Danville, IL
17199	WILLIAMSON	IL	16060	Carbondale-Marion, IL
18121	PARKE	IN	45460	Terre Haute, IN
18133	PUTNAM	IN	26900	Indianapolis-Carmel-Anderson, IN
18161	UNION	IN	17140	Cincinnati, OH-KY-IN
21091	HANCOCK	KY	36980	Owensboro, KY
21101	HENDERSON	KY	21780	Evansville, IN-KY
22045	IBERIA	LA	29180	Lafayette, LA
24001	ALLEGANY	MD	19060	Cumberland, MD-WV
24047	WORCESTER	MD	41540	Salisbury, MD-DE
25011	FRANKLIN	MA	44140	Springfield, MA
26155	SHIAWASSEE	MI	29620	Lansing-East Lansing, MI
27075	LAKE	MN	20260	Duluth, MN-WI
28031	COVINGTON	MS	25620	Hattiesburg, MS
31051	DIXON	NE	43580	Sioux City, IA-NE-SD
36123	YATES	NY	40380	Rochester, NY
37049	CRAVEN	NC	35100	New Bern, NC
37077	GRANVILLE	NC	20500	Durham-Chapel Hill, NC
37085	HARNETT	NC	22180	Fayetteville, NC
37087	HAYWOOD	NC	11700	Asheville, NC
37103	JONES	NC	35100	New Bern, NC
37137	PAMLICO	NC	35100	New Bern, NC
42037	COLUMBIA	PA	14100	Bloomsburg-Berwick, PA
42085	MERCER	PA	49660	Youngstown-Warren-Boardman, OH-PA
42089	MONROE	PA	20700	East Stroudsburg, PA
42093	MONTOUR	PA	14100	Bloomsburg-Berwick, PA
42103	PIKE	PA	35084	Newark, NJ-PA
45027	CLARENDON	SC	44940	Sumter, SC
48431	STERLING	TX	41660	San Angelo, TX
49003	BOX ELDER	UT	36260	Ogden-Clearfield, UT
51113	MADISON	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV
51175	SOUTHAMPTON	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
51620	FRANKLIN CITY	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
54035	JACKSON	WV	16620	Charleston, WV
54043	LINCOLN	WV	16620	Charleston, WV
54057	MINERAL	WV	19060	Cumberland, MD-WV
55069	LINCOLN	WI	48140	Wausau-Weston, WI
72001	ADJUNTAS	PR	38660	Ponce, PR

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name
72055	GUANICA	PR	49500	Yauco, PR
72081	LARES	PR	10380	Aguadilla-Isabela, PR
72083	LAS MARIAS	PR	32420	Mayagüez, PR
72141	UTUADO	PR	10380	Aguadilla-Isabela, PR

d. Rural Counties That Would Become Urban

Under the revised OMB statistical area delineations (based upon OMB

Bulletin No. 23–01), a total of 54 counties (and county equivalents) that are currently located in rural areas would be considered located in urban areas under the revised OMB

delineations beginning in CY 2025. Table 28 lists the 54 counties that would be urban if we adopt as final our proposal to implement the revised OMB delineations.

TABLE 28: RURAL COUNTIES THAT WOULD CHANGE TO URBAN STATUS

FIPS County Code	County Name	State	Proposed CY 2025 CBSA	Proposed CY 2025 CBSA Name
01087	MACON	AL	12220	Auburn-Opelika, AL
01127	WALKER	AL	13820	Birmingham, AL
12133	WASHINGTON	FL	37460	Panama City-Panama City Beach, FL
13187	LUMPKIN	GA	12054	Atlanta-Sandy Springs-Roswell, GA
15005	KALAWAO	HI	27980	Kahului-Wailuku, HI
17053	FORD	IL	16580	Champaign-Urbana, IL
17127	MASSAC	IL	37140	Paducah, KY-IL
18159	TIPTON	IN	26900	Indianapolis-Carmel-Greenwood, IN
18179	WELLS	IN	23060	Fort Wayne, IN
20021	CHEROKEE	KS	27900	Joplin, MO-KS
21007	BALLARD	KY	37140	Paducah, KY-IL
21039	CARLISLE	KY	37140	Paducah, KY-IL
21127	LAWRENCE	KY	26580	Huntington-Ashland, WV-KY-OH
21139	LIVINGSTON	KY	37140	Paducah, KY-IL
21145	MC CRACKEN	KY	37140	Paducah, KY-IL
21179	NELSON	KY	31140	Louisville/Jefferson County, KY-IN
22053	JEFFERSON DAVIS	LA	29340	Lake Charles, LA
22083	RICHLAND	LA	33740	Monroe, LA
26015	BARRY	MI	24340	Grand Rapids-Wyoming-Kentwood, MI
26019	BENZIE	MI	45900	Traverse City, MI
26055	GRAND TRAVERSE	MI	45900	Traverse City, MI
26079	KALKASKA	MI	45900	Traverse City, MI
26089	LEELANAU	MI	45900	Traverse City, MI
27133	ROCK	MN	43620	Sioux Falls, SD-MN
28009	BENTON	MS	32820	Memphis, TN-MS-AR
28123	SCOTT	MS	27140	Jackson, MS
30007	BROADWATER	MT	25740	Helena, MT
30031	GALLATIN	MT	14580	Bozeman, MT
30043	JEFFERSON	MT	25740	Helena, MT
30049	LEWIS AND CLARK	MT	25740	Helena, MT
30061	MINERAL	MT	33540	Missoula, MT
32019	LYON	NV	39900	Reno, NV
37125	MOORE	NC	38240	Pinehurst-Southern Pines, NC
38049	MCHENRY	ND	33500	Minot, ND
38075	RENVILLE	ND	33500	Minot, ND
38101	WARD	ND	33500	Minot, ND
39007	ASHTABULA	OH	17410	Cleveland, OH
39043	ERIE	OH	41780	Sandusky, OH
41013	CROOK	OR	13460	Bend, OR
41031	JEFFERSON	OR	13460	Bend, OR
42073	LAWRENCE	PA	38300	Pittsburgh, PA
45087	UNION	SC	43900	Spartanburg, SC
46033	CUSTER	SD	39660	Rapid City, SD
47081	HICKMAN	TN	34980	Nashville-Davidson--Murfreesboro--Franklin, TN
48007	ARANSAS	TX	18580	Corpus Christi, TX
48035	BOSQUE	TX	47380	Waco, TX
48079	COCHRAN	TX	31180	Lubbock, TX
48169	GARZA	TX	31180	Lubbock, TX
48219	HOCKLEY	TX	31180	Lubbock, TX
48323	MAVERICK	TX	20580	Eagle Pass, TX
48407	SAN JACINTO	TX	26420	Houston-Pasadena-The Woodlands, TX
51063	FLOYD	VA	13980	Blacksburg-Christiansburg-Radford, VA
51181	SURRY	VA	47260	Virginia Beach-Chesapeake-Norfolk, VA-NC
55123	VERNON	WI	29100	La Crosse-Onalaska, WI-MN

e. Urban Counties That Would Move to a Different Urban CBSA Under the Revised OMB Delineations

In addition to rural counties becoming urban and urban counties becoming rural, several urban counties would shift from one urban CBSA to a new or existing urban CBSA under our proposal

to adopt the revised OMB delineations. In other cases, applying the new OMB delineations would involve a change only in CBSA name or number, while the CBSA would continue to encompass the same constituent counties. For example, CBSA 35154 (New Brunswick-Lakewood, NJ) would experience both a

change to its number and its name and become CBSA 29484 (Lakewood-New Brunswick, NJ), while all three of its constituent counties would remain the same. In other cases, only the name of the CBSA would be modified. Table 29 lists CBSAs that would change in name and/or CBSA number only, but the

constituent counties would not change (except in instances where an urban county became rural or a rural county became urban, as discussed in the previous section).

TABLE 29: URBAN AREAS WITH CBSA NAME AND/OR NUMBER CHANGE

Current CBSA Code	Current CBSA Name	Proposed CY 2025 CBSA Code	Proposed CY 2025 CBSA Name
10380	Aguadilla-Isabela, PR	10380	Aguadilla, PR
10540	Albany-Lebanon, OR	10540	Albany, OR
12420	Austin-Round Rock-Georgetown, TX	12420	Austin-Round Rock-San Marcos, TX
12540	Bakersfield, CA	12540	Bakersfield-Delano, CA
13820	Birmingham-Hoover, AL	13820	Birmingham, AL
13980	Blacksburg-Christiansburg, VA	13980	Blacksburg-Christiansburg-Radford, VA
15260	Brunswick, GA	15260	Brunswick-St. Simons, GA
15680	California-Lexington Park, MD	30500	Lexington Park, MD
16540	Chambersburg-Waynesboro, PA	16540	Chambersburg, PA
16984	Chicago-Naperville-Evanston, IL	16984	Chicago-Naperville-Schaumburg, IL
17460	Cleveland-Elyria, OH	17410	Cleveland, OH
19430	Dayton-Kettering, OH	19430	Dayton-Kettering-Beavercreek, OH
19740	Denver-Aurora-Lakewood, CO	19740	Denver-Aurora-Centennial, CO
21060	Elizabethtown-Fort Knox, KY	21060	Elizabethtown, KY
21780	Evansville, IN-KY	21780	Evansville, IN
21820	Fairbanks, AK	21820	Fairbanks-College, AK
22660	Fort Collins, CO	22660	Fort Collins-Loveland, CO
23224	Frederick-Gaithersburg-Rockville, MD	23224	Frederick-Gaithersburg-Bethesda, MD
23844	Gary, IN	29414	Lake County-Porter County-Jasper County, IN
24340	Grand Rapids-Kentwood, MI	24340	Grand Rapids-Wyoming-Kentwood, MI
24860	Greenville-Anderson, SC	24860	Greenville-Anderson-Greer, SC
25940	Hilton Head Island-Bluffton, SC	25940	Hilton Head Island-Bluffton-Port Royal, SC
26380	Houma-Thibodaux, LA	26380	Houma-Bayou Cane-Thibodaux, LA
26420	Houston-The Woodlands-Sugar Land, TX	26420	Houston-Pasadena-The Woodlands, TX
26900	Indianapolis-Carmel-Anderson, IN	26900	Indianapolis-Carmel-Greenwood, IN
27900	Joplin, MO	27900	Joplin, MO-KS
27980	Kahului-Wailuku-Lahaina, HI	27980	Kahului-Wailuku, HI
29404	Lake County-Kenosha County, IL-WI	29404	Lake County, IL
29820	Las Vegas-Henderson-Paradise, NV	29820	Las Vegas-Henderson-North Las Vegas, NV
31020	Longview, WA	31020	Longview-Kelso, WA
34740	Muskegon, MI	34740	Muskegon-Norton Shores, MI
34820	Myrtle Beach-Conway-North Myrtle Beach, SC-NC	34820	Myrtle Beach-Conway-North Myrtle Beach, SC
35084	Newark, NJ-PA	35084	Newark, NJ
35154	New Brunswick-Lakewood, NJ	29484	Lakewood-New Brunswick, NJ
35840	North Port-Sarasota-Bradenton, FL	35840	North Port-Bradenton-Sarasota, FL
36084	Oakland-Berkeley-Livermore, CA	36084	Oakland-Fremont-Berkeley, CA
36260	Ogden-Clearfield, UT	36260	Ogden, UT
36540	Omaha-Council Bluffs, NE-IA	36540	Omaha, NE-IA
37460	Panama City, FL	37460	Panama City-Panama City Beach, FL
39100	Poughkeepsie-Newburgh-Middletown, NY	28880	Kiryas Joel-Poughkeepsie-Newburgh, NY
39340	Provo-Orem, UT	39340	Provo-Orem-Lehi, UT
39540	Racine, WI	39540	Racine-Mount Pleasant, WI
41540	Salisbury, MD-DE	41540	Salisbury, MD
41620	Salt Lake City, UT	41620	Salt Lake City-Murray, UT
42680	Sebastian-Vero Beach, FL	42680	Sebastian-Vero Beach-West Vero Corridor, FL
42700	Sebring-Avon Park, FL	42700	Sebring, FL
43620	Sioux Falls, SD	43620	Sioux Falls, SD-MN
44420	Staunton, VA	44420	Staunton-Stuarts Draft, VA
44700	Stockton, CA	44700	Stockton-Lodi, CA
45540	The Villages, FL	48680	Wildwood-The Villages, FL

Current CBSA Code	Current CBSA Name	Proposed CY 2025 CBSA Code	Proposed CY 2025 CBSA Name
47220	Vineland-Bridgeton, NJ	47220	Vineland, NJ
47260	Virginia Beach-Norfolk-Newport News, VA-NC	47260	Virginia Beach-Chesapeake-Norfolk, VA-NC
48140	Wausau-Weston, WI	48140	Wausau, WI
48300	Wenatchee, WA	48300	Wenatchee-East Wenatchee, WA
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	48424	West Palm Beach-Boca Raton-Delray Beach, FL
49340	Worcester, MA-CT	49340	Worcester, MA
49660	Youngstown-Warren-Boardman, OH-PA	49660	Youngstown-Warren, OH

In some cases, all urban counties from a CY 2024 CBSA would be moved and subsumed by another CBSA in CY 2025.

Table 30 lists the CBSAs that, under our proposal to adopt the revised OMB

statistical area delineations, would be subsumed by another CBSA.

TABLE 30: URBAN AREAS THAT WOULD BE SUBSUMED BY ANOTHER CBSA

Current CBSA Code	Current CBSA Name	Proposed CY 2025 CBSA Code	Proposed CY 2025 CBSA Name
31460	Madera, CA	23420	Fresno, CA
36140	Ocean City, NJ	12100	Atlantic City-Hammononton, NJ
41900	San Germán, PR	32420	Mayagüez, PR

In other cases, if we adopt the new OMB delineations, some counties would shift between existing and new CBSAs, changing the constituent makeup of the CBSAs. In another type of change, some CBSAs have counties that would split off to become part of, or to form entirely new labor market areas. For example, the District of Columbia, DC, Charles County, MD and Prince Georges County, MD would move from CBSA 47894 (Washington-Arlington-Alexandria, DC-

VA-MD-WV) into CBSA 47764 (Washington, DC-MD). Calvert County, MD would move from CBSA 47894 (Washington-Arlington-Alexandria, DC-VA-MD-WV) into CBSA 30500 (Lexington Park, MD). The remaining counties that currently make up 47894 (Washington-Arlington-Alexandria, DC-VA-MD-WV) would move into CBSA 11694 (Arlington-Alexandria-Reston, VA-WV). Finally, in some cases, a CBSA would lose counties to another

existing CBSA if we adopt the new OMB delineations. For example, Grainger County, TN would move from CBSA 34100 (Morristown, TN) into CBSA 28940 (Knoxville, TN). Table 31 lists the 73 urban counties that would move from one urban CBSA to a new or modified urban CBSA if we adopt the revised OMB delineations.

TABLE 31: COUNTIES THAT WOULD CHANGE TO A DIFFERENT URBAN CBSA

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name	Proposed CY 2025 CBSA	Proposed CY 2025 CBSA Name
13013	BARROW	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13035	BUTTS	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13045	CARROLL	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13063	CLAYTON	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13077	COWETA	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13085	DAWSON	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13089	DE KALB	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13097	DOUGLAS	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13113	FAYETTE	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13117	FORSYTH	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13121	FULTON	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13135	GWINNETT	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13149	HEARD	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13151	HENRY	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13159	JASPER	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13199	MERIWETHER	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13211	MORGAN	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13217	NEWTON	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13227	PICKENS	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13231	PIKE	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13247	ROCKDALE	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13255	SPALDING	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13297	WALTON	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13015	BARTOW	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
13057	CHEROKEE	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
13067	COBB	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
13143	HARALSON	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
13223	PAULDING	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
21163	MEADE	KY	21060	Elizabethtown-Fort Knox, KY	31140	Louisville/Jefferson County, KY-IN
17097	LAKE	IL	29404	Lake County-Kenosha County, IL-WI	29404	Lake County, IL
55059	KENOSHA	WI	29404	Lake County-Kenosha County, IL-WI	28450	Kenosha, WI
06039	MADERA	CA	31460	Madera, CA	23420	Fresno, CA
47057	GRAINGER	TN	34100	Morristown, TN	28940	Knoxville, TN
37019	BRUNSWICK	NC	34820	Myrtle Beach-Conway-North Myrtle Beach, SC-NC	48900	Wilmington, NC
22103	ST. TAMMANY	LA	35380	New Orleans-Metairie, LA	43640	Slidell-Mandeville-Covington, LA
34009	CAPE MAY	NJ	36140	Ocean City, NJ	12100	Atlantic City-Hammonton, NJ
72023	CABO ROJO	PR	41900	San Germán, PR	32420	Mayagüez, PR
72079	LAJAS	PR	41900	San Germán, PR	32420	Mayagüez, PR
72121	SABANA GRANDE	PR	41900	San Germán, PR	32420	Mayagüez, PR
72125	SAN GERMAN	PR	41900	San Germán, PR	32420	Mayagüez, PR
53061	SNOHOMISH	WA	42644	Seattle-Bellevue-Kent, WA	21794	Everett, WA
25015	HAMPSHIRE	MA	44140	Springfield, MA	11200	Amherst Town-Northampton, MA
12103	PINELLAS	FL	45300	Tampa-St. Petersburg-Clearwater, FL	41304	St. Petersburg-Clearwater-Largo, FL
12053	HERNANDO	FL	45300	Tampa-St. Petersburg-Clearwater, FL	45294	Tampa, FL
12057	HILLSBOROUGH	FL	45300	Tampa-St. Petersburg-Clearwater, FL	45294	Tampa, FL

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name	Proposed CY 2025 CBSA	Proposed CY 2025 CBSA Name
12101	PASCO	FL	45300	Tampa-St. Petersburg-Clearwater, FL	45294	Tampa, FL
39123	OTTAWA	OH	45780	Toledo, OH	41780	Sandusky, OH
51013	ARLINGTON	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51043	CLARKE	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51047	CULPEPER	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51059	FAIRFAX	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51061	FAUQUIER	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51107	LOUDOUN	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51153	PRINCE WILLIAM	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51157	RAPPAHANNOCK	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51177	SPOTSYLVANIA	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51179	STAFFORD	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51187	WARREN	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51510	ALEXANDRIA CITY	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51600	FAIRFAX CITY	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51610	FALLS CHURCH CITY	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51630	FREDERICKSBURG CITY	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51683	MANASSAS CITY	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51685	MANASSAS PARK CITY	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
54037	JEFFERSON	WV	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
11001	THE DISTRICT	DC	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	47764	Washington, DC-MD
24017	CHARLES	MD	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	47764	Washington, DC-MD
24033	PRINCE GEORGES	MD	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	47764	Washington, DC-MD
24009	CALVERT	MD	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	30500	Lexington Park, MD
24037	ST. MARYS	MD	15680	California-Lexington Park, MD	30500	Lexington Park, MD
72059	GUAYANILLA	PR	49500	Yauco, PR	38660	Ponce, PR
72111	PENUELAS	PR	49500	Yauco, PR	38660	Ponce, PR
72153	YAUCO	PR	49500	Yauco, PR	38660	Ponce, PR

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f. Proposed Transition Period

In the past we have provided for transition periods when adopting changes that have significant payment implications, particularly large negative impacts, in order to mitigate the potential impacts of proposed home health policies. For example, we have proposed and finalized budget-neutral transition policies to help mitigate negative impacts on HHAs following the adoption of the new CBSA delineations based on the 2010 Decennial Census data in the CY 2015 HH PPS final rule (79 FR 66032). Specifically, we implemented a 1-year 50/50 blended wage to the new OMB delineations. We applied a blended wage index for 1 year (CY 2015) for all geographic areas that would consist of a 50/50 blend of the wage index values using OMB's old area delineations and the wage index values using OMB's new area delineations. That is, for each county, a blended wage index was calculated equal to 50 percent of the CY 2015 wage index using the old labor market area delineation and 50 percent of the CY 2015 wage index using the new labor market area delineation, which resulted in an average of the two values. Additionally, in the CY 2021 HH PPS final rule (85 FR 70312), we proposed and finalized a transition policy to apply a 5-percent cap on any decrease in a geographic area's wage index value from the wage index value from the prior CY. This transition allowed the effects of our adoption of the revised CBSA delineations from OMB Bulletin 18-04 to be phased in over 2 years, where the estimated reduction in a geographic area's wage index was capped at five percent in CY 2021 (that is, no cap was applied to the reduction in the wage index for the second year (CY 2022)). We explained that we believed a 5-percent cap on the overall decrease in a geographic area's wage index value would be appropriate for CY 2021, as it provided predictability in payment levels from CY 2020 to CY 2021 and additional transparency because it was administratively simpler than our prior one-year 50/50 blended wage index approach.

In the CY 2023 HH PPS final rule (87 FR 66851 through 66853), we adopted a permanent 5-percent cap on wage index decreases beginning in CY 2023 and each subsequent year. The policy applies a permanent 5-percent cap on any decrease to a geographic area's wage index from its wage index in the prior year, regardless of the circumstances causing the decline, so that a geographic area's wage index would not be less

than 95 percent of its wage index calculated in the prior CY.

For CY 2025, we believe that the permanent 5-percent cap on wage index decreases would be sufficient to mitigate any potential negative impact caused by adopting the revised OMB delineations and that no further transition is necessary. Previously, the 5-percent cap had been applied at the CBSA or statewide rural area level, meaning that all the counties that make up the CBSA or rural area received the 5-percent cap. However, for CY 2025, to mitigate any potential negative impact caused by the adoption of the revised delineations, we propose that in addition to the 5-percent cap being calculated for an entire CBSA or statewide rural, the cap would also be calculated at the county level, so that individual counties moving to a new delineation would not experience more than a 5 percent decrease in wage index from the previous calendar year. Specifically, we are proposing for CY 2025, that the 5-percent cap would also be applied to counties that would move from a CBSA or statewide rural area with a higher wage index value into a new CBSA or rural area with a lower wage index value, so that the county's CY 2025 wage index would not be less than 95 percent of the county's CY 2024 wage index value under the old delineation despite moving into a new delineation with a lower wage index.

Due to the way that we propose to calculate the 5-percent cap for counties that experience an OMB designation change, some CBSAs and statewide rural areas could have more than one wage index value because of the potential for their constituent counties to have different wage index values. Specifically, some counties that change OMB designations would have a wage index value that is different than the wage index value assigned to the other constituent counties that make up the CBSA or statewide rural area that they are moving into because of the application of the 5-percent cap. However, for home health claims processing, each CBSA or statewide rural area can have only one wage index value assigned to that CBSA or statewide rural area.

Therefore, HHAs that serve beneficiaries in a county that would receive the cap would need to use a number other than the CBSA or statewide rural area number to identify the county's appropriate wage index value on home health claims in CY 2025. We are proposing that beginning in CY 2025, counties that have a different wage index value than the CBSA or rural area into which they are

designated after the application of the 5-percent cap would use a wage index transition code. These special codes are five digits in length and begin with "50" and the remaining digits are unique for that code. We are using Xs to show how the transition codes could be labeled. The 50XXX⁹ wage index transition codes would be used only in specific counties; counties located in CBSAs and rural areas that do not correspond to a different transition wage index value will still use the CBSA number. For example, FIPS county 13171 Lamar County, GA is currently part of CBSA 12060 Atlanta-Sandy Springs-Alpharetta. However, for CY 2025 we are proposing that Lamar County would be redesignated into the Rural Georgia Code 99911. Because the wage index value of rural Georgia is more than a 5-percent decrease from the wage index value that Lamar County previously received under CBSA 12060, the CY 2025 wage index for Lamar County would be capped at 95 percent of the CY 2024 wage index value for CBSA 12060. Additionally, because rural Georgia can only have one wage index value assigned to code 99911, in order for Lamar County to receive the capped wage index for CY 2025, transition code 50003 would be used on a home health claim instead of rural Georgia code 99911.

We are also proposing that the 5-percent cap would apply to a county that corresponds to a different wage index value than the wage index value in the CBSA or rural area in which they are designated due to a delineation change until the county's new wage index is more than 95 percent of the wage index from the previous calendar year. Therefore, in order to capture the correct wage index value, an HHA would continue to use the assigned 50XXX transition code for the county until the county's wage index value calculated for that calendar year using the new OMB delineations is not less than 95 percent of the county's capped wage index from the previous calendar year. Thus, in the example mentioned earlier, claims for Lamar County would use transition code 50003 until the wage index in its revised designation of Rural Georgia is equal to or more than 95 percent of its wage index value from the previous calendar year. The counties that will require a transition code and the corresponding 50XXX codes are shown in table 32 and will also be shown in the last column of the CY 2025 HH PPS wage index file.

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⁹ The remaining 3 characters of the code to be determined if finalized.

**TABLE 32: COUNTIES THAT WOULD USE A WAGE INDEX
TRANSITION CODE**

County Name	State	CY 2024 CBSA	CY 2024 CBSA Name	Proposed CY 2025 CBSA	Proposed CY 2025 CBSA Name	Transition Code
WASHINGTON	AL	33660	Mobile, AL	99901	ALABAMA	50001
FRANKLIN	AR	22900	Fort Smith, AR-OK	99904	ARKANSAS	50002
LAMAR	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	99911	GEORGIA	50003
KALAWAO	HI	99912	HAWAII	27980	Kahului-Wailuku, HI	50004
POWER	ID	38540	Pocatello, ID	99913	IDAHO	50005
VERMILION	IL	19180	Danville, IL	99914	ILLINOIS	50006
PUTNAM	IN	26900	Indianapolis-Carmel-Anderson, IN	99915	INDIANA	50007
IIENDERSON	KY	21780	Evansville, IN-KY	99918	KENTUCKY	50008
IBERIA	LA	29180	Lafayette, LA	99919	LOUISIANA	50009
CALVERT	MD	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	30500	Lexington Park, MD	50010
WORCESTER	MD	41540	Salisbury, MD-DE	99921	MARYLAND	50011
FRANKLIN	MA	44140	Springfield, MA	99922	MASSACHUSETTS	50012
SHIAWASSEE	MI	29620	Lansing-East Lansing, MI	99923	MICHIGAN	50013
LAKE	MN	20260	Duluth, MN-WI	99924	MINNESOTA	50014
ROCK	MN	99924	MINNESOTA	43620	Sioux Falls, SD-MN	50015
LYON	NV	99929	NEVADA	39900	Reno, NV	50016
YATES	NY	40380	Rochester, NY	99933	NEW YORK	50017
GRANVILLE	NC	20500	Durham-Chapel Hill, NC	99934	NORTH CAROLINA	50018
HAYWOOD	NC	11700	Asheville, NC	99934	NORTH CAROLINA	50019
OTTAWA	OH	45780	Toledo, OH	41780	Sandusky, OH	50020
PIKE	PA	35084	Newark, NJ-PA	99939	PENNSYLVANIA	50021
MADISON	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	99949	VIRGINIA	50022
SOUTHAMPTON	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC	99949	VIRGINIA	50023
FRANKLIN CITY	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC	99949	VIRGINIA	50023
JACKSON	WV	16620	Charleston, WV	99951	WEST VIRGINIA	50024
LINCOLN	WV	16620	Charleston, WV	99951	WEST VIRGINIA	50024
MINERAL	WV	19060	Cumberland, MD-WV	99951	WEST VIRGINIA	50025
ADJUNTAS	PR	38660	Ponce, PR	99940	PUERTO RICO	50026
CABO ROJO	PR	41900	San Germán, PR	32420	Mayagüez, PR	50027
GUANICA	PR	49500	Yauco, PR	99940	PUERTO RICO	50028
LAJAS	PR	41900	San Germán, PR	32420	Mayagüez, PR	50027
LARES	PR	10380	Aguadilla-Isabela, PR	99940	PUERTO RICO	50029
LAS MARIAS	PR	32420	Mayagüez, PR	99940	PUERTO RICO	50028
SABANA GRANDE	PR	41900	San Germán, PR	32420	Mayagüez, PR	50027
SAN GERMAN	PR	41900	San Germán, PR	32420	Mayagüez, PR	50027
UTUADO	PR	10380	Aguadilla-Isabela, PR	99940	PUERTO RICO	50029

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The proposed wage index file applicable to CY 2025 provides a crosswalk between the CY 2025 wage index using the current OMB delineations and the CY 2025 wage index using the proposed revised OMB delineations that would be in effect in CY 2025 if these proposed changes are finalized. This file shows each state and county and its corresponding proposed wage index along with the previous CBSA number, the proposed CBSA number or proposed transition code, and the proposed CBSA name. The proposed HH PPS wage index file applicable for CY 2025 (January 1, 2025, through December 31, 2025) is available on the CMS website at: <https://www.cms.gov/medicare/enrollment-renewal/providers-suppliers/home-health-agency-center>.

3. Proposed CY 2025 Home Health Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to

provide appropriate adjustments to the proportion of the payment amount under the HH PPS that account for area wage differences, using adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services. Since the inception of the HH PPS, we have used inpatient hospital wage data in developing a wage index to be applied to home health payments. We propose to continue this practice for CY 2025, as it is our belief that, in the absence of home health-specific wage data that accounts for area differences, using inpatient hospital wage data, including any changes made by the Office of Management and Budget (OMB) to Metropolitan Statistical Area (MSA) definitions, is appropriate and reasonable for the HH PPS. The appropriate wage index value is applied to the labor portion of the HH PPS rates based on the site of service for the beneficiary (defined by section 1861(m)

of the Act as the beneficiary's place of residence).

For CY 2025, we propose to base the HH PPS wage index on the FY 2025 hospital pre-floor, pre-reclassified wage index for hospital cost reporting periods beginning on or after October 1, 2020, and before October 1, 2021 (FY 2021 cost report data), with the revised OMB delineations. The proposed CY 2025 HH PPS wage index would not take into account any geographic reclassification of hospitals, including those in accordance with section 1886(d)(8)(B) or 1886(d)(10) of the Act but would include the 5-percent cap on wage index decreases.

There exist some geographic areas where there are no hospitals, and thus, no hospital wage data on which to base the calculation of the HH PPS wage index. To address those geographic areas in which there are no inpatient hospitals, and thus, no hospital wage data on which to base the calculation of the CY 2025 HH PPS wage index, we propose to continue to use the same

methodology discussed in the CY 2007 HH PPS final rule (71 FR 65884) to address those geographic areas in which there are no inpatient hospitals.

For urban areas without inpatient hospitals, we use the average wage index of all urban areas within the State as a reasonable proxy for the wage index for that CBSA. For CY 2025, the only urban area without inpatient hospital wage data is Hinesville, GA (CBSA 25980). Using the average wage index of all urban areas in Georgia as a proxy, we

propose the CY 2025 wage index value for Hinesville, GA, would be 0.8608.

For rural areas that do not have inpatient hospitals, we propose to use the average wage index from all contiguous Core Based Statistical Areas (CBSAs) as a reasonable proxy. The term “contiguous” means sharing a border (72 FR 49859). For CY 2025, as part of our proposal to adopt the revised OMB delineations discussed further in section III.E.2. of this proposed rule, we are proposing that rural North Dakota would now become a rural area without

a hospital from which hospital wage data can be derived. Therefore, in order to calculate the wage index for rural area 99935, North Dakota, we are proposing to use as a proxy, the average pre-floor, pre-reclassified hospital wage data from the contiguous CBSAs: CBSA 13900-Bismarck, ND, CBSA 22020-Fargo, ND-MN, CBSA 24220-Grand Forks, ND-MN, and CBSA 33500, Minot, ND, which results in a proposed CY 2025 HH PPS wage index of 0.8334 for rural North Dakota.

TABLE 33: CY 2025 WAGE INDEX FOR RURAL NORTH DAKOTA

CBSA Code	CBSA Name	CY 2025 HH PPS Wage Index
13900	Bismarck, ND	0.9020
22020	Fargo, ND-MN	0.8763
24220	Grand Forks, ND-MN	0.7865
33500	Minot, ND	0.7686
	Proposed CY 2025 HH PPS Wage Index	0.8334

Previously, the only rural area without a hospital from which hospital wage data could be derived was in Puerto Rico. However, for rural Puerto Rico, we did not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the proximity of one another of almost all of Puerto Rico’s various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas). Instead, we used the most recent wage index previously available for that area, which was 0.4047. For CY 2025, due to our proposal to adopt the revised OMB delineations discussed previously, there is now a hospital in rural Puerto Rico from which hospital wage data can be derived. Therefore, we are proposing that the wage index for rural Puerto Rico would now be based on the hospital wage data for the area instead of the previously available wage index of 0.4047. The unadjusted CY 2025 proposed wage index for rural Puerto Rico would equal 0.2520. However, because 0.2520 is more than a 5 percent decline in the CY 2024 wage index, the 5-percent cap would be applied. We are proposing that the CY 2025 5-percent cap adjusted wage index for rural Puerto Rico would be set equal to 95 percent of the CY 2024 wage index, which results in a proposed wage index value of 0.3845.

Finally, due to the proposal to adopt the revised OMB delineations, Delaware, which was previously an all-urban state, would now have one rural area with a hospital from which hospital wage data can be derived. As such, the proposed CY 2025 wage index for rural Delaware would be 1.0429.

The complete proposed CY 2025 wage index is available on the CMS website at: <https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center>.

4. Proposed CY 2025 Home Health Payment Update

a. Background

The HH PPS has been in effect since October 1, 2000. As set forth in the July 3, 2000, final rule (65 FR 41128), the base unit of payment under the HH PPS was a national, standardized 60-day episode payment rate. As finalized in the CY 2019 HH PPS final rule with comment period (83 FR 56406), and as described in the CY 2020 HH PPS final rule with comment period (84 FR 60478), the unit of home health payment changed from a 60-day episode to a 30-day period effective for those 30-day periods beginning on or after January 1, 2020.

As set forth in § 484.220, we adjust the national, standardized prospective payment rates by a case-mix relative weight and a wage index value based on the site of service for the beneficiary. To

provide appropriate adjustments to the proportion of the payment amount under the HH PPS to account for area wage differences, we apply the appropriate wage index value to the labor portion of the HH PPS rates. In the CY 2024 HH PPS final rule (88 FR 77676), we finalized the rebasing of the home health market basket to reflect 2021 Medicare cost report data. We also finalized that for CY 2024 and subsequent years the labor-related share would be 74.9 percent and the non-labor-related share would be 25.1 percent. The following are the steps we take to compute the case-mix and wage-adjusted 30-day period payment amount for CY 2025:

- Multiply the national, standardized 30-day period rate by the patient’s applicable case-mix weight.
- Divide the case-mix adjusted amount into a labor (74.9 percent) and a non-labor portion (25.1 percent).
- Multiply the labor portion by the applicable wage index based on the site of service of the beneficiary.
- Add the wage-adjusted portion to the non-labor portion, yielding the case-mix and wage adjusted 30-day period payment amount, subject to any additional applicable adjustments. We provide annual updates of the HH PPS rate in accordance with section 1895(b)(3)(B) of the Act. Section 484.225 sets forth the specific annual percentage update methodology. In accordance with section 1895(b)(3)(B)(v) of the Act

and § 484.225(i), for an HHA that does not submit home health quality data, as specified by the Secretary, the unadjusted national prospective 30-day period rate is equal to the rate for the previous calendar year increased by the applicable home health payment update percentage, minus 2 percentage points. Any reduction of the percentage change would apply only to the calendar year involved and would not be considered in computing the prospective payment amount for a subsequent calendar year. The final claim that the HHA submits for payment determines the total payment amount for the period and whether we make an applicable adjustment to the 30-day case-mix and wage-adjusted payment amount. The end date of the 30-day period, as reported on the claim, determines which calendar year rates Medicare will use to pay the claim. We may adjust a 30-day case-mix and wage-adjusted payment based on the information submitted on the claim to reflect the following:

- A LUPA is provided on a per-visit basis as set forth in §§ 484.205(d)(1) and 484.230.
- A partial payment adjustment as set forth in §§ 484.205(d)(2) and 484.235.
- An outlier payment as set forth in §§ 484.205(d)(3) and 484.240.

(b) CY 2025 National, Standardized 30-Day Period Payment Amount

Section 1895(b)(3)(A)(i) of the Act requires that the standard prospective

payment rate and other applicable amounts be standardized in a manner that eliminates the effects of variations in relative case-mix and area wage adjustments among different home health agencies in a budget-neutral manner. To determine the CY 2025 national, standardized 30-day period payment rate, we will continue our practice of using the most recent, complete utilization data at the time of rulemaking; that is, we are using CY 2023 claims data for CY 2025 payment rate updates. We apply a permanent adjustment factor, a case-mix weights recalibration budget neutrality factor, a wage index budget neutrality factor, and the home health payment update percentage to update the CY 2025 payment rate. As discussed in section II.C.1. of this proposed rule, we are proposing to implement a permanent adjustment of -4.067 percent to ensure that payments under the PDGM do not exceed what payments would have been under the 153-group payment system as required by law. The proposed permanent adjustment factor is 0.95933. As discussed previously, to ensure the changes to the PDGM case-mix weights are implemented in a budget neutral manner, we apply a case-mix weight budget neutrality factor to the CY 2025 national, standardized 30-day period payment rate. The proposed case-mix weight budget neutrality factor for CY 2025 is 1.0035.

Additionally, we apply a wage index budget neutrality factor to ensure that

wage index updates and revisions are implemented in a budget neutral manner. To calculate the wage index budget neutrality factor, we first determine the payment rate needed for non-LUPA 30-day periods using the CY 2025 wage index (with the proposed revised delineations and the 5-percent cap) so those total payments are equivalent to the total payments for non-LUPA 30-day periods using the CY 2024 wage index (with the old delineations and the 5-percent cap) and the CY 2024 national standardized 30-day period payment rate adjusted by the case-mix weights recalibration budget neutrality factor. Then, by dividing the payment rate for non-LUPA 30-day periods using the CY 2025 wage index (with the proposed revised delineations and a 5-percent cap on wage index decreases) by the payment rate for non-LUPA 30-day periods using the CY 2024 wage index (with the old delineations and a 5-percent cap on wage index decreases), we obtain a wage index budget neutrality factor of 0.9985. We then apply the wage index budget neutrality factor of 0.9985 to the 30-day period payment rate.

Next, we propose to update the 30-day period payment rate by the proposed CY 2025 home health payment update percentage of 2.5 percent. The CY 2025 national standardized 30-day period payment rate is calculated in table 34.

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TABLE 34: CY 2025 NATIONAL, STANDARDIZED 30-DAY PERIOD PAYMENT AMOUNT

CY 2024 National Standardized 30-Day Period Payment	Permanent Adjustment Factor	Case-Mix Weights Recalibration Budget Neutrality Factor	Wage Index Budget Neutrality Factor	CY 2025 HH Payment Update Factor	CY 2025 National, Standardized 30-Day Period Payment
\$2,038.13	0.95933	1.0035	0.9985	1.025	\$2,008.12

The CY 2025 national standardized 30-day period payment rate for an HHA that does not submit the required

quality data is updated by the proposed CY 2025 home health payment update percentage of 0.5 percent (2.5 percent

minus 2 percentage points) and is shown in table 35.

TABLE 35: CY 2025 NATIONAL, STANDARDIZED 30-DAY PERIOD PAYMENT AMOUNT FOR HHAs THAT DO NOT SUBMIT THE QUALITY DATA

CY 2024 National Standardized 30-Day Period Payment	Permanent Adjustment Factor	Case-Mix Weights Recalibration Neutrality Factor	Wage Index Budget Neutrality Factor	CY 2025 HH Payment Update Factor Minus 2 Percentage Points	CY 2025 National, Standardized 30-Day Period Payment
\$2,038.13	0.95933	1.0035	0.9985	1.005	\$1,968.94

c. CY 2025 National Per-Visit Rates for 30-Day Periods of Care

The national per-visit rates are used to pay LUPAs and are also used to compute imputed costs in outlier calculations. The per-visit rates are paid by type of visit or home health discipline. The six home health disciplines are as follows:

- Home health aide (HH aide).
- Medical Social Services (MSS).
- Occupational therapy (OT).
- Physical therapy (PT).
- Skilled nursing (SN).
- Speech-language pathology (SLP).

To calculate the proposed CY 2025 national per-visit rates, we started with the CY 2024 national per-visit rates. Then we applied a wage index budget neutrality factor to ensure budget neutrality for LUPA per-visit payments. We calculated the wage index budget

neutrality factor by simulating total payments for LUPA 30-day periods of care using the CY 2025 wage index with the new delineations and the 5-percent cap on wage index decreases and comparing it to simulated total payments for LUPA 30-day periods of care using the CY 2024 wage index with the old delineations and the 5-percent cap. By dividing the total payments for LUPA 30-day periods of care using the CY 2025 wage index by the total payments for LUPA 30-day periods of care using the CY 2024 wage index, we obtained a wage index budget neutrality factor of 0.9991. We apply the wage index budget neutrality factor in order to calculate the CY 2025 national per-visit rates.

The LUPA per-visit rates are not calculated using case-mix weights. Therefore, no case-mix weight budget neutrality factor is needed to ensure

budget neutrality for LUPA payments. Additionally, we are not applying the permanent adjustment to the per visit payment rates but only to the case-mix adjusted 30-day payment rate. Lastly, the per-visit rates for each discipline are updated by the proposed CY 2025 home health payment update percentage of 2.5 percent. The national per-visit rates are adjusted by the wage index based on the site of service of the beneficiary. The per-visit payments for LUPAs are separate from the LUPA add-on payment amount, which is paid for episodes that occur as the only episode or initial episode in a sequence of adjacent episodes. The CY 2025 national per-visit rates for HHAs that submit the required quality data are updated by the proposed CY 2025 home health payment update percentage of 2.5 percent and are shown in table 36.

TABLE 36: CY 2025 NATIONAL PER-VISIT PAYMENT AMOUNTS

HH Discipline	CY 2024 Per-Visit Payment Amount	Wage Index Budget Neutrality Factor	CY 2025 HH Payment Update Factor	CY 2025 Per- Visit Payment Amount
Home Health Aide	\$76.23	0.9991	1.025	\$78.07
Medical Social Services	\$269.87	0.9991	1.025	\$276.37
Occupational Therapy	\$185.29	0.9991	1.025	\$189.75
Physical Therapy	\$184.03	0.9991	1.025	\$188.46
Skilled Nursing	\$168.37	0.9991	1.025	\$172.42
Speech-Language Pathology	\$200.04	0.9991	1.025	\$204.86

The CY 2025 per-visit payment rates for HHAs that do not submit the required quality data are updated by the

proposed CY 2025 home health payment update percentage of 2.5

percent minus 2 percentage points and are shown in table 37.

TABLE 37: CY 2024 NATIONAL PER-VISIT PAYMENT AMOUNTS FOR HHAs THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

HH Discipline	CY 2024 Per-Visit Payment Amount	Wage Index Budget Neutrality Factor	CY 2025 HH Payment Update Factor Minus 2 Percentage Points	CY 2025 Per-Visit Payment Amount
Home Health Aide	\$76.23	0.9991	1.005	\$76.54
Medical Social Services	\$269.87	0.9991	1.005	\$270.98
Occupational Therapy	\$185.29	0.9991	1.005	\$186.05
Physical Therapy	\$184.03	0.9991	1.005	\$184.78
Skilled Nursing	\$168.37	0.9991	1.005	\$169.06
Speech-Language Pathology	\$200.04	0.9991	1.005	\$200.86

BILLING CODE 4120-01-C**d. LUPA Add-On Factors**

Prior to the implementation of the 30-day unit of payment, LUPA episodes were eligible for a LUPA add-on payment if the episode of care was the first or only episode in a sequence of adjacent episodes. As stated in the CY 2008 HH PPS final rule, the average visit lengths in these initial LUPAs are 16 to 18 percent higher than the average visit lengths in initial non-LUPA episodes (72 FR 49848). LUPA episodes that occur as the only episode or as an initial episode in a sequence of adjacent episodes are adjusted by applying an additional amount to the LUPA payment before adjusting for area wage differences.

In the CY 2014 HH PPS final rule (78 FR 72305), we changed the methodology for calculating the LUPA add-on amount, whereby we finalized the approach of multiplying the per-visit payment amount for the first skilled nursing (SN), physical therapy (PT), or speech language pathology (SLP) visit in LUPA episodes that occur as the only episode or an initial episode in a sequence of adjacent episodes by 1 + the proportional increase in minutes for an initial visit over non-initial visits. Specifically, we updated the analysis using 100 percent of LUPA episodes and a 20 percent sample of non-LUPA first episodes from CY 2012 claims data. The analysis showed that the average excess of minutes for the first visit in LUPA episodes that were the only episode or an initial LUPA in a sequence of

adjacent episodes are 37.27 minutes for the first visit if SN, 31.69 minutes for the first visit if PT, and 31.56 minutes for the first visit if SLP. The average minutes for all non-first visits in non-LUPA episodes were 44.10 minutes for SN, 47.30 minutes for PT, and 50.37 minutes for SLP. To determine the final LUPA add-on factors for each discipline, we calculated the ratio of the average excess minutes for the first visits in LUPA claims to the average minutes for all non-first visits in non-LUPA claims. (Of note, the average excess minutes for the first visit in LUPA add-on claims equal, for each discipline, is equal to the average minutes for the first visit in LUPA add-on claims minus the average minutes for non-first visits in LUPA add-on claims.) We then added one to these ratios to obtain the respective finalized add on factors: 1.8451 for SN; 1.6700 for PT; and 1.6266 for SLP. In the CY 2019 HH PPS final rule with comment period (83 FR 56440), in addition to finalizing a 30-day unit of payment, we finalized our policy of continuing to multiply the per-visit payment amount for the first SN, PT, or SLP visit in LUPA periods that occur as the only period of care or the initial 30-day period of care in a sequence of adjacent 30-day periods of care by the appropriate add-on factor (using the already established LUPA add-on factors of 1.8451 for SN, 1.6700 for PT, and 1.6266 for SLP) to determine the LUPA add-on payment amount for 30-day periods of care under the PDGM.

At this time, in an effort to enhance the accuracy and relevance of LUPA

add-on factors to reflect current healthcare practices and costs, CMS is proposing to update the LUPA add-on factors for PT, SN, and SLP, which have not been revised since the CY 2014 HH PPS final rule, during which CY 2012 data was used. For this proposed rule, we are proposing to use the same methodology used to establish the LUPA add-on amount for CY 2014, using updated claims data.

Specifically, we are proposing to update the LUPA add-on factors by using 100 percent of LUPA periods and a 100 percent sample of non-LUPA first periods from CY 2023 claims data. In doing so, the analysis demonstrates that the average excess of minutes for the first visit in LUPA periods that were the only period or an initial LUPA in a sequence of adjacent periods are 30.00 minutes for the first visit if SN, 28.18 minutes for the first visit if PT, and 31.59 minutes for the first visit if SLP. The average minutes for all non-first visits in non-LUPA episodes are 41.51 minutes for SN, 45.11 minutes for PT, and 47.13 minutes for SLP. The following table 38 shows the average excess minutes for the first visit in LUPA periods, the average minutes for all non-first visits in non-LUPA episodes, as well as the current LUPA add-on factors, the proposed LUPA add-on factors, and the percent change between the current and the proposed LUPA add-on factors. This table also shows the proposed OT LUPA add-on factor outlined in section II.4.e. of this proposed rule as follows:

TABLE 38: CURRENT AND PROPOSED LUPA ADD-ON FACTORS

Discipline	Current LUPA Add-on Factors	Proposed LUPA Add-on Factors Using Data from CY2023	Percent Change from Old to New	Average Excess of Minutes for the First Visit in LUPA Periods	Average Minutes for All Non-First Visits in Non-LUPA Episodes
SN	1.8451	1.7227	-6.6%	30.00	41.51
PT	1.6700	1.6247	-2.7%	28.18	45.11
SLP	1.6266	1.6703	+2.7%	31.59	47.13
OT	1.6700	1.7266	+3.4%	33.40	45.97

To determine the LUPA add-on factors for each discipline in relation to the aforementioned proposed LUPA add-on factor updates, we calculate the ratio of the average excess minutes for the first visits in LUPA claims to the average minutes for all non-first visits in non-LUPA claims. We then add one to these ratios to obtain the proposed add-on factors: 1.7227 for SN; 1.6247 for PT; and 1.6703 for SLP. As an example of the application of the proposed add-on factors for CY 2025, for LUPA periods that occur as the only episode or an initial period in a sequence of adjacent periods, if the first skilled visit is SN, the payment for that visit would be \$297.03 (1.7227 multiplied by \$172.42). The proposed LUPA add-on factors will be updated based on more complete CY 2023 claims data in the final rule. As such, we solicit comments on the proposals to update the LUPA factors using the 2014 methodology and based on these updated numbers, re-price the LUPA payment amounts.

e. Occupational Therapy LUPA Add-On Factor

In order to implement Division CC, section 115, of the Consolidation Appropriations Act (CAA), 2021, CMS finalized changes to regulations at § 484.55(a)(2) and (b)(3) that allowed occupational therapists to conduct initial and comprehensive assessments for all Medicare beneficiaries under the home health benefit when the plan of care does not initially include skilled nursing care, but included OT, as well as either PT or SLP (86 FR 62351). This change necessitated the establishment of a LUPA add-on factor for calculating the LUPA add-on payment amount for the first skilled OT visit in LUPA periods that occurs as the only period of care or the initial 30-day period of care in a sequence of adjacent 30-day periods of care. However, at the time of the implementation, as we stated in the CY 2022 HH PPS final rule (86 FR 62289), there was not sufficient data regarding the average excess of minutes for the first visit in LUPA periods when the initial and comprehensive assessments

are conducted by occupational therapists. Therefore, we finalized that we would use the PT LUPA add-on factor of 1.6700 as a proxy. We also stated in the CY 2022 final rule that we would use the PT LUPA add-on factor as a proxy until we have CY 2022 data to establish a more accurate OT add-on factor for the LUPA add-on payment amounts (86 FR 62289). Ultimately, we refrained from using CY 2022 data (and instead utilized the PT LUPA add-on factor as a proxy for the OT LUPA add-on factor), as we marked the first year that occupational therapists were permitted to conduct the initial assessment. Therefore, we wanted to extend our analysis to ensure we had sufficient data to reflect OT time spent conducting initial assessments to establish a discrete OT LUPA add-on factor (86 FR 62240). Accordingly, we continued analyzing claims data and have opted to utilize CY 2023 data to make this proposal.

With sufficient recent claims data available, and to establish equitable compensation for all home health services, CMS is now proposing to establish a definitive OT-specific LUPA add-on factor and discontinue the temporary use of the PT LUPA add-on factor as a proxy. For this proposal, we are using the same methodology used to establish the LUPA add-on amount for CY 2014, as also described previously for the SN, PT and SLP add-on factors. Specifically, we are updating the analysis using 100 percent of LUPA periods and a 100 percent sample of non-LUPA first periods from CY 2023 claims data. The analysis shows that the average excess of minutes for the first OT visit in LUPA periods that were the only period or an initial LUPA in a sequence of adjacent periods is 33.40 minutes for the first visit. The average number of minutes for all non-first visits in non-LUPA periods is 45.97 minutes for OT.

To determine the LUPA add-on factors for OT to adequately adjust LUPA payments to account for the excess minutes during the first visit in a LUPA period, we are proposing to

calculate the ratio of the average excess minutes for the first visits in LUPA claims to the average minutes for all non-first visits in non-LUPA claims. We are proposing to then add one to this ratio to obtain the proposed add-on factor: 1.7266 for OT. As an example of the application of the proposed add-on factor, for LUPA periods that occur as the only period or as an initial period in a sequence of adjacent periods, if the first skilled visit is OT, the payment for that visit will be \$327.62 (1.7266 multiplied by \$189.75). Table 38 shows the current LUPA add-on factors and the proposed LUPA add-on factors. The proposed OT LUPA add-on factor will be updated based on more complete CY 2023 claims data in the final rule. As such, we solicit comments on the proposed use of OT data to determine the OT LUPA add-on factor, as well as the proposed methodology to determine this OT LUPA add-on factor.

f. Payments for High-Cost Outliers Under the HH PPS

(1) Background

Section 1895(b)(5) of the Act allows for the provision of an addition or adjustment to the home health payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Under the HH PPS and the previous unit of payment (that is, 60-day episodes), outlier payments were made for 60-day episodes whose estimated costs exceed a threshold amount for each HHRG. The episode's estimated cost was established as the sum of the national wage-adjusted per visit payment amounts delivered during the episode. The outlier threshold for each case-mix group or PEP adjustment defined as the 60-day episode payment or PEP adjustment for that group plus a fixed-dollar loss (FDL) amount. For the purposes of the HH PPS, the FDL amount is calculated by multiplying the home health FDL ratio by a case's wage-adjusted national, standardized 60-day episode payment rate, which yields an FDL dollar amount for the case. The outlier threshold amount is the sum of

the wage and case-mix adjusted PPS episode amount and wage-adjusted FDL amount. The outlier payment is defined to be a proportion of the wage-adjusted estimated cost that surpasses the wage-adjusted threshold. The proportion of additional costs over the outlier threshold amount paid as outlier payments is referred to as the loss-sharing ratio.

As we noted in the CY 2011 HH PPS final rule (75 FR 70397 through 70399), section 3131(b)(1) of the Affordable Care Act amended section 1895(b)(3)(C) of the Act to require that the Secretary reduce the HH PPS payment rates such that aggregate HH PPS payments were reduced by 5 percent. In addition, section 3131(b)(2) of the Affordable Care Act amended section 1895(b)(5) of the Act by redesignating the existing language as section 1895(b)(5)(A) of the Act and revised the language to state that the total amount of the additional payments or payment adjustments for outlier episodes could not exceed 2.5 percent of the estimated total HH PPS payments for that year. Section 3131(b)(2)(C) of the Affordable Care Act also added section 1895(b)(5)(B) of the Act, which capped outlier payments as a percent of total payments for each HHA for each year at 10 percent.

As such, beginning in CY 2011, we reduced payment rates by 5 percent and targeted up to 2.5 percent of total estimated HH PPS payments to be paid as outliers. To do so, we first returned the 2.5 percent held for the target CY 2010 outlier pool to the national, standardized 60-day episode rates, the national per visit rates, the LUPA add-on payment amount, and the NRS conversion factor for CY 2010. We then reduced the rates by 5 percent as required by section 1895(b)(3)(C) of the Act, as amended by section 3131(b)(1) of the Affordable Care Act. For CY 2011 and subsequent calendar years we targeted up to 2.5 percent of estimated total payments to be paid as outlier payments, and apply a 10-percent agency-level outlier cap.

In the CY 2017 HH PPS proposed and final rules (81 FR 43737 through 43742 and 81 FR 76702), we described our concerns regarding patterns observed in home health outlier episodes. Specifically, we noted the methodology for calculating home health outlier payments may have created a financial incentive for providers to increase the number of visits during an episode of care in order to surpass the outlier threshold; and simultaneously created a disincentive for providers to treat medically complex beneficiaries who require fewer but longer visits. Given these concerns, in the CY 2017 HH PPS

final rule (81 FR 76702), we finalized changes to the methodology used to calculate outlier payments, using a cost-per-unit approach rather than a cost-per-visit approach. This change in methodology allows for more accurate payment for outlier episodes, accounting for both the number of visits during an episode of care and the length of the visits provided. Using this approach, we now convert the national per-visit rates into per 15-minute unit rates. These per 15-minute unit rates are used to calculate the estimated cost of an episode to determine whether the claim will receive an outlier payment and the amount of payment for an episode of care. In conjunction with our finalized policy to change to a cost-per-unit approach to estimate episode costs and determine whether an outlier episode should receive outlier payments, in the CY 2017 HH PPS final rule we also finalized the implementation of a cap on the amount of time per day that would be counted toward the estimation of an episode's costs for outlier calculation purposes (81 FR 76725). Specifically, we limit the amount of time per day (summed across the six disciplines of care) to 8 hours (32 units) per day when estimating the cost of an episode for outlier calculation purposes.

In the CY 2017 HH PPS final rule (81 FR 76724), we stated that we did not plan to re-estimate the average minutes per visit by discipline every year. Additionally, the per unit rates used to estimate an episode's cost were updated by the home health update percentage each year, meaning we would start with the national per visit amounts for the same calendar year when calculating the cost-per-unit used to determine the cost of an episode of care (81 FR 76727). We will continue to monitor the visit length by discipline as more recent data becomes available and may propose to update the rates as needed in the future.

In the CY 2019 HH PPS final rule with comment period (83 FR 56521), we finalized a policy to maintain the current methodology for payment of high-cost outliers upon implementation of PDGM beginning in CY 2020 and calculated payment for high-cost outliers based upon 30-day period of care. Upon implementation of the PDGM and 30-day unit of payment, we finalized the FDL ratio of 0.56 for 30-day periods of care in CY 2020. Given that CY 2020 was the first year of the PDGM and the change to a 30-day unit of payment, we finalized maintaining the same FDL ratio of 0.56 in CY 2021 as we did not have sufficient CY 2020 data at the time of CY 2021 rulemaking to propose a change to the FDL ratio for

CY 2021. In the CY 2022 HH PPS final rule with comment period (86 FR 62292), we estimated that outlier payments would be approximately 1.8 percent of total HH PPS final rule payments if we maintained an FDL of 0.56 in CY 2022. Therefore, in order to pay up to, but no more than, 2.5 percent of total payments as outlier payments we finalized an FDL of 0.40 for CY 2022. In the CY 2023 HH PPS final rule (87 FR 66875), using CY 2021 claims utilization data, we finalized an FDL of 0.35 in order to pay up to, but no more than, 2.5 percent of the total payment as outlier payments in CY 2023. In the CY 2024 HH PPS final rule (88 FR 77749), using CY 2022 claims utilization data, we finalized an FDL of 0.27 for CY 2024.

(2) Proposed FDL Ratio for CY 2025

For a given level of outlier payments, there is a trade-off between the values selected for the FDL ratio and the loss-sharing ratio. A high FDL ratio reduces the number of periods that can receive outlier payments but makes it possible to select a higher loss-sharing ratio, and therefore, increase outlier payments for qualifying outlier periods. Alternatively, a lower FDL ratio means that more periods can qualify for outlier payments, but outlier payments per period must be lower.

The FDL ratio and the loss-sharing ratio are selected so that the estimated total outlier payments do not exceed the 2.5 percent aggregate level (as required by section 1895(b)(5)(A) of the Act). Historically, we have used a value of 0.80 for the loss-sharing ratio, which, we believe, preserves incentives for agencies to attempt to provide care efficiently for outlier cases. With a loss-sharing ratio of 0.80, Medicare pays 80 percent of the additional estimated costs that exceed the outlier threshold amount. Using CY 2023 claims data (as of March 19, 2024) and given the statutory requirement that total outlier payments do not exceed 2.5 percent of the total payments estimated to be made under the HH PPS, we are proposing an FDL ratio of 0.38 for CY 2025 which is higher than the finalized CY 2024 FDL of 0.27. CMS will update the FDL, if needed, in the final rule once we have more complete CY 2023 claims data.

F. Annual Rate Update for Disposable Negative Pressure Wound Therapy (dNPWT) Device

1. Background

Negative pressure wound therapy (NPWT) is a medical procedure in which a vacuum dressing is used to enhance and promote healing in acute, chronic, and burn wounds. The therapy

involves using a sealed wound dressing attached to a pump to create a negative pressure environment in the wound. The therapy can be administered using the conventional NPWT system, classified as durable medical equipment (DME), or can be administered using a disposable device. A disposable NPWT (dNPWT) device is a single-use integrated system that consists of a non-manual vacuum pump, a receptacle for collecting exudate, and wound dressings. Unlike conventional NPWT systems classified as DME, dNPWT devices have preset continuous negative pressure, no intermittent setting, are pocket-sized and easily transportable, and are generally battery-operated with disposable batteries. In order for a beneficiary to receive dNPWT under the home health benefit, the beneficiary must qualify for the home health benefit in accordance with existing eligibility requirements.

2. Payment Policies for dNPWT Devices

Prior to CY 2024, the separate payment amount for dNPWT included the furnishing of services as well as the dNPWT device. The separate payment amount was set equal to the amount of the payment that would be made under the Medicare Hospital Outpatient Prospective Payment System (OPPS) using the CPT codes 97607 and 97608. Payment for visits where the sole purpose of a home health visit was to furnish dNPWT was not made under the HH PPS. Therefore, visits performed solely for the purpose of furnishing a new dNPWT device were not reported on the HH PPS claim (TOB 32x), instead HHAs submitted these claims on a TOB 34x. However, if a home health visit included the provision of other home health services in addition to, and separate from, furnishing dNPWT, the HHA submitted both a TOB 32x and TOB 34x—the TOB 32x for other home health services and the TOB 34x for furnishing NPWT using a disposable device.

Beginning in CY 2024, Division FF, section 4136 of the CAA, 2023 (Pub. L. 117–328) amended section 1834 of the Act (42 U.S.C. 1395m(s)) and mandated several amendments to the Medicare separate payment for dNPWT. These changes included—

- For CY 2024, the separate payment amount for an applicable dNPWT device was set equal to the supply price used to determine the relative value for the service under the Physician Fee Schedule (PFS) under section 1848 as of January 1, 2022 (CY 2022), updated by the percent increase in the CPI-U for the 12-month period ending with June of the preceding year reduced by m the

productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act for such year;

- For 2025 and each subsequent year, the separate payment amount was to be set equal to the payment amount established for the device in the previous year, updated by the percent increase in the CPI-U for the 12-month period ending with June of the preceding year reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) for such year.

- The separate payment amount for applicable devices furnished on or after January 1, 2024, would no longer include payment for nursing or therapy services described in section 1861(m) of the Act so that payment for such nursing or therapy services are now made under the HH PPS, and is no longer separately billable.

- Claims for the separate payment amount of an applicable dNPWT device are now accepted and processed on claims submitted using the type of bill (TOB) 32X.

In the CY 2024 HH PPS final rule (88 FR 77676), we finalized our proposal to codify these changes to dNPWT payments mandated by the CAA, 2023. Beginning January 1, 2024, the separate payment for a dNPWT device is made to an HHA for an individual who is under a home health plan of care using Healthcare Common Procedure Coding System (HCPCS) code A9272. The code HCPCS A9272 is defined as a wound suction, disposable, includes dressing, all accessories and components, any type, each. The HHA reports the HCPCS code A9272 for the device only on the home health TOB 32X. The services related to the application of the device are included in the home health payment and are excluded from the separate payment amount for the device. The CY 2024 single payment amount for a dNPWT device for individuals under a home health plan of care was set equal to \$270.09, which equaled the supply price of an applicable device under the Medicare PFS (as of January 1, 2022) of \$263.25 updated by the 2.6 percent increase in the CPI-U for the 12-month period ending in June of 2023, minus the productivity adjustment.

3. CY 2025 Separate Payment Amount for dNPWT Device

For CY 2025, we are proposing that the separate payment amount for a dNPWT device would be set equal to the CY 2024 payment amount of \$270.09 updated by the CPI-U for June 2024, minus the productivity adjustment, as mandated by the CAA, 2023. The application of the

productivity adjustment may result in a net update that may be less than 0.0 for a year and may result in the separate payment amount for an applicable device for a year being less than such separate payment amount for such device for the preceding year. We note that the CPI-U for the 12-month period ending in June of 2024 is not available at the time of this proposed rulemaking. Therefore, the CY 2025 payment amount, as well as the CPI-U for the 12-month period ending in June of 2024, and the corresponding productivity adjustment will be updated in the final rule.

For CY 2026 and subsequent years, if CMS does not intend to propose changes to its established methodology for calculating dNPWT payments, payment rates will be updated using CMS's established methodology via the Home Health Prospective Payment System Rate Update Change Request and posted on the HHA Center website at <https://www.cms.gov/medicare/enrollment-renewal/providers-suppliers/home-health-agency-center>. For more in-depth information regarding the finalized policies associated with the scope of the payment for dNPWT and conditions for payment, we refer readers to the CY 2024 HH PPS final rule (88 FR 77749 through 77752).

III. Home Health Quality Reporting Program (HH QRP)

A. Background and Statutory Authority

The HH QRP is authorized by section 1895(b)(3)(B)(v) of the Act. Section 1895(b)(3)(B)(v)(II) of the Act requires that, for 2007 and subsequent years, each home health agency (HHA) submit to the Secretary in a form and manner, and at a time, specified by the Secretary, such data that the Secretary determines are appropriate for the measurement of health care quality. To the extent that an HHA does not submit data in accordance with this clause, the Secretary shall reduce the home health market basket percentage increase applicable to the HHA for such year by 2 percentage points. As provided at section 1895(b)(3)(B)(vi) of the Act, depending on the market basket percentage increase applicable for a particular year, as further reduced by the productivity adjustment (except in 2018 and 2020) described in section 1886(b)(3)(B)(xi)(II) of the Act, the reduction of that increase by 2 percentage points for failure to comply with the requirements of the HH QRP may result in the home health market basket percentage increase being less than 0.0 percent for a year, and may result in payment rates under the Home

Health PPS for a year being less than payment rates for the preceding year. Section 1890A of the Act requires that the Secretary establish and follow a pre-rulemaking process, in coordination with the consensus-based entity (CBE) with a contract under section 1890 of the Act, to solicit input from certain groups regarding the selection of quality and efficiency measures for the HH QRP. The HH QRP regulations can be found at 42 CFR 484.245 and 484.250.

Based on feedback from patients and stakeholders, CMS has launched an effort to update and shorten the Home Health Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) survey. In 2023 CMS tested

a shortened survey across a variety of different types of HHAs. We are reviewing the findings of the field test and plan to propose in the future updates to the survey with the intent to shorten it.

B. Summary of the Provision of This Proposed Rule

In this proposed rule, we are proposing to add four new items and to modify one assessment item on the OASIS. Second, we propose an update to the removal of the suspension of OASIS all-payer data collection. Third, we are seeking information on future HH QRP quality measure concepts. These proposals are further specified in the following sections.

For a detailed discussion of the considerations, we historically use for measure selection for the HH QRP quality, resource use, and other measures, we refer readers to the CY 2016 HH PPS final rule (80 FR 68695 through 68696). In the CY 2019 HH PPS final rule with comment period (83 FR 56548 through 56550) we finalized the factors we consider for removing previously adopted HH QRP measures.

C. Quality Measures Currently Adopted for the CY 2024 HH QRP

The HH QRP currently includes 21 measures for the CY 2024 program year, as described in table 39.

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TABLE 39: MEASURES CURRENTLY ADOPTED FOR THE CY 2024 HH QRP

Short Name	Measure Name & Data Source
QM Name	OASIS-based
Ambulation	Improvement in Ambulation/Locomotion (CBE #0167).
Application of Falls	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) (CBE #0674).
Application of Functional Assessment	Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (CBE #2631). ⁴
Bathing	Improvement in Bathing (CBE #0174).
Bed Transferring	Improvement in Bed Transferring (CBE # 0175).
Patient COVID-19 Vaccination	COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date
DRR	Drug Regimen Review Conducted With Follow-Up for Identified Issues- Post Acute Care (PAC) HH QRP.
DC Function	Discharge Function Score
Dyspnea	Improvement in Dyspnea.
Influenza	Influenza Immunization Received for Current Flu Season
Oral Medications	Improvement in Management of Oral Medications (CBE #0176).
Pressure Ulcer/Injury	Changes in Skin Integrity Post-Acute Care
Timely Care	Timely Initiation Of Care (CBE #0526).
TOH -Provider	Transfer of Health Information to Provider-Post-Acute Care ¹
TOH -Patient	Transfer of Health Information to Patient-Post-Acute Care ¹
QM Name	Claims-based
ACH	Acute Care Hospitalization During the First 60 Days of HH (CBE #0171) ³
DTC	Discharge to Community-Post Acute Care (PAC) Home Health (HH) Quality Reporting Program (QRP) (CBE #3477)
ED Use	Emergency Department Use without Hospitalization During the First 60 Days of HH (CBE #0173) ³
MSPB	Total Estimated Medicare Spending Per Beneficiary (MSPB)—Post Acute Care (PAC) HH QRP.
PPR	Potentially Preventable 30-Day Post-Discharge Readmission Measure for HH Quality Reporting Program.
PPH	Home Health Within Stay Potentially Preventable Hospitalization
QM Name	HHCAHPS-based
CAHPS Home Health Survey	CAHPS® Home Health Care Survey (experience with care) (CBE #0517) ² - How often the HH team gave care in a professional way. - How well did the HH team communicate with patients. - Did the HH team discuss medicines, pain, and home safety with patients. - How do patients rate the overall care from the HHA. - Will patients recommend the HHA to friends and family.

NOTES: 1. Data collection delayed due to the COVID-19 public health emergency for the TOH-Patient and TOH-Provider. 2. The HHCAHPS has five components that together are used to represent one CBE-endorsed measure. 3. ACH and ED Use will be retired from public reporting in October 2024 4. Application of Functional Assessment will be retired from public reporting in January 2025.

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D. Proposal To Collect Four New Items as Standardized Patient Assessment Data Elements and Modify One Item Collected as a Standardized Patient Assessment Data Element Beginning With the CY 2027 HH QRP

In this proposed rule, we are proposing to add four new items¹⁰ to be collected as standardized patient assessment data elements under the social determinants of health (SDOH) category HH QRP: Living Situation (one item); Food (two items); and Utilities (one item). We are also proposing to modify one of the current items collected as standardized patient assessment data under the SDOH category (the Transportation item) as described in section III.D.5. of this proposed rule.

1. Definition of Standardized Patient Assessment Data

Section 1895(b)(3)(B)(v) of the Act requires that for CY 2007 and subsequent years, HHAs submit quality data to the Secretary. Section 1899B(a)(1)(C) of the Act requires, in part, the Secretary to modify the post-acute care (PAC) assessment instruments for PAC providers, including HHAs, to submit standardized patient assessment data under the Medicare program. Section 1899B(b)(1)(A) of the Act requires PAC providers to submit standardized patient assessment data under applicable reporting provisions (which, for HHAs, is the HH QRP) for the admission (start and resumption of care) and discharge of an individual (and more frequently as the Secretary deems appropriate). Section 1899B(b)(1)(B) of the Act defines standardized patient assessment data as data required for at least the quality measures described in section 1899B(c)(1) of the Act and that is concerning the following categories: (1) functional status, such as mobility and self-care at admission to a PAC provider and before discharge from a PAC provider; (2) cognitive function, such as ability to express ideas and to understand, and mental status, such as depression and dementia; (3) special services, treatments, and interventions, such as need for ventilator use, dialysis, chemotherapy, central line placement, and total parenteral nutrition; (4) medical conditions and comorbidities, such as diabetes, congestive heart failure, and pressure ulcers; (5) impairments, such as incontinence and an impaired ability to hear, see, or

swallow, and (6) other categories deemed necessary and appropriate by the Secretary.

2. Social Determinants of Health (SDOH) Collected as Standardized Patient Assessment Data Elements

Section 1899B(b)(1)(B)(vi) of the Act authorizes the Secretary to collect standardized patient assessment data elements with respect to other categories deemed necessary and appropriate. Accordingly, we finalized the creation of the SDOH category of standardized patient assessment data elements in the CY 2020 HH PPS final rule (84 FR 60597 through 60608). SDOH are the socioeconomic, cultural, and environmental circumstances in which individuals live that impact their health.¹¹ According to the World Health Organization research shows that the SDOH can be more important than health care or lifestyle choices in influencing health, accounting for between 30–55% of health outcomes.¹² This is a part of a growing body of research that highlights the importance of SDOH on health outcomes. Subsequent to the CY 2020 HH PPS final rule, we expanded our definition of SDOH: SDOH are the conditions in the environments where people are born, live, learn, work, play, worship and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks.^{13 14 15} This expanded definition aligns our definition of SDOH with the definition used by HHS agencies, including OASH, the Centers for Disease Control and Prevention (CDC) and the White House Office of Science and Technology Policy.^{16 17} We currently collect seven

items in this SDOH category of standardized patient assessment data elements: ethnicity, race, preferred language, interpreter services, health literacy, transportation, and social isolation (84 FR 60597 through 60608).¹⁸ In accordance with our authority under section 1899B(b)(1)(B)(vi) of the Act, we similarly finalized the creation of the SDOH category of standardized patient assessment data elements for skilled nursing facilities (SNFs) in the FY 2020 SNF PPS final rule (84 FR 38805 through 38817), for Inpatient Rehabilitation Facilities (IRFs) in the FY 2020 IRF PPS final rule (84 FR 39149 through 39161), and for Long Term Acute Hospitals (LTCHs) in the FY 2020 LTCH PPS final rule (84 FR 42577 through 42579). We also collect the same seven SDOH items in these PAC providers' respective patient/resident assessment instruments (84 FR 38817, 39161, and 42577, respectively).

Adding access to standardized data relating to SDOH on a national level permits us to conduct periodic analyses, and to assess their appropriateness as risk adjusters or in future quality measures. Our ability to perform these analyses and to make adjustments relies on existing data collection of SDOH items from PAC settings. We adopted these SDOH items using common standards and definitions across the four PAC providers to promote interoperable exchange of longitudinal information among these PAC providers, including HHAs, and other providers. We believe this information may facilitate coordinated care, improve patient focused care planning, and allow for continuity of the discharge planning process from PAC settings.

We noted in our CY 2020 HH PPS final rule that each of the items was identified in the 2016 National Academies of Sciences, Engineering, and Medicine (NASEM) report as impacting care use, cost, and outcomes for Medicare beneficiaries (84 FR 60598 through 60602). At that time, we acknowledged that other items may also be useful to understand. The SDOH items we are proposing to collect as standardized patient assessment data elements under the SDOH category in this proposed rule were also identified

¹¹ Office of the Assistant Secretary for Planning and Evaluation (ASPE). Second Report to Congress on Social Risk and Medicare's Value-Based Purchasing Programs. June 28, 2020. Available at: <https://aspe.hhs.gov/reports/second-report-congress-social-risk-medicare-value-based-purchasing-programs>.

¹² World Health Organization. Social determinants of health. Available at: https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1.

¹³ Using Z Codes: The Social Determinants of Health (SDOH). Data Journey to Better Outcomes.

¹⁴ Improving the Collection of Social Determinants of Health (SDOH) Data with ICD-10-CM Z Codes. <https://www.cms.gov/files/document/cms-2023-omh-z-code-resource.pdf>.

¹⁵ CMS.gov Measures Management System (MMS). CMS Focus on Health Equity. Health Equity Terminology and Quality Measures. <https://mmshub.cms.gov/about-quality-quality-at-CMS/goals/cms-focus-on-health-equity/health-equity-terminology>.

¹⁶ Centers for Disease Control and Prevention. Social Determinants of Health (SDOH) and PLACES Data.

¹⁷ "U.S. Playbook to Address Social Determinants of Health" from the White House Office Of Science And Technology Policy (November 2023).

¹⁰ Items may also be referred to as "data elements."

¹⁸ These SDOH data are also collected for purposes outlined in section 2(d)(2)(B) of the Improving Medicare Post-Acute Care Transitions Act (IMPACT Act). For a detailed discussion on SDOH data collection under section 2(d)(2)(B) of the IMPACT Act, see the CY 2020 HH PPS final rule (84 FR 60597 through 60608).

in the 2016 NASEM report¹⁹ or the 2020 NASEM report²⁰ as impacting care use, cost and outcomes for Medicare beneficiaries. These items have the potential to affect treatment preferences and goals of patients and their caregivers. Identification of the SDOH items may also help HHAs be in a position to offer assistance, by connecting patients and their caregivers with these associated needs to social support programs, as well as inform our understanding of patient complexity.

Health-related social needs (HRSNs) are the resulting effects of SDOH, which are individual-level, adverse social conditions that negatively impact a person's health or health care.²¹ Examples of HRSN include lack of access to food, housing, or transportation, and these have been associated with poorer health outcomes, greater use of emergency departments and hospitals, and higher health care costs.^{22 23} Certain HRSNs can lead to unmet social needs that directly influence an individual's physical, psychosocial, and functional status.²⁴ This is particularly true for food security, housing stability, utilities security, and access to transportation.²⁵

Evidence supports the positive impact on health outcomes of interventions aimed at addressing HRSNs.²⁶

We are proposing to require HHAs collect and submit four new items in the OASIS as standardized patient assessment data elements under the SDOH category because these items would collect information not already captured by the current SDOH items. Specifically, we believe the ongoing identification of SDOH would have three significant benefits. First, promoting screening for SDOH could serve as evidence-based building blocks for supporting healthcare providers in actualizing their commitment to address disparities that disproportionately impact underserved communities. Second, screening for SDOH advances health equity through identifying potential social needs so the HHA may address those with the patient, their caregivers, and community partners during the home health episode and discharge planning process, if indicated.²⁷ Third, these SDOH items would support ongoing HH QRP initiatives by providing data with which to stratify HHAs' performance on current and future quality measures to improve care quality across different populations.

Additional collection of SDOH items would permit us to continue developing the statistical tools necessary to maximize the value of Medicare data and improve the quality of care for all beneficiaries. For example, we recently developed and released the Health Equity Confidential Feedback Reports, which provided data to HHAs on whether differences in quality measure outcomes are present for their patients by dual-enrollment status and race and ethnicity.²⁸ We note that advancing

health equity by addressing the health disparities that underlie the country's health system is one of our strategic pillars²⁹ and a Biden-Harris Administration priority.³⁰

3. Proposal to Collect Four New Items as Standardized Patient Assessment Data Elements Beginning January 1, 2027, for the CY 2027 HH QRP Program Year³¹

We are proposing to require HHAs collect four new items as standardized patient assessment data elements under the SDOH category using the OASIS: one item for living situation, as described in III.D.3.a. of this proposed rule; two items for food, as described in section III.D.3.b. of this proposed rule; and one item for utilities, as described in section III.D.3.c of this proposed rule.

We selected the proposed SDOH items from the Accountable Health Communities (AHC) HRSN Screening Tool developed for the AHC Model. The AHC HRSN Screening Tool is a universal, comprehensive screening for HRSNs that was developed by a technical expert panel (TEP) in July 2016 to discuss opportunities and challenges involved in screening for HRSNs, consider and pare down CMS' list of evidence-based screening questions, and recommend a short list of questions for inclusion in the final tool.^{32 33} The TEP agreed to prioritize the inclusion of five SDOH domains as follows: (1) housing instability (for example, homelessness, poor housing quality); (2) food insecurity; (3) transportation difficulties; (4) utility assistance needs; and (5) interpersonal safety concerns (for example, intimate-

www.cms.gov/medicare/quality/snf-quality-reporting-program/training.

²⁹ Brooks-LaSure, C. (2021). My First 100 Days and Where We Go from Here: A Strategic Vision for CMS. Centers for Medicare & Medicaid. Available at: <https://www.cms.gov/blog/my-first-100-days-and-where-we-go-here-strategic-vision-cms>.

³⁰ The White House. The Biden-Harris Administration Immediate Priorities. <https://www.whitehouse.gov/priorities/>.

³¹ Per the authority for the OASIS assessment instrument under 1891(d)(1), Home Health Conditions of Participation [42 U.S.C. 1395bbb].

³² Centers for Medicare & Medicaid Services. "A Guide to Using the Accountable Health Communities Health-Related Social Needs Screening Tool: Promising Practices and Key Insights." August 2022. Available at <https://www.cms.gov/priorities/innovation/media/document/ahcm-screeningtool-companion>.

³³ Billioux, A., K. Verlander, S. Anthony, and D. Alley. 2017. Standardized screening for health-related social needs in clinical settings: The accountable health communities screening tool. Discussion Paper, National Academy of Medicine, Washington, DC. <https://nam.edu/wp-content/uploads/2017/05/Standardized-Screening-for-Health-Related-Social-Needs-in-Clinical-Settings.pdf>.

¹⁹ Social Determinants of Health. Healthy People 2020. <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>. February 2019.

²⁰ National Academies of Sciences, Engineering, and Medicine. 2020. Leading Health Indicators 2030: Advancing Health, Equity, and Well-Being. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25682>.

²¹ Centers for Medicare & Medicaid Services. "A Guide to Using the Accountable Health Communities Health-Related Social Needs Screening Tool: Promising Practices and Key Insights." August 2022. Available at <https://www.cms.gov/priorities/innovation/media/document/ahcm-screeningtool-companion>.

²² Berkowitz, S.A., T.P. Baggett, and S.T. Edwards. "Addressing Health-Related Social Needs: Value-Based Care or Values-Based Care?" *Journal of General Internal Medicine*, vol. 34, no. 9, 2019, pp. 1916–1918. <https://doi.org/10.1007/s11606-019-05087-3>.

²³ Whitman A, De Lew N, Chappel A, Aysola V, Zuckerman R, & Sommers B D. Addressing social determinants of health: Examples of successful evidence-based strategies and current federal efforts. ASPE (Assistant Secretary for Planning and Evaluation) Office of Health Policy. Report HP–2022–12 April 1, 2022. SDOH-Evidence-Review.pdf (hhs.gov). Accessed 3/1/2024.

²⁴ Hugh Alderwick and Laura M. Gottlieb, "Meanings and Misunderstandings: A Social Determinants of Health Lexicon for Health Care Systems: Milbank Quarterly," *Milbank Memorial Fund*, November 18, 2019, <https://www.milbank.org/quarterly/articles/meanings-and-misunderstandings-a-social-determinants-of-health-lexicon-for-health-care-systems/>.

²⁵ Hugh Alderwick and Laura M. Gottlieb, "Meanings and Misunderstandings: A Social Determinants of Health Lexicon for Health Care Systems: Milbank Quarterly," *Milbank Memorial Fund*, November 18, 2019, <https://www.milbank.org/quarterly/articles/meanings-and-misunderstandings-a-social-determinants-of-health-lexicon-for-health-care-systems/>.

²⁶ Whitman A, De Lew N, Chappel A, Aysola V, Zuckerman R, & Sommers B D. Addressing social determinants of health: Examples of successful evidence-based strategies and current federal efforts. ASPE (Assistant Secretary for Planning and Evaluation) Office of Health Policy. Report HP–2022–12 April 1, 2022. SDOH-Evidence-Review.pdf (hhs.gov). Accessed 5/29/2024.

²⁷ American Hospital Association (2020). Health Equity, Diversity & Inclusion Measures for Hospitals and Health System Dashboards. December 2020. Accessed: January 18, 2022. Available at: https://ifdhe.aha.org/system/files/media/file/2020/12/ifdhe_inclusion_dashboard.pdf.

²⁸ In October 2023, we released two new annual Health Equity Confidential Feedback Reports to HHAs: The Discharge to Community (DTC) Health Equity Confidential Feedback Report and the Medicare Spending Per Beneficiary (MSPB) Health Equity Confidential Feedback Report. The PAC Health Equity Confidential Feedback Reports stratified the DTC and MSPB measures by dual-enrollment status and race/ethnicity. For more information on the Health Equity Confidential Feedback Reports, please refer to the Education and Outreach materials available here: <https://>

partner violence, elder abuse, child maltreatment).³⁴

We believe that requiring HHAs to report new items that are currently included in the AHC HRSN Screening Tools would further standardize the screening of SDOH across patient assessment instruments and the various quality reporting programs. For example, our proposal would align, in part, with the requirements of the Hospital Inpatient Quality Reporting (IQR) Program and the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program. As of January 2024, hospitals are required to report whether they have screened patients for the standardized SDOH categories of housing stability, food security, and access to transportation to meet the Hospital IQR Program requirements.³⁵ Beginning January 2025, IPFs will also be required to report whether they have screened patients for the same set of SDOH categories.³⁶ As we continue to standardize data collection across PAC settings, we believe using common standards and definitions for new items is important to ensure the interoperable exchange of longitudinal information between HHAs and other providers to facilitate coordinated care, continuity in care planning, and the discharge planning process.

In the following section we describe each of the four proposed items in more detail.

a. Living Situation

Healthy People 2030 prioritizes economic stability as a key SDOH, of which housing stability is a component.^{37 38} Lack of housing stability encompasses several challenges, such as having trouble paying rent, overcrowding, moving frequently, or spending the bulk of household income on housing.³⁹ These experiences may negatively affect

physical health and make it harder to access health care. Lack of housing stability can also lead to homelessness, which is housing deprivation in its most severe form.⁴⁰ On a single night in 2023, roughly 653,100 people, or 20 out of every 10,000 people in the United States, were experiencing homelessness.⁴¹ Rates of chronic disease and premature mortality are higher among the unsheltered homeless relative to the sheltered.⁴² Older adults (aged 65 years and older) have lower rates of experiencing any housing instability compared to younger people (8.8% versus 18.7%), but low-income older adults may be more at risk for housing instability if they lack the resources necessary to secure and/or maintain structurally sound housing.⁴³ Adults (aged 18–64 years) with disabilities experience challenges to securing stable housing including affordability and accessibility.⁴⁴ We believe that HHAs can use information obtained from the Living Situation assessment item during a patient's initial assessment as well as in discharge planning. For example, HH social workers can work with patients experiencing housing instability to ensure patients are referred to available community resources, such as supportive housing programs. HHAs could work in partnership with community care hubs and community-based organizations to establish new care transition workflows, including referral pathways, contracting mechanisms, data sharing strategies, and implementation training that can

track both health and social needs outcomes to ensure unmet needs, such as housing, are successfully addressed through closed loop referrals and follow-up.⁴⁵ HHAs could also take action to help alleviate a patient's other related costs of living, like food, by referring patients to community-based organizations that would allow patients' additional resources to be allocated towards housing without sacrificing other needs.⁴⁶ Finally, HHAs could use the information obtained from the Living Situation assessment item to better coordinate with other PAC facilities and agencies during transitions of care, so that referrals to address a patient's housing stability are not lost during vulnerable transition periods.

Due to the potential negative impacts housing instability can have on a patient's health, we are proposing to adopt the Living Situation assessment item as a new standardized patient assessment data element under the SDOH category. This Living Situation assessment item is currently collected in the AHC HRSN Screening Tool^{47 48} and was adapted from the Protocol for Responding to and Assessing Patients' Assets, Risks, and Experiences (PRAPARE) tool.⁴⁹ The proposed Living Situation item asks, "What is your living situation today?" The proposed response options are: (1) I have a steady place to live; (2) I have a place to live today, but I am worried about losing it in the future; (3) I do not have a steady place to live; (4) Patient unable to respond; and (5) Patient declines to respond. A draft of the proposed Living Situation item can be found in the Downloads section of the HH QRP Quality Measures web page at <https://>

⁴⁰ Homelessness is defined as "lacking a regular nighttime residence or having a primary nighttime residence that is a temporary shelter or other place not designed for sleeping." Crowley, S. (2003). The affordable housing crisis: Residential mobility of poor families and school mobility of poor children. *Journal of Negro Education*, 72(1), 22–38. doi: 10.2307/3211288.

⁴¹ The 2023 Annual Homeless Assessment Report (AHAR) to Congress. The U.S. Department of Housing and Urban Development 2023. <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>.

⁴² Richards J, & Kuhn R. Unsheltered homelessness and health: A Literature Review. *AJPM focus* 2023; 2(1):100043. *American Journal of Preventive Medicine*. Unsheltered Homelessness and Health: A Literature Review (sciedirectassets.com). Accessed 3/1/2024.

⁴³ Bhat, Aarti C., David M. Almeida, Andrew Fenelon, and Alexis R. Santos-Lozada. "A longitudinal analysis of the relationship between housing insecurity and physical health among midlife and aging adults in the United States." *SSM-Population Health* 18 (2022): 101128.

⁴⁴ Popkin SJ, Hermans A, Oneto AD, Farrell L, Connery M, & Cannington A. 2022. People with Disabilities Living in the US Face Urgent Barriers to Housing: Federal Programs are not Meeting the Housing Needs of Disabled People. Urban Institute. People with Disabilities Living in the US Face Urgent Barriers to Housing_0.pdf (urban.org). Accessed 5/29/2024.

⁴⁵ U.S. Department of Health & Human Services (HHS). Call to Action, "Addressing Health Related Social Needs in Communities Across the Nation." November 2023. <https://aspe.hhs.gov/sites/default/files/documents/3e2f6140d0087435cc6832bf8cf32618/hhs-call-to-action-health-related-social-needs.pdf>.

⁴⁶ Henderson, K.A., Manian, N., Rog, D.J., Robison, E., Jorge, E., AlAbdulmunem, M. "Addressing Homelessness Among Older Adults" (Final Report). Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. October 26, 2023.

⁴⁷ More information about the AHC HRSN Screening Tool is available on the website at <https://innovation.cms.gov/Files/workbooks/ahcm-screeningtool.pdf>.

⁴⁸ The AHC HRSN Screening Tool Living Situation item includes two questions. In an effort to limit HHA burden, we are only proposing the first question.

⁴⁹ National Association of Community Health Centers and Partners, National Association of Community Health Centers, Association of Asian Pacific Community Health Organizations, Association OPC, Institute for Alternative Futures. "PRAPARE." 2017. <https://prapare.org/the-prapare-screening-tool/>.

³⁴ More information about the AHC HRSN Screening Tool is available on the website at <https://innovation.cms.gov/Files/workbooks/ahcm-screeningtool.pdf>.

³⁵ Centers for Medicare & Medicaid Services, FY2023 IPPS/LTCH PPS final rule (87 FR 49191 through 49194).

³⁶ Centers for Medicare & Medicaid Services, FY 2024 Inpatient Psychiatric Prospective Payment System—Rate Update (88 FR 51107 through 51121).

³⁷ <https://health.gov/healthypeople/priority-areas/social-determinants-health>.

³⁸ Healthy People 2030 is a long-term, evidence-based effort led by the U.S. Department of Health and Human Services (HHS) that aims to identify nationwide health improvement priorities and improve the health of all Americans.

³⁹ Kushel, M. B., Gupta, R., Gee, L., & Haas, J.S. (2006). Housing instability and food insecurity as barriers to health care among low-income Americans. *Journal of General Internal Medicine*, 21(1), 71–77. doi: 10.1111/j.1525–1497.2005.00278.x

www.cms.gov/medicare/quality/home-health/home-health-quality-measures.

b. Food

The U.S. Department of Agriculture (USDA), Economic Research Service defines a lack of food security as a household-level economic and social condition of limited or uncertain access to adequate food.⁵⁰ Adults who are food insecure may be at an increased risk for a variety of negative health outcomes and health disparities. For example, a study found that food-insecure adults may be at an increased risk for obesity.⁵¹ Nutrition security is also an important component that builds on and complements long standing efforts to advance food security. The USDA defines nutrition security as “consistent and equitable access to healthy, safe, affordable foods essential to optimal health and well-being.”⁵² While having enough food is one of many predictors for health outcomes, a diet low in nutritious foods is also a factor.⁵³ Studies have shown that older adults struggling with food security consume fewer calories and nutrients and have lower overall dietary quality than those who are food secure, which can put them at nutritional risk. Older adults are also at a higher risk of developing malnutrition, which is considered a state of deficit, excess, or imbalance in protein, energy, or other nutrients that adversely impacts an individual’s own body form, function, and clinical outcomes. About 50% of older adults are affected by malnutrition, which is further aggravated by a lack of food security and poverty.⁵⁴ We believe that adopting items to collect and analyze information about a patient’s food security at home could provide additional insight into their health complexity and help facilitate coordination with other healthcare providers, facilities, and agencies during

transitions of care, so that referrals to address a patient’s food security are not lost during vulnerable transition periods. For example, an HHA’s registered nurse (RN) or other clinically qualified nutrition professional could work with the patient to plan healthy, affordable food choices prior to discharge.⁵⁵ HHAs could also refer any patient that indicates lack of food security to government initiatives such as home delivered meals programs provided by Area Agencies on Aging,⁵⁶ the Supplemental Nutrition Assistance Program (SNAP), and food pharmacies (programs to increase access to healthful foods by making them affordable), initiatives that have been associated with lower health care costs and reduced hospitalization and emergency department visits.⁵⁷

We are proposing to adopt two new food-related standardized patient assessment data elements under the SDOH category. These proposed items are based on the Food data elements currently collected in the AHC Screening Tool and were adapted from the U.S. Department of Agriculture 18-item Household Food Security Survey (HFSS).⁵⁸ The first proposed Food item states, “Within the past 12 months, you worried that your food would run out before you got money to buy more.” The second proposed Food item states, “Within the past 12 months, the food you bought just didn’t last and you didn’t have money to get more.” We propose the same response options for both items: (1) Often true; (2) Sometimes true; (3) Never True; (4) Patient declines to respond; and (5) Patient unable to respond. A draft of the proposed Food items to be adopted as standardized patient assessment data elements under the SDOH category can be found in the Downloads section of the HH QRP Quality Measures web page at <https://www.cms.gov/medicare/quality/home-health/home-health-quality-measures>.

⁵⁰ U.S. Department of Agriculture, Economic Research Service (n.d.). *Definitions of food security*. Retrieved March 10, 2022, from <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/definitions-of-food-security/>.

⁵¹ Hernandez, D. C., Reesor, L. M., & Murillo, R. (2017). Food insecurity and adult overweight/obesity: Gender and race/ethnic disparities. *Appetite*, 117, 373–378.

⁵² Food and Nutrition Security (n.d.). USDA. <https://www.usda.gov/nutrition-security>.

⁵³ National Center for Health Statistics. (2022, September 6). Exercise or Physical Activity. Retrieved from Centers for Disease Control and Prevention: <https://www.cdc.gov/nchs/fastats/exercise.htm>.

⁵⁴ Food Research & Action Center (FRAC). “Hunger is a Health Issue for Older Adults: Food Security, Health, and the Federal Nutrition Programs.” December 2019. <https://frac.org/wp-content/uploads/hunger-is-a-health-issue-for-older-adults-1.pdf>.

⁵⁵ Schroeder K, Smaldone A. Food Insecurity: A Concept Analysis. *Nurse Forum*. 2015 Oct-Dec;50(4):274–84. doi: 10.1111/nuf.12118. Epub 2015 Jan 21. PMID: 25612146; PMCID: PMC4510041.

⁵⁶ Administration for Community Living. *Nutrition Services*. Last updated 02/02/2024. Accessed 04/19/2024. <https://acl.gov/programs/health-wellness/nutrition-services>.

⁵⁷ Tsega M, Lewis C, McCarthy D, Shah T, Coutts K. Review of Evidence for Health-Related Social Needs Interventions. July 2019. The Commonwealth Fund. <https://www.commonwealthfund.org/sites/default/files/2019-07/ROI-EVIDENCE-REVIEW-FINAL-VERSION.pdf>.

⁵⁸ More information about the HFSS tool can be found at <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/survey-tools/>.

c. Utilities

A lack of energy (utility) security can be defined as an inability to adequately meet basic household energy needs.⁵⁹ According to the Department of Energy, one in three households in the U.S. are unable to adequately meet basic household energy needs.⁶⁰ The median energy burden for rural households of older adults is considerably higher than that for households without older adults.⁶¹ The consequences associated with a lack of utility security are represented by three primary dimensions: economic, physical, and behavioral. Patients with low incomes are disproportionately affected by high energy costs, and they may be forced to prioritize paying for housing and food over utilities. Among older adults, food insecurity and high energy costs together are prevalent.⁶² Some patients with low incomes may face limited housing options and be at increased risk of living in lower-quality physical conditions with malfunctioning heating and cooling systems, poor lighting, and outdated plumbing and electrical systems. Finally, patients with a lack of utility security may use concerning behavioral approaches to cope, such as using stoves and space heaters for heat.⁶³ In addition, data from the Department of Energy’s U.S. Energy Information Administration confirm that a lack of energy security disproportionately affects certain populations, such as low-income and African American households.⁶⁴ The effects of a lack of utility security include vulnerability to environmental exposures such as dampness, mold, and thermal discomfort in the home, which

⁵⁹ Hernández D. Understanding ‘energy insecurity’ and why it matters to health. *Soc Sci Med*. 2016 Oct; 167:1–10. doi: 10.1016/j.socscimed.2016.08.029. Epub 2016 Aug 21. PMID: 27592003; PMCID: PMC5114037.

⁶⁰ U.S. Energy Information Administration. “One in Three U.S. Households Faced Challenges in Paying Energy Bills in 2015.” 2017 Oct 13. <https://www.eia.gov/consumption/residential/reports/2015/energybills/>.

⁶¹ Simes, Miranda, Farzana Khan, and Diana Hernández. “Energy Insecurity and Social Determinants of Health.” In *Handbook of Social Sciences and Global Public Health*, pp. 2119–2137. Cham: Springer International Publishing, 2023.

⁶² Simes, Miranda, Farzana Khan, and Diana Hernández. “Energy Insecurity and Social Determinants of Health.” In *Handbook of Social Sciences and Global Public Health*, pp. 2119–2137. Cham: Springer International Publishing, 2023.

⁶³ Hernández D. “What ‘Merle’ Taught Me About Energy Insecurity and Health.” *Health Affairs*, VOL.37, NO.3: Advancing Health Equity Narrative Matters. March 2018. <https://doi.org/10.1377/hlthaff.2017.1413>.

⁶⁴ U.S. Energy Information Administration. “One in Three U.S. Households Faced Challenges in Paying Energy Bills in 2015.” 2017 Oct 13. <https://www.eia.gov/consumption/residential/reports/2015/energybills/>.

have direct effect on patients' health.⁶⁵ For example, research has shown associations between a lack of energy security and respiratory conditions as well as mental health-related disparities and poor sleep quality in vulnerable populations such as the elderly, children, the socioeconomically disadvantaged, and the medically vulnerable.⁶⁶ We believe adopting an item to collect information about a patient's utility security upon start or resumption of care in HHAs would facilitate the identification of patients who may not have utility security and who may benefit from engagement efforts. For example, HHAs could use the information on utility security to help connect identified patients in need, such as older adults, to programs that can help pay for home energy (heating/cooling) costs, like the Low-Income Home Energy Assistance Program (LIHEAP)⁶⁷ or receive broadband internet service through the Affordable Connectivity Program.⁶⁸ HHAs can also partner with community care hubs and community-based organizations to assist patients in applying for these and other local utility assistance programs, as well as helping them navigate the enrollment process.⁶⁹

We are proposing to adopt a new item, Utilities, as a new standardized patient assessment data element under the SDOH category. This proposed item is based on the Utilities item currently collected in the AHC HRSN Screening Tool and was adapted from the Children's Sentinel Nutrition Assessment Program (C-SNAP) survey.⁷⁰ The proposed Utilities item

asks, "In the past 12 months, has the electric, gas, oil, or water company threatened to shut off services in your home?" The proposed response options are: (1) Yes; (2) No; (3) Already shut off; (4) Patient unable to respond; and (5) Patient declines to respond. A draft of the proposed Utilities item to be adopted as a standardized patient assessment data element under the SDOH category can be found in the downloads section of the HH QRP Quality Measures web page at <https://www.cms.gov/medicare/quality/home-health/home-health-quality-measures>.

4. Stakeholder Input

We developed our proposal after considering the feedback we received when we proposed the creation of the SDOH category of standardized patient assessment data elements in the CY 2020 HH PPS proposed rule (84 FR 34677 through 34684). Commenters were generally in favor of the concept of collecting SDOH data elements and stated that if implemented appropriately the data could be useful in identifying and addressing health care disparities, as well as refining the risk adjustment of outcome measures. We incorporated this input into the development of this proposal.

We invite comment on the proposal to adopt four new items as standardized patient assessment data elements under the SDOH category beginning with the CY 2027 HH QRP: one living situation item; two food items; and one utilities item.

5. Proposal To Modify the Transportation Item Beginning With the CY 2027 HH QRP Program Year

Beginning January 1, 2023, HHAs began collecting seven standardized patient assessment data elements under the SDOH category on the OASIS Version E. One of these items, A1250. Transportation collects data on whether a lack of transportation has kept a patient from getting to and from medical appointments, meetings, work, or from getting things they need for daily living. This item was adopted as a standardized patient assessment data element under the SDOH category in the CY 2020 HH PPS final rule (84 FR 60478). As we discussed in the CY 2020 HH PPS final rule, we continue to believe that access to transportation for ongoing health care and medication access needs, particularly for those with chronic diseases, is essential to successful chronic disease management and the

collection of a Transportation item would facilitate the connection to programs that can address identified needs.

As part of our routine item and measure monitoring work, we continue to assess the implementation of the new SDOH items. We have identified an opportunity to improve the data collection for A1250. Transportation by aligning it with the Transportation category collected in our other programs. Specifically, we are proposing to modify the current Transportation item so that it aligns with a Transportation item collected on the AHC HRSN Screening Tool available to the IPFQR and IQR Programs. A1250. Transportation currently collected in the OASIS asks, "Has lack of transportation kept you from medical appointments, meetings, work, or from getting things needed for daily living?" The response options are: (A) Yes, it has kept me from medical appointments or from getting any medications; (B) Yes, it has kept me from non-medical meetings, appointments, work, or from getting things that I need; (C) No; (X) Patient unable to respond; and (Y) Patient declines to respond. The Transportation item collected in the AHC HRSN Screening Tool asks, "In the past 12 months, has lack of reliable transportation kept you from medical appointments, meetings, work or from getting things needed for daily living?" The two response options are: (1) Yes; and (2) No. Consistent with the AHC HRSN Screening Tool, we are proposing to modify the A1250. Transportation item currently collected in the OASIS in two ways: (1) revise the look-back period for when the patient experienced lack of reliable transportation; and (2) simplify the response options.

While the current Transportation assessment item uses a look-back period of six to 12 months, we believe the distinction of a 12-month lookback period will reduce ambiguity for both patients and clinicians, and therefore improve the validity of the data collected. Second, we are proposing to simplify the response options. Currently, HHAs separately collect information on whether a lack of reliable transportation has kept the patient from medical appointments or from getting medications, and whether a lack of transportation has kept the patient from non-medical meetings, appointments, work, or from getting things they need. Although transportation barriers can directly affect a person's ability to attend medical appointments and obtain medications, a lack of transportation can also affect a person's health in other

⁶⁵ Shahrestanaki, S.K., Rafii, F., Najafi Ghezleji, T. et al. Patient safety in home health care: a grounded theory study. *BMC Health Serv Res* 23, 467 (2023). <https://doi.org/10.1186/s12913-023-09458-9>.

⁶⁶ Siegel, Eva Laura, Kathryn Lane, Ariel Yuan, Lauren A. Smalls-Mantey, Jennifer Laird, Carolyn Olson, and Diana Hernández. "Energy Insecurity Indicators Associated With Increased Odds Of Respiratory, Mental Health, And Cardiovascular Conditions: Study examines energy insecurity and health conditions." *Health Affairs* 43, no. 2 (2024): 260–268.

⁶⁷ Low Income Home Energy Assistance Program (LIHEAP) | The Administration for Children and Families ([hhs.gov](https://www.acf.hhs.gov/ocs/programs/liheap)) (<https://www.acf.hhs.gov/ocs/programs/liheap>).

⁶⁸ <https://www.fcc.gov/broadbandbenefit>.

⁶⁹ National Council on Aging (NCOA). "How to Make It Easier for Older Adults to Get Energy and Utility Assistance." Promising Practices Clearinghouse for Professionals. Jan 13, 2022. <https://www.ncoa.org/article/how-to-make-it-easier-for-older-adults-to-get-energy-and-utility-assistance>.

⁷⁰ This validated survey was developed as a clinical indicator of household energy security among pediatric caregivers. Cook, J.T., D.A. Frank., P.H. Casey, R. Rose-Jacobs, M.M. Black, M. Chilton, S. Ettinger de Cuba, et al. "A Brief Indicator of Household Energy Security: Associations with Food Security, Child Health, and Child Development in

US Infants and Toddlers." *Pediatrics*, vol. 122, no. 4, 2008, pp. e874–e875. <https://doi.org/10.1542/peds.2008-0286>.

ways, including accessing goods and services, obtaining adequate food and clothing, and social activities.⁷¹ The proposed modified Transportation item would collect information on whether a lack of reliable transportation has kept the patient from medical appointments, meetings, work or from getting things needed for daily living, rather than collecting the information separately. As discussed previously, we believe reliable transportation services are fundamental to a person's overall health, and as a result, the burden of collecting this information separately outweighs its potential benefit.

For the reasons stated, we are proposing to modify A1250. Transportation based on the Transportation item adopted for use in the AHC HRSN Screening Tool and adapted from the PRAPARE tool. The proposed Transportation item asks, "In the past 12 months, has a lack of reliable transportation kept you from medical appointments, meetings, work or from getting things needed for daily living?" The proposed response options are: (0) Yes; (1) No; (7) Patient declines to respond; and (8) Patient unable to respond. A draft of the proposed Transportation item to be adopted as a standardized patient assessment data element under the SDOH category can be found on the HH QRP Quality Measures web page at <https://www.cms.gov/medicare/quality/home-health/home-health-quality-measures/downloads>.

We invite comment on this proposal to modify the current Transportation item previously adopted as a standardized patient assessment data element under the SDOH category beginning January 1, 2027, with the CY 2027 HH QRP.

E. Proposal To Update OASIS All-Payer Data Collection

In the CY 2023 HH PPS final rule CMS finalized the end of the temporary suspension of OASIS data collection on non-Medicare/non-Medicaid HHA patients and the requirement for HHAs to submit all-payer OASIS data for purposes of the HH QRP, beginning with the CY 2027 Program Year (87 FR 66862 through 66865). Consistent with the two-quarter phase-in that we typically use when changing data submission items or requirements, HHAs will have an opportunity to begin submitting this data for patients discharged between January 1, 2025,

through June 30, 2025, but we will not use that phase-in data to make a compliance determination. We noted that the new all-payer OASIS data reporting will be required beginning with the CY 2027 program year, with data for that program year required for patients discharged between July 1, 2025, and June 30, 2026. For HHAs to operationalize this requirement, CMS determined that further details would be needed to clarify OASIS data collection and submission for non-Medicare/non-Medicaid patients. The CY23 final rule referenced discharge as the time point to identify when all-payer data collection would start but did not address the other data collection time points.

To clarify expectations around the start of OASIS all-payer data collection we are proposing to establish a change from data collection beginning with the OASIS discharge time point to using the start of care (SOC) time point. The SOC is the first assessment that can be submitted for a non-Medicare/non-Medicaid patient, either on or after January 1, 2025, for the phase-in (voluntary) period or on or after July 1, 2025, for the mandatory period. We will use the M0090 Date Assessment Completed date of the SOC assessment to identify non-Medicare/non-Medicaid patient assessments in the phase-in and mandatory periods.

Using the SOC time point ensures agency demographics (for example, Agency's CMS Certification Number (CCN), State and Branch ID#s) and patient demographics (for example, patient name, State, zip code, Social Security number (SSN), gender, date of birth (DOB), payment source) are collected for each non-Medicare/non-Medicaid patient assessment at the start of all-payer OASIS data collection. After these are collected and submitted with the SOC assessment, they are resubmitted with each subsequent OASIS submission (that is, ROC, recert, other follow up, transfer, discharge, death at home). Using the SOC time point would ensure that baseline data is available for use in calculating or risk-adjusting quality measures, and in linking to prior OASIS assessments. The data would also be available for matching purposes to support use of the current quality assessments only (QAO) metric used in the annual payment update (APU) calculation.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173; December 8, 2003) finalized the temporary suspension of OASIS requirements for collection of data on non-Medicare/non-

Medicaid patients.⁷² The CY 2023 HH PPS final rule ends this temporary suspension of OASIS data collection for non-Medicare/non-Medicaid patients.

CMS is providing a voluntary phase-in period for HHAs to begin OASIS data collection and submission for all non-Medicare/non-Medicaid patients.

- Prior to January 1, 2025—Per the HH CoPs and OASIS guidance, HHAs are required to collect and submit OASIS assessments for all skilled Medicare and/or Medicaid patients, with some exemptions. OASIS assessment time points include start of care, resumption of care, recertification, other follow-up, transfer, discharge, and death at home. The criteria for patients exempt from OASIS data collection are not changing and will continue to include patients under 18, patients receiving maternity services, and patients receiving only personal care, housekeeping or chore services.

- January 1, 2025, through June 30, 2025—For non-Medicare/non-Medicaid patients who are not exempt from OASIS data collection, and who begin receiving home health care services with an OASIS SOC M0090 date from January 1, 2025, through June 30, 2025, OASIS data collection and submission are voluntary. When OASIS data collection and submission are started for a non-Medicare/non-Medicaid patient with the SOC OASIS assessment, HHAs may but are not required to complete all subsequent OASIS time point assessments related to the patient's home health stay (that is, resumption of care, recertification, other follow up, transfer, discharge, and death at home) including assessments completed on or after July 1, 2025.

- Beginning July 1, 2025—For patients with any pay source who are not exempt from OASIS data collection, and who begin receiving home health care services with an OASIS SOC M0090 date on or after July 1, 2025, OASIS data collection and submission to the internet Quality Improvement Evaluation System (iQIES) are required. This includes the SOC OASIS as well as any subsequent OASIS time point assessments relevant to the patient's home health stay (that is, resumption of care, recertification, other follow up, transfer, discharge, and death at home).

We invite comment on this proposal to update requirements for OASIS all-payer data collection beginning January 1, 2025.

⁷¹ Victoria Transport Policy Institute (2016, August 25). Basic access and basic mobility: Meeting society's most important transportation needs. Retrieved from <http://www.vtpi.org/tdm/tdm103.htm>.

⁷² E:\PUBLAW\PUBL173.108 (congress.gov).

F. Form, Manner, and Timing of Data Submission Under the HH QRP

1. Background

We refer readers to the regulatory text at § 484.45 for information regarding the current policies for reporting HH QRP data.

2. Proposed Reporting Schedule for the Submission of SDOH Assessment Items Beginning January 1, 2027, With the CY 2027 HH QRP

As discussed in section III.D.3. of this proposed rule, we are proposing to adopt four new items as standardized patient assessment data elements in the SDOH category: one living situation item, two food items, and one utilities item, and to modify the transportation item in section III.D.5. of this proposed rule beginning January 1, 2027, with the CY 2027 HH QRP.

We are proposing that HHAs would be required to report these new assessment items using the OASIS beginning with patients admitted on January 1, 2027, for purposes of the CY 2027 HH QRP program year. Starting in CY 2027, HHAs would be required to submit data for the entire calendar year, corresponding to the CY 2028 HH QRP program year with respect to OASIS submission requirements.

We are also proposing that HHAs that submit the living situation, food, utilities, and transportation items with respect to start or resumption of care would be deemed to have submitted those assessment items with respect to both start or resumption of care and discharge, because it is unlikely that the assessment of those items at start or resumption of care will differ from the assessment of the same item at discharge. A draft of the proposed assessment items is available in the Downloads section of the HH QRP Quality Measures web page at <https://www.cms.gov/medicare/quality/home-health/home-health-quality-measures>. As we noted in section III.D.5 of this proposed rule, we continue to assess the implementation of the new items in the SDOH category, including A1250. Transportation, as part of our routine assessment item and measure monitoring work. We analyzed the data home health agencies reported from January 1, 2023, through September 30, 2023 (Q1 2023–Q3 2023) and found that home health patient responses do not significantly change from admission to discharge. Specifically, the proportion of patients who responded “Yes” to the A1250 transportation item at start of care or resumption of care (8.87 percent) versus at discharge to community (5.71 percent) differed by only 3.16

percentage points during this period. We find these results convincing, and therefore are proposing to require HHAs to submit the proposed item, transportation, at the start and resumption of care only.

We invite public comment on our proposal to collect data on the following items in the SDOH category start or resumption of care beginning January 1, 2027 with the CY 2027 HH QRP program year: one Living Situation item as described in section III.D.3.a of this proposed rule; two Food items, as described in section III.D.3.b of this proposed rule; one Utilities item as described in section III.D.3.c of this proposed rule; and one Transportation item as described in section III.D.5 of this proposed rule.

G. HH QRP Quality Measure Concepts Under Consideration for Future Years—Request for Information (RFI)

We are seeking input on the importance, relevance, appropriateness, and applicability of each of the following concepts under consideration for future years in the HH QRP: vaccinations, depression, pain management, and substance use disorders. In the CY 2024 HH PPS proposed rule (88FR 43738 through 43740), we published a request for information (RFI) on a set of principles for selecting and prioritizing HH QRP measures, identifying measurement gaps, and suitable measures for filling these gaps. Within this proposed rule, we also sought input on data available to develop measures, approaches for data collection, perceived challenges or barriers, and approaches for addressing identified challenges. We refer readers to the CY 2024 HH PPS final rule (88 FR 77772 through 77774) for a summary of the public comments we received in response to the RFI.

Subsequently, our measure development contractor convened a TEP on December 15, 2023 to obtain input on the future measure concepts that could fill the measurement gaps identified in our CY 2024 RFI.⁷³ The TEP discussed the alignment of PAC and Hospice measures with CMS’ “Universal Foundation” of quality measures.⁷⁴ The Universal Foundation

⁷³ The Post-Acute Care (PAC) and Hospice Quality Reporting Program Cross-Setting TEP summary report will be published in early summer or as soon as technically feasible. IRFs can monitor the Partnership for Quality Measurement website at <https://mmshub.cms.gov/get-involved/technical-expert-panel/updates> for updates.

⁷⁴ Centers for Medicare & Medicaid Services. Aligning Quality Measures Across CMS—the Universal Foundation. November 17, 2023. <https://www.cms.gov/aligning-quality-measures-across-cms-universal-foundation>.

aims to focus provider attention, reduce burden, identify disparities in care, prioritize development of interoperable, digital quality measures, allow for comparisons across programs, and help identify measurement gaps.

In consideration of the feedback, we received from interested parties through these activities, we are seeking input on four concepts for the HH QRP. One is a composite of vaccinations,⁷⁵ which could represent overall immunization status of patients such as the Adult Immunization Status measure⁷⁶ in the Universal Foundation. A second concept on which we are seeking feedback is the concept of depression for the HH QRP, similar to the Clinical Screening for Depression and Follow-up measure⁷⁷ in the Universal Foundation. Third, we are seeking feedback on the concept of pain management. Finally, we seek input on a measure concept relating to substance use disorders, such as the Initiation and Engagement of Substance Use Disorder Treatment measure⁷⁸ included in the Universal Foundation of Quality Measures.

While we will not be responding to specific comments in response to this RFI in the CY 2025 HH PPS final rule, we invite public comment on these four measure concepts and intend to use this input to inform our future measure development efforts.

IV. The Expanded Home Health Value-Based Purchasing (HHVBP) Model

A. Background

As authorized by section 1115A of the Act and finalized in the CY 2016 HH PPS final rule (80 FR 68624), the Center for Medicare and Medicaid Innovation (Innovation Center) implemented the Home Health Value-Based Purchasing (HHVBP) Model (“original Model”) in nine states on January 1, 2016. The design of the original HHVBP Model leveraged the successes and lessons learned from other CMS value-based purchasing programs and demonstrations to shift from volume-based payments to a model designed to

⁷⁵ A composite measure can summarize multiple measures through the use of one value or piece of information. More information can be found at <https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/mms/downloads/composite-measures.pdf>.

⁷⁶ CMS Measures Inventory Tool. Adult immunization status measure found at <https://cmiit.cms.gov/cmit/#/FamilyView?familyId=26>.

⁷⁷ Preventative Care and Screening: Screening for Depression and Follow Up measure found at https://qpp.cms.gov/docs/QPP_quality_measure_specifications/CQM-Measures/2023_Measure_134_MIPSCQM.pdf.

⁷⁸ Initiation and Engagement of Substance Use Disorder Treatment measure found at <https://ecqi.healthit.gov/ecqm/ec/2023/cms0137v11>.

promote the delivery of higher quality care to Medicare beneficiaries. The specific goals of the original HHVBP Model were to—

- Provide higher incentives for better quality care with greater efficiency;
- Study new potential quality and efficiency measures for appropriateness in the home health setting; and
- Enhance the current public reporting process.

The original HHVBP Model resulted in an average 4.6 percent improvement in HHAs' total performance scores (TPS) and an average annual savings of \$141 million to Medicare without evidence of adverse risks.⁷⁹ The evaluation of the original Model also found reductions in unplanned acute care hospitalizations and skilled nursing facility (SNF) stays, resulting in reductions in inpatient and SNF spending. The U.S. Secretary of Health and Human Services determined that expansion of the original HHVBP Model would further reduce Medicare spending and improve the quality of care. In October 2020, the CMS Chief Actuary certified that expansion of the HHVBP Model would produce Medicare savings if expanded to all States.⁸⁰

On January 8, 2021, CMS announced the certification of the HHVBP Model for expansion nationwide, as well as the intent to expand the Model through notice and comment rulemaking.⁸¹

In the CY 2022 HH PPS final rule (86 FR 62292 through 62336) we finalized the decision to expand the HHVBP Model to all Medicare certified HHAs in the 50 States, territories, and District of Columbia beginning January 1, 2022. CY 2022 was a pre-implementation year. The first payment year is CY 2025 based on the first performance year which was CY 2023. Our codified policies for the expanded HHVBP Model can be found in our regulations at 42 CFR part 484, subpart F, §§ 484.300 through 484.375.

B. Request for Information on Future Performance Measure Concepts for the Expanded HHVBP Model

The expanded HHVBP Model provides an opportunity to examine a broad array of quality measures that address critical gaps in care. A comprehensive review of the Value-Based Purchasing (VBP) experience, conducted by the Office of the Assistant Secretary for Planning and Evaluation

(ASPE), identified several objectives for HHVBP measures.⁸² The recommended objectives emphasize measuring patient outcomes and functional status; appropriateness of care; and incentives for providers to build infrastructure to facilitate measurement within the quality framework. The study identified the following seven objectives which served as guiding principles for the development of performance measures used in the original HHVBP Model:

- Use a broad measure set that captures the complexity of the HHA service provided.
- Incorporate the flexibility to include Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 measures that are cross-cutting amongst post-acute care settings.
- Develop second-generation measures of patient outcomes, health and functional status, shared decision making, and patient activation.
- Include a balance of process, outcome, and patient experience measures.
- Advance the ability to measure cost and value.
- Add measures for appropriateness or overuse.
- Promote infrastructure investments.

A central driver of the process used to select measures for the original HHVBP Model was incorporating innovative thinking from the field while simultaneously drawing on evidence-based literature and documented best practices. Broadly, measures were selected based on their impact on care delivery and to support the goal of improving health outcomes, quality, safety, efficiency, and experience of care for patients.

As we continue to leverage our value-based purchasing initiatives to improve the quality of care furnished across healthcare settings, we are interested in considering new performance measures for inclusion in the expanded HHVBP Model. We specifically request public comments on several specific performance measures as well as general comments on other future model concepts that may be considered for inclusion in the expanded HHVBP Model. These measures are based on input from the HHVBP Technical Expert Panel (TEP), which met in Fall 2023. The TEP included experts from the home health setting specializing in quality assurance, patient advocacy, clinical work, and measure

development. The meeting included a discussion of potential measures for inclusion in the expanded HHVBP Model. These include a combination of new measure concepts (for example, family caregiver measure), already developed measures that are not currently in the measure set for the expanded HHVBP Model (for example, Medicare Spending per Beneficiary (MSPB)), and new OASIS-based and claims-based measures.

• *Family caregiver measure:*
Generally, TEP members were very supportive of future development of a family caregiver measure. One TEP member encouraged CMS to “think outside the box” to find ways of including the caregiver's voice in quality reporting. The TEP discussed OASIS items that provide information related to the patient's caregiver status. While acknowledging that the focus of the Medicare home health benefit is the patient, not the caregiver, they recommended that CMS consider the caregiver as a partner and measure caregivers' needs and not just the needs as they relate to the beneficiary. The TEP noted that the caregivers are often the reason patients are even able to be at home (vs. receiving care in the more costly nursing home setting). CMS intends to develop a patient-reported outcome performance measure (PRO-PM) to assess caregiver burden in the Guiding an Improved Dementia Experience (GUIDE) Model that may be a useful example for caregiver measures that may be developed for HHVBP.⁸³ Creating one or more measures based on an HHA's ability to meet caregiver needs would permit measurement of changes in caregiver quality-of-life.

• *Falls with injury (claims-based):*
Several TEP members suggested that CMS explore a claims-based measure of falls with injury. One TEP member noted an Office of Inspector General (OIG) study that found that HHAs failed to report 55 percent of falls leading to major injuries and hospitalizations on their OASIS data.⁸⁴ While it may not be possible to identify all falls from claims data, a claims-based measure may be more accurate, although, as with other claims-based measures, data would only be available for Fee for Service patients. Due to the high rate of non-reporting, the OASIS-based falls measure may not

⁷⁹ <https://innovation.cms.gov/data-and-reports/2020/hhvp-thirdann-rpt>.

⁸⁰ <https://www.cms.gov/files/document/certificationhome-health-value-based-purchasing-hhvpmodel.pdf>.

⁸¹ <https://www.cms.gov/newsroom/press-releases/cms-takes-action-improve-home-health-care-seniors-announces-intent-expand-home-health-value-based>.

⁸² U.S. Department of Health and Human Services. Office of the Assistant Secretary for Planning and Evaluation (ASPE) (2014). Measuring Success in Health Care Value-Based Purchasing Programs. Cheryl L. Damberg et al. on behalf of RAND Health.

⁸³ For more details on the GUIDE Model, see the Model web page (<https://www.cms.gov/priorities/innovation/innovation-models/guide>). For more details on the caregiver measures being developed for GUIDE, see the Request for Applications (<https://www.cms.gov/files/document/guide-rfa.pdf>).

⁸⁴ <https://oig.hhs.gov/oei/reports/OEI-05-22-00290.asp>.

provide accurate information about the incidence of these falls.

- *Medicare spending per Beneficiary:* The TEP also discussed potentially adding the MSPB measure to the HHVBP applicable measure set. This cross-setting measure is part of the Home Health Quality Reporting Program and is currently publicly reported on Care Compare. MSPB may be a valid tool for measuring the value of the care that HHAs provide that may be appropriate for use in the expanded HHVBP Model. The measure would provide information on the efficiency of home health providers, as measured by Medicare payments for their patients.

- *Function measures to complement existing cross-setting Discharge (DC) Function measure:* Several TEP members raised a concern that the measure does not include the full self-care/activities of daily living elements (for example, bathing, dressing), which they noted as critically important for home health patients and caregivers. Another TEP member indicated that patients often already have capacity to do things like roll and sit up when they enter home health care but may not be able to bathe or get dressed without assistance. The TEP emphasized the importance of functional cognition, which is included in OASIS item GG0100 as part of prior functional status but is not included as part of the current DC Function measure.

As we continue to explore refinements to the expanded HHVBP Model, we request comments related to adding the potential performance measures described previously to the HHVBP Measure Set. We also request comments about other potential performance measures that we should consider for the expanded HHVBP Model.

C. Future Approaches to Health Equity in the Expanded HHVBP Model

In alignment with the President's Executive orders⁸⁵ to support underserved communities, CMS is working to advance health equity by designing, implementing, and operationalizing policies and programs that support health for all the people served by our programs, eliminating avoidable differences in health outcomes experienced by people who are disadvantaged or underserved, and providing the care and support that our enrollees need to thrive. As we continue

to leverage our value-based purchasing initiatives to improve the quality of care furnished across healthcare settings, we are interested in exploring the role of health equity in creating better health outcomes for all populations in our programs and models. In the CY 2023 HH PPS final rule, we stated that we are committed to achieving equity in health care outcomes for beneficiaries by supporting providers in quality improvement activities to reduce health disparities, enabling beneficiaries to make more informed decisions, and promoting provider accountability for health care disparities.⁸⁶

The CY 2023 HH PPS rule (87 FR 66874 through 66876) included an RFI, "Future Approaches to Health Equity in the expanded HHVBP Model." The RFI requested feedback on policy changes that we should consider on the topic of health equity and specific actions the expanded HHVBP Model should take to address healthcare disparities and advance health equity. We specifically requested comments on whether we should consider incorporating adjustments into the expanded HHVBP Model to reflect the varied patient populations that HHAs serve around the country and tie health equity outcomes to the payment adjustments we make based on HHA performance under the Model. One possible approach is to make adjustments at the measure level such as stratification by which additional points are provided to HHAs that provide care to underserved communities (for example, based on dual status or other metrics).⁸⁷ Payment adjustments could also be incorporated at the scoring level in forms such as modified benchmarks, points adjustments, or modified payment adjustment percentages (for example, peer comparison groups based on whether the HHA includes a high proportion of dual eligible beneficiaries). We requested commenters' views on which of these adjustments, if any, would be most effective for the expanded HHVBP Model. Commenters shared that relevant data collection and appropriate stratification are very important in addressing any health equity gaps. While not suggesting specific

approaches, these commenters noted that CMS should consider potential stratification of health outcomes. Stakeholders, including providers, also shared their strategies for addressing health disparities, noting that this was an important commitment for many health provider organizations.

Several previous studies have found that historically underserved communities, including Medicare beneficiaries who are dually enrolled in Medicaid, live in a low-income neighborhood, or are Black, receive lower quality home health care relative to communities not historically underserved.⁸⁸ Previous studies have found that patients from underserved communities have higher rates of hospital readmissions, are more likely to be discharged without functional improvement,⁸⁹ are less likely to receive care from high-quality HHAs, and have worse patient-reported care experiences. Improving the quality of care for these underserved communities is an important quality improvement goal under the expanded HHVBP Model.

Disparities in health care outcomes may result from differences within HHAs (for example, patients from underserved communities within certain HHAs service areas are less likely to have good outcomes, such as functional improvement, discharge to community, and avoiding readmission to a hospital). These disparities may also result from differences across HHAs. That is, patients from underserved communities are less likely than other patients to receive care from good quality HHAs and thus at higher risk of poor outcomes.⁹⁰ The literature is mixed on the sources of these disparities. One study found that differences in readmission rates for underserved communities were primarily within, rather than across, HHAs.⁹¹ Another study found that

⁸⁸ Joynt Maddox, K.E., Chen, L.M., Zuckerman, R., & Epstein, A.M. (2018). Association Between Race, Neighborhood, and Medicaid Enrollment and Outcomes in Medicare Home Health Care. *Journal of the American Geriatrics Society*, 66(2), 239–246. <https://doi.org/10.1111/jgs.15082>.

⁸⁹ Fashaw-Walters, S.A., Rahman, M., Jarrin, O.F., Gee, G., Mor, V., Nkimbeng, M., & Thomas, K.S. (2023). Getting to the root: Examining within and between home health agency inequities in functional improvement. *Health Services Research*. <https://doi.org/10.1111/1475-6773.14194>.

⁹⁰ Fashaw-Walters, S.A., Rahman, M., Gee, G., Mor, V., White, M., & Thomas, K.S. (2022). Out Of Reach: Inequities in the Use of High-Quality Home Health Agencies. *Health Affairs (Project Hope)*, 41(2), 247–255. <https://doi.org/10.1377/hlthaff.2021.01408>.

⁹¹ Joynt Maddox, K.E., Chen, L.M., Zuckerman, R., & Epstein, A.M. (2018). Association Between Race, Neighborhood, and Medicaid Enrollment and Outcomes in Medicare Home Health Care. *Journal*

Continued

⁸⁵ Executive Orders 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," and 14091, "Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government."

⁸⁶ <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/CMS-Quality-Strategy.pdf>.

⁸⁷ CMS defines an "underserved community" as "individuals who share a particular characteristic—demographic, geographic (urban or rural), or other factor—that results in them being systemically denied full opportunity to participate in aspects of economic, social, and civic life. (Source: <https://www.cms.gov/priorities/innovation/key-concepts/health-equity>).

differences both within and across HHAs contribute to the overall disparities in patients' functional improvement.⁹² This same study found that roughly half of observed individual-level disparities in the use of high-quality home health agencies was attributable to neighborhood-level factors.⁹³ Differences in care experience for underserved communities were explained by differences both within and across HHAs, but the within-HHA variations more often accounted for a greater proportion of the differences.⁹⁴

We have been exploring several potential approaches for integrating health equity concepts into the expanded HHVBP Model.

Considerations for evaluating these approaches include the following:

- *Effectiveness*: Does the approach further the model test? What would its impact on underserved communities be?
- *Feasibility*: How long would it take to implement the approach? Are the necessary data currently being collected? How many HHAs would be included?
- *Reliability*: Does the approach allow for reliable measurement of health equity within HHAs?
- *Alignment*: Is this approach aligned with other Medicare quality and VBP Programs?

D. Social Risk Factors

As part of our work developing potential equity measures, we are exploring potential definitions to use for defining historically underserved communities. Building on feedback from the CY 2024 SNF VBP proposals, our analyses have focused on three potential social risk factors Dual eligible status (DES), Area Deprivation Index (ADI), and Medicaid as sole payment source that can serve as a proxy to identify the underserved. Note that we also examined low-income subsidy (LIS) as a potential measure of equity but did not include it in further analyses,

because the correlation for the Dual Eligible Status (DES) proportion and the LIS eligibility proportion is above 0.98. We have not yet examined low-income subsidy (LIS) eligibility. We also plan to assess disparities between rural and urban home health providers and patients when analyzing social risk factors, perhaps measuring rurality using the rural-urban commuting area (RUCA) codes, which classify U.S. census tracts using measures of population density, urbanization, and daily commuting.

E. Approaches to a Potential Health Equity Adjustment for the Expanded HHVBP Model

One of the approaches that we have explored is the Health Equity Adjustment (HEA) that will begin in the Skilled Nursing Facility (SNF) VBP starting with the FY 2027 program year. The HEA is calculated using a methodology that considers a SNF's performance on the SNF VBP quality measures and the proportion of the SNF's residents with DES. Under the HEA, SNFs that perform well on the SNF VBP quality measures and serve a higher proportion of residents with DES will earn HEA bonus points are added to normalized sum of all points a SNF is awarded for each measure. That sum is then the final SNF Performance Score. More information on the HEA can be found in the FY 2024 SNF PPS final rule (88 FR 53304).

We used the HEA methodology that was finalized for the SNF VBP to simulate how that methodology would impact the expanded HHVBP Model, using the current measure set for the Model and July 2023 Interim Performance Report (IPR) data. A limitation of using the July 2023 IPR data for these analyses is that the TPS for the July 2023 IPRs was mainly based on achievement points—there are no improvement points for the claims-based and HHCAHPS measures (due to lags in the data for these measures) and only small improvement points for the OASIS-based measures. This may distort results of the equity implications of the HEA methodology, but we believe that using the more current data is preferable to using earlier data from prior to the public health emergency. We used data on the proportion of HHA patients who are dually eligible at any point during the performance year. The HEA methodology is fully described in the FY 2024 Skilled Nursing Facility Prospective Payment System final rule (88 FR 53307 through 53316) that included—

- Determine number of measures for which HHA is a top tier performer;

- Calculate measure performance scaler;
- Calculate underserved multiplier;
- Calculate HEA Bonus Points; and
- Add HEA Bonus Points to the Normalized Sum of all Points Awarded for Each Measure.

Using the original TPS and a TPS measure that includes the HEA bonus points), we simulated payment adjustment amounts with and without the HEA. We examined the change in payment adjustment percentage for HHAs based on their dual eligibility status (for example, decile in terms of percentage of dual eligible patients) and HEA bonus points.

Of the 10,218 active HHAs in the July 2023 quarterly monitoring analytic file, 9,591 (93.9 percent) have information on the number of beneficiaries with dual eligible status (DES) that were served by the HHA in the performance year. Of these HHAs, a TPS was calculated for 7,556. Because the HEA operates by adding points to the TPS, it is only possible to calculate a TPS including the HEA for these 7,556 HHAs that had a valid TPS.

We found that the average TPS was higher for HHAs in the highest decile in terms of share of beneficiaries with DES than for HHAs in any other decile, before applying the HEA. Applying the HEA primarily increased TPS for these HHAs that were already high performing, which increased the gap in the average payment adjustment for these HHAs and the average payment adjustment for HHAs serving a lower share of beneficiaries with DES. As a result, we concluded that the HEA using DES as the proxy for the underserved, as designed for SNF VBP, may not be the best approach for the home health setting. In contrast, the average TPS was higher for HHAs with a relatively low share of beneficiaries living in a neighborhood with a high ADI.

We also plan to consider how changes to the definition of the underserved population, as codified in the SNF VBP reg text at § 413.338(a) would alter the effects of the HEA. In contrast to the results for dual eligibility, we have found that average TPS was lower for HHAs serving a high share of beneficiaries living in a neighborhood with a high ADI. We also found that HHAs in the highest ADI quintile and highest DES quintile had lower average TPS than other groups. These results suggest that defining the underserved population using ADI or a combination of ADI and DES would alter the effects of the HEA. We are also examining measures of the underserved population that are based on the percentage of

of the American Geriatrics Society, 66(2), 239–246. <https://doi.org/10.1111/jgs.15082>.

⁹² Fashaw-Walters, S.A., Rahman, M., Jarrín, O.F., Gee, G., Mor, V., Nkimben, M., & Thomas, K.S. (2023). Getting to the root: Examining within and between home health agency inequities in functional improvement. *Health Services Research*. <https://doi.org/10.1111/1475-6773.14194>.

⁹³ Fashaw-Walters SA, Rahman M, Gee G, Mor V, White M, Thomas KS. Out Of Reach: Inequities In The Use Of High-Quality Home Health Agencies. *Health Aff (Millwood)*. 2022 Feb;41(2):247–255. doi: 10.1377/hlthaff.2021.01408. PMID: 35130066; PMCID: PMC8883595.

⁹⁴ Joynt Maddox, K.E., Chen, L.M., Zuckerman, R. and Epstein, A.M. (2018), Association Between Race, Neighborhood, and Medicaid Enrollment and Outcomes in Medicare Home Health Care. *J Am Geriatr Soc*, 66: 239–246. <https://doi.org/10.1111/jgs.15082>.

patients with Medicaid as the only payment source.

F. Other Health Equity Measures

We are also exploring other health equity measures that would more directly focus on certain disparities. These could be structured in several different ways:

- Measure(s) for particular underserved communities: Performance on one or more measures for specific underserved communities (for example, based on DES).
- Measure(s) based on within-provider differences in performance for underserved communities (for example, based on DES): This type of measure could be based on a single outcome or multiple outcomes (that is, a composite measure).
- Measure(s) based on the worst performing group: Calculate performance scores for multiple patient groups and set the measure performance equal to the score for the worst performing group.

We have examined the reportability of these other health equity measures and have found that several HHAs will not have a sufficient number of DES beneficiaries for these measures to be calculated. Our analyses of data used for the July 2023 IPRs found that, overall, 25.4 percent of HHAs served fewer than 12 beneficiaries with DES. This suggests that roughly one-fourth of HHAs may not serve enough beneficiaries with DES to calculate a performance measure using only beneficiaries with DES. The percentage of HHAs that served fewer than 12 beneficiaries with DES or fewer than 12 beneficiaries without DES was 36.5 percent. Although the reportability for these measures do exclude some smaller HHAs that serve fewer underserved patients, the reportability level will be closely aligned to the current SNF VBP HEA. As the 25.4 percent proportion that are not reported is not that much more than is currently being excluded on the SNF VBP HEA where SNFs in the bottom 20 percent of proportion duals are excluded. The impact or reportability of a potential HHVBP HEA needs more analysis for future consideration.

Looking forward, we recognize that the exact structure of the current SNF VBP HEA may not be the most efficient approach for the unique attributes of care being provided in the home versus care in the SNF. However, CMS is committed to and working towards the establishment of an HHVBP HEA that rewards HHAs that provide high quality care to underserved communities. We will continue to explore the addition of other measures, using other proxies for

identifying the underserved and possibly adjusting the scoring mechanism to be more effective at addressing the issue.

As a reminder, we stated in the CY 2024 HH PPS final rule (88 FR 77790), we will gather at least 2 years of performance data, and study effects of the expanded Model on health equity outcomes before incorporating any potential changes to the expanded Model regarding health equity.

V. Medicare Home Intravenous Immune Globulin (IVIG) Items and Services

A. General Background

1. Statutory Background

Division FF, section 4134 of the CAA, 2023 added coverage and payment of items and services related to administration of IVIG in a patient's home of a patient with a diagnosed primary immune deficiency disease furnished on or after January 1, 2024. Division FF, section 4134(a) of the CAA, 2023 amended the existing IVIG benefit category at section 1861(s)(2)(Z) of the Act by adding coverage for IVIG administration items and services in a patient's home of a patient with a diagnosed primary immune deficiency disease. This benefit covers items and services related to administration of IVIG in a patient's home of a patient with a diagnosed primary immune deficiency disease. In addition, section 4134(b) of Division FF of the CAA, 2023 amended section 1842(o) of the Act by adding a new paragraph (8) that established the payment for IVIG administration items and services. Under the CAA, 2023 provision, payment for these IVIG administration items and services is required to be a bundled payment separate from the payment for the IVIG product, made to a supplier for all items and services related to administration of IVIG furnished in the home during a calendar day.

2. Overview

Primary immune deficiency diseases (PIDD) are conditions triggered by genetic defects that cause a lack of and/or impairment in antibody function, resulting in the body's immune system not being able to function in a normal way. Immune globulin (Ig) therapy is used to temporarily replace some of the antibodies (that is, immunoglobulins) that are missing or not functioning properly in people with PIDD.⁹⁵ The

goal of Ig therapy is to use Ig obtained from normal donor plasma to maintain a sufficient level of antibodies in the blood of individuals with PIDD to fight off bacteria and viruses. Ig is formulated for both intravenous and subcutaneous administration (SCIg). Clinicians can prescribe either product to the beneficiary with PIDD according to clinical need and preference, and beneficiaries can switch between intravenous and subcutaneous administration of Ig.

3. Legislative Summary

Section 642 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pu Law 108–173) amended section 1861 of the Act to provide Medicare Part B coverage of the IVIG product for the treatment of PIDD in the home, but not the items and services involved with administration.

Section 101 of the Medicare IVIG Access and Strengthening Medicare and Repaying Taxpayers Act of 2012 (Medicare IVIG Access Act) (Pub. L. 112–242) mandated the establishment, implementation, and evaluation of a 3-year Medicare Intravenous Immune Globulin (IVIG) Demonstration Project (the Demonstration) under Part B of title XVIII of the Act. The Demonstration was implemented to evaluate the benefits of providing coverage and payment for items and services needed for the home administration of IVIG for the treatment of PIDD, and to determine if it would improve access to home IVIG therapy for patients with PIDD. The Medicare IVIG Access Act mandated that Medicare would establish a per visit payment amount for the items and services necessary for the home administration of IVIG therapy for beneficiaries with specific PIDD diagnoses. The Demonstration did not include Medicare payment for the IVIG product which continues to be paid under Part B in accordance with sections 1842(o) and 1847(A) of the Act. The Demonstration covered and paid a per visit payment amount for the items and services needed for the administration of IVIG in the home. Items may include infusion set and tubing, and services include nursing services to complete an infusion of IVIG lasting on average three to five hours.⁹⁶

On September 28, 2017, Congress passed the Disaster Tax Relief and Airport and Airway Extension Act of 2017 (Pub. L. 115–63). Section 302 of Public Law 115–63 extended the

⁹⁵ Perez EE, Orange JS, Bonilla F, et al. (2017) Update on the use of immunoglobulin in human disease: A review of evidence; Journal Allergy Clin Immunol. 139(3S): S1–S46.

⁹⁶ Updated Interim Report to Congress: Evaluation of the Medicare Patient Intravenous Immunoglobulin Demonstration Project, 2022: <https://innovation.cms.gov/data-and-reports/2022/ivig-updatedintrtc>.

Demonstration through December 31, 2020.

Division CC, section 104, of the Consolidated Appropriations Act, 2021 (CAA, 2021) (Pub. L. 116–260), further extended the Demonstration for another 3 years through December 31, 2023.

Division FF, section 4134 of the CAA, 2023 (CAA, 2023) (Pub. L. 117–328) mandated that CMS establish permanent coverage and payment for items and services related to administration of IVIG in a patient's home of a patient with PIDD. The permanent home IVIG items and services payment is effective for home IVIG administration furnished on or after January 1, 2024. Payment for these items and services is required to be a separate bundled payment made to a supplier for all administration items and services furnished in the home during a calendar day. The statute provides that payment amount may be based on the amount established under the Demonstration. The standard Part B coinsurance and the Part B deductible is required to apply. In addition, that statute states that the separate bundled payment for these IVIG administration items and services does not apply for individuals receiving services under the Medicare home health benefit. The CAA, 2023 provision clarifies that a supplier who furnishes these services meet the requirements of a supplier of medical equipment and supplies.

4. Demonstration Overview

Under the Demonstration, Medicare provided a bundled payment under Part B, that is separate from the IVIG product, for items and services that are necessary to administer IVIG in the home to enrolled beneficiaries who are not otherwise homebound and receiving services under the home health benefit. The Demonstration only applied to situations where the beneficiary required IVIG for the treatment of certain PIDD diagnoses or was receiving SCIg to treat PIDD and wished to switch to IVIG.

Services covered under the Demonstration were required to be provided and billed by specialty pharmacies, enrolled as durable medical equipment (DME) suppliers, that provided the Medicare Part B-covered Ig. The covered items and services under the Demonstration were paid as a single bundle and subject to coinsurance and deductible in the same manner as other Part B services. HHAs were not eligible to bill for services covered under the Demonstration but could bill for services related to the administration of IVIG if the patient was receiving services under a home health episode of care, in which case the home

health payment covered the items and services.

In order to participate in the Demonstration, beneficiaries must have met the following requirements:

- Be eligible to have the IVIG paid for at home under Part B FFS.
- Have a diagnosis of PIDD.
- Not be enrolled in a Medicare Advantage plan.
- Cannot be in a home health episode of care on the date of service (in such circumstances, the home health payment covers the services).

- Must receive the service in their home or a setting that is “home like”.

To participate in the Demonstration, the beneficiary was required to submit an application, signed by their physician.

DME suppliers billing for the items and services covered under the Demonstration must have met the following requirements:

- Meet all Medicare, as well as other national, state, and local standards and regulations applicable to the provision of services related to home infusion of IVIG.
- Be enrolled and current with the National Supplier Clearinghouse.
- Be able to bill the DME Medicare Administrative Contractors (MACs).

CMS implemented a bundled per visit payment amount under the Demonstration, statutorily required to be based on the national per visit low-utilization payment adjustment (LUPA) for skilled nursing services used under the Medicare HH PPS established under section 1895 of the Act. The payment amount was subject to coinsurance and deductible.

For billing under the Demonstration, CMS established a “Q” code for services, supplies, and accessories used in the home:

- Q2052—(Long Description)—Services, supplies, and accessories used in the home under Medicare Intravenous immune globulin (IVIG) Demonstration.
- Q2052—(Short Description)—IVIG demo, services/supplies.

Suppliers billed Q2052 as a separate claim line on the same claim for the IVIG product.

B. Scope of Expanded IVIG Benefit

As discussed previously, Division FF, section 4134 of the CAA, 2023, added coverage of items and services related to the administration of IVIG in a patient's home, to the existing IVIG benefit category at section 1861(s)(2)(Z) of the Act, effective January 1, 2024. IVIG is covered in the home under Part B if all the following criteria are met:

- It is an approved pooled plasma derivative for the treatment of primary immune deficiency disease.

- The patient has a diagnosis of primary immune deficiency disease.

- The IVIG is administered in the home.

- The treating practitioner has determined that administration of the IVIG in the patient's home is medically appropriate.

Therefore, as section 4134(a)(1) of the CAA, 2023, adds the items and services (furnished on or after January 1, 2024) related to the administration of IVIG to the benefit category defined under section 1861(s)(2)(Z) of the Act (the Social Security Act provision requiring coverage of the IVIG product in the home), the same beneficiary eligibility requirements for the IVIG product apply for the IVIG administration items and services. Subpart B of part 410 of the regulations set out the medical and other health services requirements under Part B. The regulations at § 410.10 identify the services that are subject to the conditions and limitations specified in this subpart. Section 410.10(y) includes intravenous immune globulin administered in the home for the treatment of primary immune deficiency diseases. Section 410.12 outlines general basic conditions and limitations for coverage of medical and other health services under Part B, as identified in § 410.10. Section 410.12(a) includes the conditions that must be met for these services to be covered, and include the following:

- When *the services must be furnished*. The services must be furnished while the individual is in a period of entitlement.
- By *whom the services must be furnished*. The services must be furnished by a facility or other entity as specified in §§ 410.14 through 410.69.
- *Physician certification and recertification requirements*. If the services are subject to physician certification requirements, they must be certified as being medically necessary, and as meeting other applicable requirements, in accordance with subpart B of part 424.

As the definition of IVIG at section 1861(zz) of the Act now includes the items and services necessary to administer IVIG in the home, in the CY 2024 HH PPS final rule (88 FR 77793), we finalized the amendment to the regulation at § 410.10(y) to add “items and services”. Furthermore, sub-regulatory guidance documents (that is, IVIG LCD (33610)⁹⁷ and IVIG Policy

⁹⁷ <https://www.cms.gov/medicare-coverage-database/view/lcd.aspx?LCDId=33610>.

Article (A52509)⁹⁸ provide direction on coding and coverage for the IVIG product at home. Through the Local Coverage Determination (LCD) for Intravenous Immune Globulin (L33610),⁹⁹ the Durable Medical Equipment Medicare administrative contractors (DME MACs) specify the Healthcare Common Procedure Coding System (HCPCS) codes for which IVIG derivatives are covered under this

benefit. Therefore, a beneficiary must be receiving one of the IVIG derivatives specified under the LCD for IVIG to qualify to receive the items and services covered under section 1861(s)(2)(Z) of the Act. Furthermore, for any item (including IVIG) to be covered by Medicare, it must (1) be eligible for a defined Medicare benefit category, (2) be reasonable and necessary for the diagnosis or treatment of illness or

injury or to improve the functioning of a malformed body member, and (3) meet all other applicable Medicare statutory and regulatory requirements. Policy guidance for the LCD for IVIG¹⁰⁰ identifies the ICD-10-CM codes that support medical necessity for the provision of IVIG in the home. These diagnosis codes are listed in table 40.

TABLE 40: ICD-10-CM CODES THAT SUPPORT MEDICAL NECESSITY FOR HOME IVIG

Code	Description
D80.0	Hereditary hypogammaglobulinemia
D80.2	Selective deficiency of immunoglobulin A [IgA]
D80.3	Selective deficiency of immunoglobulin G [IgG] subclasses
D80.4	Selective deficiency of immunoglobulin M [IgM]
D80.5	Immunodeficiency with increased immunoglobulin M [IgM]
D80.6	Antibody deficiency with near-normal immunoglobulins or with hyperimmunoglobulinemia
D80.7	Transient hypogammaglobulinemia of infancy
D81.0	Severe combined immunodeficiency [SCID] with reticular dysgenesis
D81.1	Severe combined immunodeficiency [SCID] with low T- and B-cell numbers
D81.2	Severe combined immunodeficiency [SCID] with low or normal B-cell numbers
D81.5	Purine nucleoside phosphorylase [PNP] deficiency
D81.6	Major histocompatibility complex class I deficiency
D81.7	Major histocompatibility complex class II deficiency
D81.82	Activated Phosphoinositide 3-kinase Delta Syndrome [APDS]
D81.89	Other combined immunodeficiencies
D81.9	Combined immunodeficiency, unspecified
D82.0	Wiskott-Aldrich syndrome
D82.1	Di George's syndrome
D82.4	Hyperimmunoglobulin E [IgE] syndrome
D83.0	Common variable immunodeficiency with predominant abnormalities of B-cell numbers and function
D83.1	Common variable immunodeficiency with predominant immunoregulatory T-cell disorders
D83.2	Common variable immunodeficiency with autoantibodies to B- or T-cells
D83.8	Other common variable immunodeficiencies
D83.9	Common variable immunodeficiency, unspecified
G11.3	Cerebellar ataxia with defective DNA repair

In accordance with this guidance, a beneficiary must be diagnosed with one of the primary immune deficiencies identified by the ICD-10-CM codes, set out in table 40 and as updated in subregulatory guidance, to qualify to receive the items and services covered under section 1861(s)(2)(Z) of the Act. This policy guidance is revised as needed by the DME MACs. And finally, to qualify to receive IVIG in the home, section 1861(zz) of the Act requires that a treating practitioner must have determined that administration of the

IVIG in the patient's home is medically appropriate. Accordingly, we updated the sub-regulatory guidance pursuant to the CAA, 2023 to reflect the expansion of the benefit to the items and services related to the home administration of IVIG. Leveraging the existing regulations and sub-regulatory guidance maintains one set of standards across the entire IVIG benefit (that is, for the product and for the related items and services needed for home administration).

1. Items and Services Related to the Home Administration of IVIG

Section 101(c) of the Medicare IVIG Access Act established coverage for items and services needed for the in-home administration of IVIG for the treatment of primary immunodeficiencies under a Medicare demonstration program. In the CY 2024 HH PPS final rule, we stated that we interpreted section 4134 of the CAA, 2023 to make permanent coverage of the same items and services under the existing IVIG Demonstration to promote

⁹⁸ <https://www.cms.gov/medicare-coverage-database/view/article.aspx?articleId=52509>.

⁹⁹ Local Coverage Determination (LCD): IVIG (L33610) <https://www.cms.gov/medicare-coverage-database/view/lcd.aspx?LCDId=33610&ContrId=389>.

¹⁰⁰ <https://www.cms.gov/medicare-coverage-database/view/article.aspx?articleId=52509>.

continuous and comprehensive coverage for beneficiaries who choose to receive home IVIG therapy (88 FR 77794). Under the Demonstration, the bundled payment for the items and services necessary to administer the drug intravenously in the home included the infusion set and tubing, and nursing services to complete an infusion of IVIG lasting on average three to five hours.¹⁰¹ Although “items and services” are not explicitly defined under section 4134 of the CAA, 2023, we stated in the CY 2024 HH PPS proposed rule (88 FR 43755) that we believed the items and services covered under the Demonstration are inherently the same items and services that would be covered under the payment added to the benefit category at section 1861(s)(2)(Z) of the Act. We also did not enumerate a list of services that must be included in the separate bundled payment; however, we stated that we anticipated the nursing services would include such professional services as IVIG administration, assessment and site care, and education (88 FR 43755). Moreover, we stated that it is up to the provider to determine the services and supplies that are appropriate and necessary to administer the IVIG for each individual, and this may or may not include the use of a pump. Because IVIG does not have to be administered through a pump (although it can be), external infusion pumps are not covered under the DME benefit for the administration of IVIG. An external infusion pump is only covered under the DME benefit if the infusion pump is necessary to safely administer the drug. The Local Coverage Determination (LCD) for External Infusion Pumps identify the drugs and biologicals that the DME Medicare Administrative Contractors (MACs) have determined require the use of such pumps and cannot be administered via a disposable elastomeric pump or the gravity drip method.¹⁰² As such, under the IVIG Demonstration, coverage did not extend to the DME pump, and thereby, is not covered separately under the home IVIG items and services payment.

2. Home IVIG Items and Services and the Relationship to/Interaction With Home Health and Home Infusion Therapy Services

Prior to enactment of the CAA, 2023, IVIG administration items and services

were explicitly excluded from coverage under the Part B IVIG benefit. However, if a beneficiary was considered homebound and qualified for the home health benefit, the items and services needed to administer IVIG in the home could be covered as home health services. Section 4134(b) of the CAA, 2023 excludes the IVIG items and services bundled payment in the case of an individual receiving home health services under section 1895 of the Act. Therefore, we clarified in the CY 2024 HH PPS final rule that a beneficiary does not have to be considered confined to the home (that is, homebound) in order to be eligible for the home IVIG benefit; however, homebound beneficiaries requiring items and services related to the administration of home IVIG, and who are receiving services under a home health plan of care, may continue to receive services related to the administration of home IVIG as covered home health services (88 FR 77794). We also clarified that the items and services related to the administration of IVIG in the home, and as identified on the home health plan of care, would be included in the payment for the 30-day home health period payment. HHAs must provide home health items and services included on the plan of care either directly or under arrangement and must bill and be paid under the HH PPS for such covered home health services. If an HHA is unable to furnish the items and services related to the administration of IVIG (as indicated in the plan of care) in the home, they are responsible for arranging these services (including arranging for services in an outpatient facility) and are required to bill these services as home health services under the HH PPS (88 FR 77795).

Regarding the home infusion therapy (HIT) services benefit, we reminded readers that Medicare payment for home infusion therapy services is for services furnished in coordination with the furnishing of intravenous and subcutaneous infusion drugs and biologicals specified on the DME LCD for External Infusion Pumps (L33794),¹⁰³ with the exception of insulin pump systems and certain drugs and biologicals on a self-administered drug exclusion list (88 FR 77794). For the drugs and biologicals to be covered under the Part B DME benefit they must require infusion through an external infusion pump. If the drug or biological can be infused through a disposable

pump or by a gravity drip, it does not meet this criterion. IVIG does not require an external infusion pump for administration purposes and therefore, is explicitly excluded from the DME LCD for External Infusion Pumps. However, subcutaneous immunoglobulin (SCIG) is covered under the DME LCD for External Infusion Pumps, and items and services for administration of SCIG in the home are covered under the HIT services benefit. While a DME supplier and a HIT supplier (or a DME supplier also enrolled as a HIT supplier) could not furnish services related to the administration of immunoglobulin (either IVIG or SCIG) to the same beneficiary on the same day, a beneficiary could potentially receive services under both benefits for services related to the infusion of different drugs. For example, a DME supplier also accredited and enrolled as a HIT supplier, could furnish HIT services to a beneficiary receiving intravenous acyclovir as well as IVIG, and bill both the IVIG and the HIT services benefits on the same date of service. We also recognize that a beneficiary may, on occasion, switch from receiving immunoglobulin subcutaneously to intravenously and vice versa, and as such, utilize both the HIT services and the IVIG benefits within the same month.

C. Home IVIG Administration Items and Services Payment

Section 101 of the Medicare IVIG Access Act established the authority for a Demonstration providing payment for items and services needed for the in-home administration of IVIG. In the CY 2024 HH PPS final rule, we stated that we believed the provisions established under that law serve as the basis for the conditions for payment with respect to the requirements that must be met for Medicare payment to be made to suppliers for the items and services covered under section 1861(s)(2)(Z) of the Act and clarified that the relevant regulations and subregulatory guidance also apply.

1. Home IVIG Administration Items and Services Supplier Type

Section 4134(b) of the CAA, 2023 amends section 1842(o) of the Act by adding a new paragraph (8) that establishes a separate bundled payment to the supplier for all items and services related to the administration of such intravenous immune globulin, described in section 1861(s)(2)(Z) of the Act to such individual in the patient's home during a calendar day. Section 4134(c) of the CAA, 2023 amends section

¹⁰¹ Updated Interim Report to Congress: Evaluation of the Medicare Patient Intravenous Immunoglobulin Demonstration Project, August 2022 found at: <https://innovation.cms.gov/data-and-reports/2022/ivig-updatedintrtc>.

¹⁰² <https://www.cms.gov/medicare-coverage-database/view/lcd.aspx?LCDId=33794>.

¹⁰³ Local Coverage Determination (LCD): External Infusion Pumps (L33794) <https://www.cms.gov/medicare-coverage-database/view/lcd.aspx?LCDId=33794>.

1834(j)(5) of the Act, which are a requirement for supplier of medical equipment and supplies, by adding a new subparagraph (E), clarifying with respect to payment, that items and services related to the administration of intravenous immune globulin furnished on or after January 1, 2024, as described in section 1861(zz) of the Act, are included in the definition of medical equipment and supplies. This means that suppliers that furnish IVIG administration items and services must meet the existing DMEPOS supplier requirement for payment purposes under this benefit. Suppliers of IVIG administration items and services must enroll as a DMEPOS supplier and comply with the Medicare program's DMEPOS supplier standards (found at 42 CFR 424.57(c)) and DMEPOS quality standards to become accredited for furnishing medical equipment and supplies. Further, to receive payment for home IVIG items and services, the supplier must also meet the requirements under subpart A of part 424, Conditions for Medicare Payment. The DMEPOS supplier may subcontract with a provider to meet the professional services identified in section V.B.1. of this proposed rule. All professionals who furnish services directly, under an individual contract, or under arrangement with a DMEPOS supplier to furnish services related to the administration of IVIG in the home, must be legally authorized (licensed, certified, or registered) in accordance with applicable Federal, State, and local laws, and must act only within the scope of their State license or State certification, or registration. A supplier may not contract with any entity that is currently excluded from the Medicare program, any State health care programs or from any other Federal procurement or non-procurement programs.

2. Home IVIG Administration

Section 1861(s)(2)(Z) of the Act defines benefit coverage of intravenous immune globulin for the treatment of primary immune deficiency diseases *in the home*. Under the IVIG Demonstration, beneficiaries are eligible to participate if they receive IVIG services in “their home or a setting that is ‘home like’”.¹⁰⁴ Section 410.12(b) identifies the supplier types who can furnish the services identified at § 410.10. Section 410.38 provides the conditions for payment for DME suppliers and identifies the institutions

that may not qualify as the patient's home. As such, the home administration of IVIG items and services must be furnished in the patient's home, defined as a place of residence used as the home of an individual, including an institution that is used as a home. An institution that is used as a home may not be a hospital, critical access hospital (CAH), or SNF as defined in § 410.38(b).

D. Home IVIG Items and Services Payment Rate

1. Proposed Payment Rate Update for Home IVIG Items and Services for CY 2025

Section 1842(o) of the Act provides the authority for the development of a separate bundled payment for Medicare-covered items and services related to the administration of intravenous immune globulin to an individual in the patient's home during a calendar day, in an amount that the Secretary determines to be appropriate. This section of the Act also states payment may be based on the payment established pursuant to section 101(d) of the Medicare IVIG Access Act. Section 4134(d) of the CAA, 2023, amends section 1833(a)(1) of the Act to provide that, with respect to items and services related to the administration of IVIG furnished on or after January 1, 2024, as described in section 1861(zz) of the Act, the amounts paid shall be the lesser of the 80 percent of the actual charge or the payment amount established under section 1842(o)(8) of the Act.

In accordance with section 101(d) of the Medicare IVIG Access Act, the Secretary established a per visit Demonstration payment amount for the items and services needed for the in-home administration of IVIG based on the national per visit low-utilization payment amount (LUPA) under the prospective payment system for home health services established under section 1895 of the Social Security Act. Under the Demonstration, the bundled payment amount for services needed for the home administration of IVIG included infusion services provided by a skilled nurse. Therefore, the bundled payment was based on the LUPA amount for skilled nursing, based on an average 4-hour infusion. The initial payment rate for the first year of the Demonstration, was based on the full skilled nursing LUPA for the first 90 minutes of the infusion and 50 percent of the LUPA for each hour thereafter for an additional 3 hours. Thereafter, the payment rate was annually updated based on the nursing LUPA rate for such year. The service was subject to

coinsurance and deductibles similar to other Part B services.

We stated in the CY 2024 HH PPS proposed rule (88 FR 43755), we believed payment under section 1861(s)(2)(Z) of the Act covers the same items and services covered under the IVIG Demonstration. We also agreed that the professional services needed to safely administer IVIG in the home would be services furnished by a registered nurse (88 FR 43756). Therefore, we stated that setting the CY 2024 payment rate for the home IVIG items and services under section 1861(s)(2)(Z) of the Act, based on the CY 2023 payment amount established under the Demonstration was appropriate. However, we noted the Demonstration used the LUPA rate, which is annually adjusted by the wage index budget neutrality factor, as well as the home health payment rate update percentage, and stated that we believed it was appropriate to update the CY 2023 IVIG services Demonstration rate by only the CY 2024 home health payment rate update percentage. We stated that we would not include the wage index budget neutrality factor, as the IVIG items and services payment rate is not statutorily required to be geographically wage adjusted. Further, although section 1842(o) of the Act states that payment is for the items and services furnished to an individual in the patient's home during a *calendar day*, we stated that, as the statute aligns the payment amount with such amount determined under the Demonstration, we believed the best reading of “calendar day” is “per visit.” Additionally, we stated that we would expect a supplier to furnish only one visit per calendar day (88 FR 43756).

In the CY 2024 HH PPS final rule, we established a new subpart R under the regulations at 42 CFR part 414 to incorporate payment provisions for the implementation of the IVIG items and services payment in accordance with section 1842(o) of the Act for home IVIG items and services furnished on or after January 1, 2024. We finalized a policy at § 414.1700(a), that a single payment amount is made for items and services furnished by a DMEPOS supplier *per visit*. We finalized a policy at § 414.1700(b), setting the initial payment amount equivalent to the CY 2023 “Services, Supplies, and Accessories Used in the home under the Medicare IVIG Demonstration” payment amount, updated by the CY 2024 home health update percentage of 3.0 percent. We also finalized a policy at § 414.1700(c) to annually update the CY 2025 home IVIG items and services payment rate and subsequent years, by

¹⁰⁴ Intravenous Immune Globulin Demonstration MLN Fact Sheet: <https://www.cms.gov/files/document/mln3191598-intravenous-immune-globulin-demonstration.pdf>.

the home health payment rate update percentage for such year. Therefore, the proposed CY 2025 home IVIG items and services payment rate would be the CY 2024 IVIG items and services payment rate of \$420.48 updated by the proposed home health payment update percentage of 2.5 percent ($\$420.48 \times 1.025 = \$430.99$).

The updated home intravenous immune globulin items and services payment rate will be posted in the Billing and Rates section of the CMS' Home Infusion Therapy (HIT) web page (found at <https://www.cms.gov/medicare/payment/fee-for-service-providers/home-infusion-therapy>) once this rate is finalized. In subsequent years, if CMS does not intend to propose changes to its established methodology for calculating the IVIG items and services payment, this payment rate will be updated using CMS' established methodology via the Home Health Prospective Payment System Rate Update Change Request and posted on the CMS HIT/Home IVIG Services web page.¹⁰⁵ For more in-depth information regarding the finalized policies associated with the scope of the home IVIG items and services payment, we refer readers to the CY 2024 HH PPS final rule (88 FR 77791).

VI. Home Health CoP Changes and Long Term (LTC) Requirements for Acute Respiratory Illness Reporting

A. Home Health CoP Changes

1. Background and Statutory Authority

CMS has broad statutory authority to establish health and safety standards for most Medicare- and Medicaid-participating provider and supplier types. The Secretary gives CMS the authority to enact regulations that are necessary in the interest of the health and safety of individuals who are furnished services in an institution, while other laws, as outlined later, give CMS the authority to prescribe regulations as may be necessary to carry out the administration of the program. Sections 1861(o) and 1891 of the Act authorize the Secretary to establish the requirements that an HHA must meet to participate in the Medicare Program, and these conditions of participation (CoPs) are set forth in regulations at 42 CFR part 484.

The CoPs apply to the HHA as an entity, as well as to the services furnished to each individual patient under the care of the HHA. In accordance with section 1861(o) of the Act, the Secretary is responsible for

establishing additional CoPs besides those set out in the statute that are adequate to protect the health and safety of the individuals under HHA care. Section 1891(c)(2) of the Act establishes the requirements for surveying HHAs to determine whether they meet the CoPs.

2. Proposed Updates to the Home Health Agency CoPs To Require HHAs To Establish an Acceptance to Service Policy (§ 484.105(i))

Admission to HHA services is a critical step in the process of patients receiving timely, appropriate care to meet their needs. In accordance with the requirements of § 484.105(f)(1), each HHA must furnish skilled nursing services and at least one other therapeutic service (physical therapy, speech-language pathology, occupational therapy, medical social services, or home health aide services) on a visiting basis and in a place of residence that is used as a patient's home. As such, the services provided by each HHA vary, creating challenges for individuals seeking to find the right HHA to meet their unique care needs. Likewise, the unique mix of services provided by an HHA also necessitates an HHA-specific approach to accepting referrals for care to ensure that the HHA is capable of meeting the needs of the referred patient, in accordance with the requirements of § 484.60. This CoP states that patients are accepted for treatment on the reasonable expectation that an HHA can meet the patient's needs in his or her place of residence. Thus, a timely, appropriate admission process serves both prospective patients seeking care and ensures that HHAs accept for treatment only those patients for whom there is a reasonable expectation of being able to meet the patient's care needs.

Researchers have found that timely admission to home health, and in turn the initiation of services are key to good home health patient outcomes. Timely initiation of home health care lowers the risk of 30-day hospital readmissions.¹⁰⁷ According to one study published in 2021, when the initiation of home health services is significantly delayed (that is, from 8 to 14 days after discharge), the odds of rehospitalization for diabetic patients were four times greater than among patients receiving home health service initiation within 2 days.¹⁰⁸ Yet the rate of timely initiation of home health care varies significantly, indicating that the referral and acceptance process is in need of improvement. In a study of initiation of

home health care for individuals diagnosed with Alzheimer's disease and related dementia,¹⁰⁷ only 57.3 percent of patients discharged from the hospital began home health services within 48 hours of discharge, while 21.6 percent of patients had care initiated between 3 and 7 days post-discharge, another 8.4 percent had care initiated between 8–10 days post-discharge, and 12.8 percent experienced a delay of 11 to 14 days between discharge and home health care initiation. The 42.7 percent of patients in the study who waited 3 or more days after discharge for initiation of home health services were more likely to be dually enrolled in Medicare and Medicaid, live in rural areas, have experienced longer hospital stays, experienced a hospital acquired condition, or experienced an intensive care unit stay. Additionally, this population was more likely to have been discharged with a lower functional status and were more likely to live alone. In another study of Medicare beneficiaries,¹⁰⁸ only 54 percent of patients discharged from the hospital to home health care received home health care services within 14 days of discharge. The rate of patients receiving home health services within 14 days of discharge with a home health referral was even lower among Black and Hispanic patients, those who were dually enrolled in both Medicare and Medicaid, and patients who lived in high-poverty, high unemployment zip codes. This research brings attention to vulnerable populations at risk of poor outcomes associated with delays in the timely initiation of home health care services.¹⁰⁹

Timely initiation of home health care services is also intrinsically linked to the home health referral process, whereby connections are made between referral sources and HHAs. Patient referral sources are varied, with some patients and caregivers conducting their own searches for care, known as self-referrals, while others are referred by a community-based practitioner or an acute care provider such as a hospital. Patients that begin HHA care without an

¹⁰⁷ Amol M. Karmarkar, Indrakshi Roy, Taylor Lane, Stefany Shaibi, Julie A. Baldwin & Amit Kumar (2023), Home health services for minorities in urban and rural areas with Alzheimer's and related dementia, *Home Health Care Services Quarterly*, 42:4, 265–281, DOI: 10.1080/01621424.2023.2206368.

¹⁰⁸ Assessment of Receipt of the First Home Health Care Visit After Hospital Discharge Among Older Adults. Jun Li, Ph.D., Mingyu Qi, MS, and Rachel M. Werner, Ph.D., MD. *JAMA Netw Open*. 2020 Sep; 3(9): e2015470. doi: 10.1001/jamanetworkopen.2020.15470:10.1001/jamanetworkopen.2020.15470.

¹⁰⁹ <https://alz-journals.onlinelibrary.wiley.com/doi/full/10.1002/alz.13139>, date accessed 5–08–24.

¹⁰⁵ <https://www.cms.gov/medicare/payment/fee-for-service-providers/home-infusion-therapy>.

¹⁰⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8197411/>, date accessed 5–7–24.

immediate prior hospitalization, those who are self-referrals or referred by a community-based practitioner, tend to be Medicaid recipients, have cognitive impairments, and are more socially vulnerable (defined as the gap between patient needs and the patient's available resources) than patients admitted from acute care. Additionally, they tend to have received 80 or more hours per month of family caregiver assistance prior to their acceptance to HHA services.¹¹⁰ This population has unique needs and circumstances needs that may make finding the right HHA a challenging process, and they may not have access to information needed to target their search for an HHA in an effective and efficient manner. Given the significant delays in home health care initiation described earlier and the role that this information plays in facilitating care initiation, we are concerned about this lack of public transparency and whether referral sources, including patients and caregivers searching for HHA services, currently have access to sufficient and timely information necessary to locate an HHA that is capable of meeting each specific patient's needs. Without such information, care delays are likely to occur, placing patients at higher risk of poor outcomes.

In addition to the challenges of finding the right HHA and resultant potential delays in the timely initiation of home health care, we are also concerned that HHAs are at higher risk of overextending their available resources when accepting new patients to HHA services. Delays in service initiation may indicate not only that referral sources have difficulty locating an appropriate HHA, but also that HHAs are accepting patients when and for whom they are not capable of delivering timely care. We are aware of anecdotal reports of home care agencies not providing care to meet patient needs^{111 112} and reports by agencies of challenges maintaining appropriate staff caseloads to continue delivering care to patients that have been accepted for

service. We acknowledge that these challenges may be related to workforce shortages. HHAs are expected to discharge patients for whom the HHA is unable to deliver care to meet patient needs, and to adhere to the HHA discharge requirements at § 484.58. Such discharges create transition of care burdens for patients and their caregivers that may be prevented by consistently applying an admission to service policy that includes the elements proposed in this rule to ensure the correct match of an HHA's available patient care resources and the anticipated needs of the patients accepted for service by that HHA. In line with this HHA proposal, CMS recently published a final rule titled "Ensuring Access to Medicaid Services" (89 FR 40542, May 10, 2024), which requires States to report how they establish and maintain Home and Community Based Services (HCBS) wait lists, assess wait times, and report on quality measures. That final rule aims to increase transparency and accountability and standardize data and monitoring, with the goal of improving access to care.

To address these dual concerns regarding the referral and acceptance process and their implications for prospective and current patients, we propose to add a new standard at § 484.105(i) that would require HHAs to develop, implement, and maintain an acceptance to service policy that is applied consistently to each prospective patient referred for home health care. We propose to require that the policy be reviewed annually and address, at minimum, the following criteria related to the HHA's capacity to provide patient care: the anticipated needs of the referred prospective patient, the HHA's case load and case mix, the HHA's staffing levels, and the skills and competencies of the HHA staff. It is our understanding, based on information provided by HHA accrediting organizations and the largest HHA trade association, that HHAs typically have acceptance to service policies that are categorical in nature, meaning that the policies address entire categories of diagnosis or service types that they are or are not capable of providing care for. This proposed rule would not prevent HHAs from maintaining these existing policies and is intended to complement them. We also understand that an HHA's case load, case mix, and staffing levels may change over time, and that an HHA may choose to pre-establish methodologies that take into account such fluctuations as part of their acceptance to service policy to ensure consistency and minimize

administrative efforts in maintaining the policy.

We propose, at § 484.105(i)(1)(i) through (iv), that HHAs would be required to include information regarding the HHA's case load and case mix (that is, the volume and complexity of the patients currently receiving care from the HHA), anticipated needs of the referred prospective patient, the HHA's current staffing levels, and the skills and competencies of the HHA staff. These proposed elements are designed to inform an HHA's assessment of its capacity and determine its suitability to meet the anticipated needs of the prospective patient that has been referred for HHA services. While all of a prospective patient's needs may not be known at the time of referral, general information regarding the patient's diagnosis and recent hospitalization (as appropriate), and specific orders from the patient's medical provider would provide a reasonable basis for HHAs to anticipate the overall needs of the patient and determine whether, in light of the described factors, the prospective patient is or is not appropriate for the HHA to accept for service. In accordance with § 484.60, HHAs may only accept those patients for whom there is a reasonable expectation that the HHA will be able to meet the patient's needs.

We therefore propose that the patient acceptance to service policy be applied consistently to ensure that HHAs only accept those patients for whom there is a reasonable expectation that the HHA can meet the referred patient's needs. Not only would consistent application of the acceptance to service policy help to ensure that HHAs only accept referrals for care that they can deliver, it would also ensure that HHAs apply their acceptance policy based on clinical and operational factors (those criteria included in proposed § 484.105(i)(1)(ii) through (iv)) that impact patient health and safety. While Medicare-participating HHAs may choose to accept other, non-Medicare sources of payment, we expect that HHAs would apply their acceptance to service policy consistently in a manner that is neutral to the source(s) of payment for a referral. That is, if an HHA accepts payment from both Medicare and another payment source, "source X," the HHA's referral policy should be applied consistently to referrals for patients having Medicare or "source X" as a payment source. It is our position that HHAs should accept or decline patient referrals based solely on clinical considerations and the capacity of the HHA to safely and effectively deliver care to meet patient needs,

¹¹⁰ Social Vulnerability and Medical Complexity Among Medicare Beneficiaries Receiving Home Health Without Prior Hospitalization, Julia G. Burgdorf, Ph.D., Tracy M. Mroz, OTR/L, Ph.D., and Jennifer L. Wolff, Ph.D. *Innovation in Aging*, 2020, Vol. 4, No. 6, 1–9 doi:10.1093/geroni/igaa049.

¹¹¹ Pandemic-Fueled Shortages of Home Health Workers Strand Patients Without Necessary Care, February 3, 2022, KFF Health News. <https://kffhealthnews.org/news/article/pandemic-fueled-home-health-care-shortages-strand-patients/>. Accessed March 12, 2024.

¹¹² Caregiver Needed: How the Nation's Workforce Shortages Make it Harder to Age Well at Home, September 2022, USAgeing. https://www.usaging.org/Files/Workforce-Issues_508.pdf. Accessed March 14, 2024.

rather than on financial factors related to the perceived adequacy of the payment rate that the HHA has already voluntarily agreed to accept upon establishment of relationships with its payment sources.

We also propose, at § 484.105(i)(2), that HHAs make public accurate information regarding the services offered by the HHA and any limitations related to the types of specialty services, service duration, or service frequency, and that HHAs review that information annually or as necessary. As previously discussed, HHAs have the flexibility to choose the services that they provide and the geographic areas that they serve. As such, each HHA may provide a different mix of services or offer different specialty services. Likewise, each HHA has different geographical boundaries for its service area. Knowing which areas are served by an HHA and which services an HHA does and does not provide would assist referral sources and self-referrals alike in identifying HHAs that provide the services needed by the patient. Likewise, each HHA has unique staffing levels and staffing competencies affecting its capacity to deliver patient care, and those may change over time. To the extent that these variations in staffing impact the capacity of an HHA to provide its typically offered services, we would require that HHAs make public such limitations on specialty services, service duration, and service frequency to further inform the search efforts of all referral sources.

In short, making information regarding the services offered by the HHA and any limitations related to the types of specialty services, service duration, or service frequency available to the public, such as sharing it on the HHA's website and providing the same information upon request for those without access to the website, would facilitate the search for an HHA to meet a patient's needs, both from clinical referral sources such as hospitals and physician offices, and from patients and caregivers directly seeking care. The goal of this proposal is to reduce the delay between the time when a patient is identified as needing home health care and the time when the patient begins receiving such care by making key information readily available, thus improving identification of HHAs capable of meeting patient needs. Reducing the time delay would improve patient outcomes, as longer delays between referral and the initiation of HHA care are more likely to result in 30-day rehospitalizations and may place vulnerable populations at risk for various other adverse outcomes.

We request public comment on these proposals. Specifically, we request comment on alternative ways to address the delay of home health care initiation, barriers for patients with complex needs to find and access HHAs, and other opportunities to improve transparency regarding home health patient acceptance policies to better inform referral sources. We also request public comment regarding other ways to improve the referral process for referral sources, patients, and HHAs.

3. Requests for Information

a. RFI Regarding Rehabilitative Therapists Conducting the Initial and Comprehensive Assessment

The current CoPs at § 484.55(a)(1) require the registered nurse to conduct an initial assessment visit to determine the immediate care and support needs of the patient within 48 hours of referral, within 48 hours of the patient's return home, or on the physician allowed practitioner-ordered start of care date. The initial assessment establishes a patient's eligibility for coverage under the Medicare home health benefit. The clinician conducting the initial visit should determine the patient's homebound status, primary physician, and skilled services required. Section 484.55(b) further requires that the comprehensive assessment must be completed in a timely manner by a registered nurse, but no later than 5 calendar days after the start of care. However, when therapy services are the sole services ordered by the physician or allowed practitioner, the initial and comprehensive assessments can be conducted by rehabilitation professionals (specifically occupational therapists (OT), physical therapists (PT), or speech-language pathologists (SLP)), subject to certain limitations, as specified by § 484.55(a)(2) and (b)(3).

Section 484.55(c) establishes the minimum content of the comprehensive assessment, which must accurately reflect the patient's status and include the patient's current health, psychosocial, functional, and cognitive status. The comprehensive assessment must also reflect the patient's strengths, goals, and care preferences, including information that may be used to demonstrate the patient's progress towards the achievement of the goals identified by the patient and the measurable outcomes identified by the HHA. Additionally, the comprehensive assessment must include a determination of the patient's continuing need for home care, and their medical, nursing, rehabilitative, social, and discharge planning needs.

Further, the comprehensive assessment must also include a review of the patient's medication and identify the patient's primary caregiver(s) or patient representative. Lastly, the comprehensive assessment must incorporate the current version of the Outcome and Assessment Information Set (OASIS) items. HHAs must complete data collection for the comprehensive assessment within 5 days of the start of care.

At the beginning of the COVID-19 Public Health Emergency (PHE), CMS waived the requirements at § 484.55(a)(2) and (b)(3) and thus permitted rehabilitation professionals to perform the initial and comprehensive assessment in instances when both nursing and therapy services are ordered. This temporary blanket waiver reflected the unique circumstances of the PHE, with its acute pressures on the nursing workforce, and allowed rehabilitation professionals to perform the initial and comprehensive assessment for patients receiving therapy services as part of the broader nursing and therapy care plan, to the extent permitted under State law, regardless of whether the therapy service established patient eligibility to receive home care.

Subsequently, Division CC, section 115 of the Consolidated Appropriations Act (CAA) of 2021 (Pub. L. 116–260), permitted OTs to conduct the initial and comprehensive assessments only when OT is on the home health plan of care with either PT or speech therapy, and skilled nursing services are not initially on the plan of care. CMS proposed changes to § 484.55(a)(3) and (b)(2) in the CY 2022 Home Health PPS proposed rule (86 FR 35874), and finalized the changes in the CY 2022 Home Health PPS final rule (86 FR 62240).

However, some groups continue to advocate for CMS to permanently allow therapists to perform the initial and comprehensive assessment in the home health setting when both therapy and nursing services are ordered. While CMS received limited feedback during the CY 2022 Home Health PPS proposed rule from several commenters supporting a change of this type, we are interested in obtaining additional feedback on this specific potential change.

The three types of rehabilitative therapists (OT, PT, and SLP) have different education requirements for entry into to practice. Currently, entry-level education for OT is either a Master's degree or Doctorate of Occupational Therapy. Education programs are accredited by the Accreditation Council for Occupational

Therapy Education (ACOTE) of the American Occupational Therapy Association (AOTA). The ACOTE establishes, approves, and administers educational standards to evaluate occupational therapy educational programs. Graduates of ACOTE-accredited programs are eligible to take the National Board for Certification in Occupational Therapy (NBCOT) certification exam and apply for State licensure.

Physical therapy entry-level education requires a Doctor of Physical Therapy degree. The Commission on Accreditation in Physical Therapy Education (CAPTE) of American Physical Therapy Association (APTA) accredits entry-level physical therapist education programs. Graduates of these programs are then eligible to take the National Physical Therapy Examination and apply for State licensure.

Speech Language Pathologists must obtain a Certificate of Clinical Competence in Speech-Language Pathology (CCC–SLP) as well as state licensure. This requires graduation from a program accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology (CAA) of the American Speech-Language-Hearing Association (ASHA). Individuals applying for certification in speech-language pathology must have been awarded a master's, doctoral, or other recognized post-baccalaureate degree. Once students complete all academic coursework and a graduate student clinical practicum, they must also complete a clinical fellowship under the supervision of a SLP mentor. The clinical fellowship requires working at least 36 weeks and 1,260 hours and is intended to transition the fellow from a student enrolled in a communication sciences and disorders (CSD) program to an independent provider of speech-language pathology clinical services.

The APTA has indicated that the accreditation standards for entry-level certification programs for physical therapy have evolved over time, with major changes occurring between 1996 and 2024, and that contemporary PT education programs are now required to include content for students on broader health care issues to promote team-based and interdisciplinary practice. The association states that the current criteria reflect that PT education has shifted significantly since the initial and comprehensive assessments were codified into the home health CoPs, preparing any PT to perform these assessments safely. APTA further contends that education standards have shifted from an initial focus on physical

sciences to expressly incorporate interdisciplinary care topics, including pharmacology and psychosocial, and clinical educational experience in practice settings common to PTs (for example, HHAs, skilled nursing facilities (SNFs), and inpatient rehabilitation facility (IRFs)). The curricular requirements include the general clinical skills required to conduct the initial and comprehensive assessments, both in the identification of immediate care and support needs, as well as the assessment of the patient's general health, psychosocial, functional, cognitive, and pharmacological status.

Given recent input from stakeholders, including therapy professional organizations, we seek public comments regarding whether CMS should shift its longstanding policy and permit all classes of rehabilitative therapists (PTs, SLPs, and OTs) to conduct the initial assessment and comprehensive assessment for cases that have both therapy and nursing services ordered as part of the plan of care. We ask the public for data, detailed analysis, academic studies, or any other information to support their comments that provide a direct link to patient health and safety. Specifically, we solicit comment regarding the following:

- What types of mentorships, preceptorship, or training do these disciplines have qualifying them to conduct the initial assessment and comprehensive assessment?
- How do HHAs currently assign staff to conduct the initial assessment and comprehensive assessment? Do HHAs implement specific skill and competency requirements?
- Do the education requirements for entry-level rehabilitative therapist provide them with the skills to perform both the initial assessment and comprehensive assessment? Is this consistent across all the therapy disciplines? How does this compare with entry-level education for nursing staff?
- What, if any, potential education or skills gaps may exist for rehabilitative therapists in conducting the initial assessment and comprehensive assessment?
- What challenges did HHAs and therapists that conducted these assessments under the PHE waiver experience that may have impacted the quality of these assessments?
- For the HHAs and therapists that conducted the initial assessment and comprehensive assessment under the PHE waiver, what were the benefits and were there any unintended consequences of this on patient health and safety?

- What challenges, barriers, or other factors, such as workforce shortages, particularly in rural areas, impact rehabilitative therapists and nurses in meeting the needs of patients at the start of care and early in the plan of care?

b. Plan of Care Development and Scope of Services Home Health Patients Receive

In an effort to improve the HHA referral process, ensure the timely delivery of home health care, and ensure that home health care is delivered in a manner that meets patient needs and achieves the measurable outcomes and goals set forth in each patient's individualized plan of care, we are requesting public comment on policies related to these goals. Anecdotally, CMS has received an increasing number of beneficiary complaints related to the difficulty of finding a HHA to accept them for service. Beneficiaries complain that in some instances, HHA services are being altered or diminished from the original plan of care without an accompanying reduction in patient needs or achievement of the measurable outcomes and goals set forth in the plan of care. We seek to better understand these issues to inform future policy decisions, consistent with our statutory authority to ensure the health and safety of home health patients.

In CY 2022 Home Health PPS proposed rule, we solicited comments seeking information about the adequacy of aide staffing (86 FR 35874, July 7, 2021). However, only a few commenters provided information specific to the questions we posed in our request. This information was not sufficient to gain insight to the factors that may be impacting the decline in aide services. No further development action was taken due to the lack of substantive data and response from stakeholders.

The number of referrals to HHAs continue to increase. Patient acuity is also increasing^{113 114} with the evolving practice of direct discharge of intensive care unit (ICU) patients, a practice borne out of resource constrained health care infrastructure.¹¹⁵ Compared to 2019 averages, patients are 6 percent more acute at discharge. Patients with higher acuity typically have more complex care needs and a higher risk of

¹¹³ The evolution of care: An annual care delivery report, from CarePort, powered by WellSky, 2023.

¹¹⁴ <https://www.fiercehealthcare.com/providers/hospitals-struggling-discharge-patients-post-acute-care-settings-wellsky-report#:~:text=Patients%20in%20the%20hospital%20are,post%20acute%20settings%20more%20difficult>.

¹¹⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9750104/>.

complications.^{116 117} The overall aging of the U.S. population contributes to overall higher patient acuity. The U.S. Census Bureau estimated that by 2023 73 million baby boomers in the U.S. will be 65 or older. Chronic conditions are more common in older adults and can contribute to higher acuity.^{118 119} In addition, procedures that were once traditionally done in hospitals are migrating to the outpatient setting and patients are being discharged on the same day as the procedure. Specifically, surgical procedures within the U.S. are increasingly shifting to outpatient or non-hospital locations, as seen in the expected 4 percent annual expansion rate of the ambulatory surgery center (ASC) market over the 10-year period from 2017 to 2027.¹²⁰ For example, the incidence of total knee arthroplasty (TKA) surgery performed in the outpatient setting has increased as a result of improved perioperative recovery protocols and challenges brought by the COVID-19 pandemic on health systems.¹²¹ Further, literature shows that factors like the pandemic and “acuity creep” have resulted in HHAs accepting for service much more complicated patients. “As the demand for home-based care continues to rise, so does the need for more intensive care plans as patients continue to be sicker and more complex.”¹²²

We acknowledge that there may be additional factors, such as the shortage of health care practitioners (nurses and aides) across various health care sectors, and HHA business operations and practices that also influence an HHA’s care planning and delivery of services. We seek to understand the changes in practice that have occurred since publication of the January 13, 2017 “Medicare and Medicaid Program: Conditions of Participation for Home Health Agencies” final rule that revised

the home health agency CoPs (82 FR 4504) and review any potential CoP revisions that should be considered. In order to protect the health and safety of all HHA patients, we seek to understand how the services offered and business operations of the HHA may influence the development and implementation of care plans. We are also seeking additional information on how HHAs communicate with patients’ ordering physicians and allowed practitioners regarding the frequency and duration of services.

We are seeking public comments on factors that influence the services HHAs provide, the referral process, limitations on patients being able to obtain HHA service, such as rural location and availability of staff, plan of care development, and the HHA’s communication with patients’ ordering physicians and allowed practitioners. We ask the public for data, detailed analysis, academic studies, or any other information to support their comments that provide a direct link to patient health and safety. Specifically, we solicit comment regarding the following questions:

- What factors influence an HHA’s decision on what services to offer as part of its business model and how often do HHAs change the service mix?
- What are the common reasons for an HHA to not accept a referral?
- How do physicians and allowed practitioners use their role in establishing and reviewing the plan of care to ensure patients are receiving the right mix, duration, and frequency of services to meet the measurable outcomes and goals identified by the HHA and the patient?
- To what extent do physicians rely on HHA clinician evaluations and reports in establishing the mix of services, service frequency, and service duration included in the plan of care?
- What are the patient and caregiver experiences in receiving nursing, aide, and therapy services when under the care of a home health agency?
- What additional evidence is available regarding negative outcomes or adverse events that may be attributable to the mix, duration, and service frequency provided by HHAs, including, but not limited to, avoidable hospitalizations?
- In what ways can referring providers and HHAs improve the referral process?
- What other factors may influence the provision of services that impact the timeliness of services and service initiation?

- What additional areas should CMS consider to address HHA patient health and safety concerns?

B. Long-Term Care (LTC) Requirements for Acute Respiratory Illness Reporting

1. Background

Under sections 1866 and 1902 of the Act, providers of services seeking to participate in the Medicare or Medicaid program, respectively, must enter into an agreement with the Secretary or the State Medicaid agency, as appropriate. Long-term care (LTC) facilities seeking to be Medicare and Medicaid providers of services must be certified as meeting Federal participation requirements. LTC facilities include skilled nursing facilities (SNFs) for Medicare and nursing facilities (NFs) for Medicaid. The Federal participation requirements for SNFs, NFs, and dually certified facilities, are set forth in sections 1819 and 1919 of the Act and codified in the implementing regulations at 42 CFR part 483, subpart B.

Sections 1819(d)(3) and 1919(d)(3) of the Act explicitly require that LTC facilities develop and maintain an infection control program that is designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public. In addition, sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act explicitly authorize the Secretary to issue any regulations he deems necessary to protect the health and safety of residents. Continuous and systematic collection of data is an essential component of any infection control program, as the data provides information about potential health threats and enables prevention planning to mitigate severe health outcomes. LTC residents are vulnerable to infection from SARS-CoV-2 because of chronic health conditions, immunosenescence, and residence in a communal living setting. Vaccination provides protection against infection but does not eliminate the risk of acquiring SARS-CoV-2. Epidemiologic data from the CDC’s National Healthcare Safety Network (NHSN) indicate that weekly COVID-19 cases continue to follow the general surge patterns of 2020 to 2023, despite the vaccination status of the nursing home population. Additionally, the U.S. population remains at risk of increased infection incidence and adverse outcomes as additional SARS-CoV-2 strains continue to emerge, and immunity induced by COVID-19 vaccines wane. As such, in alignment with the sections 1819(d)(3), 1919(d)(3), 1819(d)(4)(B), and 1919(d)(4)(B) of the

¹¹⁶ The evolution of care: An annual care delivery report, from CarePort, powered by WellSky, 2023.

¹¹⁷ <https://www.fiercehealthcare.com/providers/hospitals-struggling-discharge-patients-post-acute-care-settings-wellsky-report#:~:text=Patients%20in%20the%20hospital%20are,post%20acute%20settings%20more%20difficult>.

¹¹⁸ <https://www.fiercehealthcare.com/providers/hospitals-struggling-discharge-patients-post-acute-care-settings-wellsky-report#:~:text=Patients%20in%20the%20hospital%20are,post%20acute%20settings%20more%20difficult>.

¹¹⁹ <https://www.census.gov/library/stories/2019/12/by-2030-all-baby-boomers-will-be-age-65-or-older.html>.

¹²⁰ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10562071/#:~:text=Surgical%20procedures%20within%20the%20United,In%202018%2C%20Young%20et%20al>.

¹²¹ <https://joser-online.biomedcentral.com/articles/10.1186/s13018-023-03750-4>.

¹²² <https://homehealthcarenews.com/2024/01/home-health-agencies-grapple-with-acuity-creep-as-patient-needs-become-more-complex/>.

Act, the policy proposed in this regulation to establish the ongoing collection of the proposed set of data elements is necessary to quickly identify threats to resident health and safety and initiate requisite responses. The data proposed in this regulation for ongoing collection would support facility, State, and Federal-level public health actions that protect the health and safety of residents and ongoing response efforts. In addition, the data collected would continue to be supplied directly to LTC facilities, State health departments, the CDC, and CMS to detect infection outbreaks, monitor the impact of infection prevention strategies, and vaccination uptake (sections VI.B.2. through B.5. of this proposed rule outline specific benefits because of the proposed data collections).

Infection prevention and control in LTC facilities was especially important during the COVID-19 PHE. Under the explicit instructions of Congress, existing regulations at § 483.80 require facilities to, among other things, establish and maintain an infection prevention and control program (IPCP) designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of communicable diseases and infections. The COVID-19 PHE placed enormous strain on the Nation's healthcare systems, requiring LTC facilities nationwide to take extraordinary measures in the face of staff shortages, and the scarcity of personal protective equipment (PPE) and critical supplies. Protecting residents in these circumstances demanded that we have better visibility and data on the spread and impact of COVID-19 in the Nation's LTC facilities. In response, CMS issued an evolving series of requirements to obtain those data through several interim final rules with comment period (IFC) during the height of the PHE and subsequent final rules to support ongoing efforts to monitor and protect residents against COVID-19. When the CDC started collecting COVID-19 case data on a national scale in LTC facilities we began to understand the epidemiological trends of COVID-19 disease in LTC residents. The data highlighted how LTC facilities played a large role in viral transmission and that LTC residents were disproportionately impacted by COVID-19 compared to community dwelling adults. Even after the end of the PHE, national data collected in LTC facilities has shown that LTC residents continue to be impacted by COVID-19 at higher rates than older adults in the community and are more likely to

develop severe outcomes. Continuing to understand trends of COVID-19 and other significant respiratory diseases (for example, RSV, Influenza) in the LTC population is critical to understanding the burden of respiratory viruses on the country.

First, on May 8, 2020, we issued a IFC titled "Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program" (85 FR 27550), which revised the infection prevention and control requirements for LTC facilities to more effectively respond to the specific challenges posed by the COVID-19 pandemic. Specifically, this May 2020 IFC added provisions to require facilities to electronically report information related to confirmed or suspected COVID-19 cases to the Centers for Disease Control and Prevention (CDC) and required facilities to inform residents and their representatives of confirmed or suspected COVID-19 cases in the facility among residents and staff.

Second, on September 2, 2020, we issued a IFC titled "Medicare and Medicaid Programs, Clinical Laboratory Improvement Amendments (CLIA), and Patient Protection and Affordable Care Act, Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency" (85 FR 54873). This September 2020 IFC set out provisions regarding testing for COVID-19 in LTC facilities, including documentation requirements and protocols specifying actions to be taken if a resident or staff member tests positive. On May 13, 2021, we issued another IFC titled "Medicare and Medicaid Programs; COVID-19 Vaccine Requirements for Long-Term Care (LTC) Facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs-IID) Residents, Clients, and Staff" (86 FR 26306), which further revised the infection control requirements that LTC facilities and intermediate care facilities for individuals with intellectual disabilities (ICFs-IID) must meet to participate in the Medicare and Medicaid programs. This May 2021 IFC aimed to reduce the spread of SARS-CoV-2 infections, the virus that causes COVID-19, by requiring education about COVID-19 vaccines for LTC facility residents, ICF-IID clients, and staff serving both populations, and by requiring that such vaccines, when available, be offered to all residents, clients, and staff. It also required LTC

facilities to report COVID-19 vaccination status of residents and staff to CDC.

To retain the data reporting requirements after the end of the PHE, on November 9, 2021, we subsequently published a final rule titled "CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model Requirements and Model Expansion; Home Health and Other Quality Reporting Program Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; and COVID-19 Reporting Requirements for Long-Term Care Facilities" (86 FR 62421), which finalized the COVID-19 data reporting requirements from the May 2020 and May 2021 IFCs. Specifically, in this November 2021 final rule, we revised the requirements at § 483.80(g)(1)(i) through (ix), to reduce the burden on the LTC facilities by allowing for a reduced frequency of reporting (weekly unless the Secretary specifies a lesser frequency) and modified the specific data elements to be reported. The rule states that until December 31, 2024, facilities must electronically report, in a standardized format specified by the Secretary, information on suspected and confirmed COVID-19 infections among residents and staff, including residents previously treated for COVID-19, total deaths and COVID-19 deaths among residents and staff, personal protective equipment and hand hygiene supplies in the facility, ventilator capacity and supplies available in the facility, resident beds and census, access to COVID-19 testing while the resident is in the facility, and staffing shortages. In addition, on an ongoing basis with no sunset date, facilities are required to report information on resident and staff vaccination status for COVID-19.

Finally, on June 5, 2023, we issued a final rule titled "Medicare and Medicaid Programs' Policy and Regulatory Changes to the Omnibus COVID-19 Health Care Staff Vaccination Requirements; Additional Policy and Regulatory Changes to the Requirements for LTC Facilities and ICF-IIDs to Provide COVID-19 Vaccine Education and Offer Vaccinations to Residents, Clients, and Staff; Policy and Regulatory Changes to the LTC Facility COVID-19 Testing Requirements" (88 FR 36485).¹²³ This June 2023 final rule

¹²³ June 2023 Final Rule. <https://www.govinfo.gov/content/pkg/FR-2023-06-05/pdf/2023-11449.pdf>.

removed expired language addressing COVID-19 testing requirements issued in the September 2020 IFC, withdrew requirements mandating COVID-19 vaccinations for staff (see 86 FR 61555 for details regarding the IFC that issued the requirements),¹²⁴ and finalized requirements issued in the May 2021 IFC for facilities to provide education about vaccines and to offer COVID-19 vaccines to residents and staff.

2. The Benefits of and Ongoing Need for LTC Facility Respiratory Illness and Vaccination Data

There are over 1.3 million older adults aged 65 years and older living in LTC facilities in the United States; and while LTC facility residents make up less than 0.5 percent of the population in the U.S., they were estimated to account for between 23 percent and 40 percent of deaths due to COVID-19 in the first two years of the COVID-19 PHE.¹²⁵ Older residents are at greater risk for both developing COVID-19 and other respiratory illnesses (for example, influenza, RSV) and for developing a protracted course of disease.¹²⁷ Age-associated changes in immune function (that is, immunosenescence) can increase susceptibility to infection and decrease response to vaccination. Additionally, older adults often have multiple comorbidities leading to increased morbidity and mortality when coupled with a respiratory tract infection.¹²⁸ The congregate setting of LTC facilities can also increase risk of disease transmission given the proximity of residents. In addition, providing care for residents often involves close-contact activities (for example, dressing, bathing) and the same health care personnel provide care to residents across different rooms and shared spaces. This readily facilitates transmission of respiratory viruses in

this setting.¹²⁹ Furthermore, LTC facility staffing shortages and consistent staff turnover, that are ever-present, but were greatly exacerbated during the COVID-19 PHE, make it even more challenging to provide quality care and to implement infection practices effectively and consistently, demonstrating the need for timely and actionable surveillance.¹³⁰

The COVID-19 PHE highlighted the value and potential utility of greater integration between public health and health care, particularly when data are available to direct collaborative actions that support patient, resident, and public health and safety. Data from health care providers, including LTC facilities, remain a key driver to identify and respond to patient, resident, and public health threats, yet health care and public health data systems have long persisted on separate, often poorly compatible tracks.¹³¹ The COVID-19 PHE also highlighted the importance of taking a broader view of patient and resident safety—one that recognizes patient and resident safety is determined not only by what is happening at the bedside, but also what is happening, in the facility as a whole, in neighboring facilities (for example, individuals moving between hospitals and LTC facilities and health care providers working in multiple facilities), and across the region, State, and county. The value of this broader view was particularly evident from the experience of LTC facilities, where systematic communicable disease and vaccination surveillance had never been integrated.

For the first time, during the COVID-19 PHE, the nation had a real-time comprehensive picture of a disease, its vaccine, and its impact in the nearly 16,000 U.S. LTC facilities because of data reported to the CDC's NHSN application. Ultimately, access to this information proved critical to providing resources and supporting coordinated action by facilities, health systems, communities and jurisdictions in responding to the PHE and protecting the health, safety and lives of LTC facility residents.

3. Benefits of Data Collection at the Facility and Local Level

The resources made available during the PHE response helped build resilience in some parts of the health care system, but the pandemic also exacerbated sources of fragility that continue to leave the United States underprepared to respond to surges—even relatively typical ones. Efforts to support the LTC community and facility infrastructure include the CMS final rule titled “Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting,” published on May 10, 2024 (89 FR 40876).¹³² This final rule established a consistent floor (baseline) for nurse staffing across all LTC facilities in an effort to reduce the variability in nurse staffing. The final rule policies aim to advance equitable, safe, and quality care for all residents receiving care from the Nation's Medicare and Medicaid participating LTC facilities. The finalized minimum staffing standards coupled with the respiratory illness data reporting requirements proposed in this rule would support targeted high-quality care for residents. For example, timely and actionable surveillance at the facility and local level would support efforts to identify and allocate resources to maintain the appropriate care needed to keep residents safe.

Data collected from LTC facilities is used by local health departments to provide specific outreach to individual facilities. This can include interventions such as site visits from health departments, providing additional supplies such as PPE and/or testing supplies, recommendations for testing protocols and individualized advice for infection prevention and control practices to protect the health and safety of residents within individual facilities. LTC facilities care for some of the most vulnerable older adults who are disproportionately impacted by respiratory viruses and severe outcomes, such as hospitalizations and death. Ongoing data collection as part of a facility infection prevention and control program helps each facility to promptly identify a respiratory viral outbreak so that containment and important interventions, such as early anti-viral treatment (SARS-CoV-2, Influenza) and anti-viral prophylaxis (Influenza), can minimize the severity of an outbreak and protect residents' health and safety. Identifying strategies to provide early

¹²⁴ COVID-19 Health Care Staff Vaccination Interim Final Rule. <https://www.federalregister.gov/documents/2021/11/05/2021-23831/medicare-and-medicicaid-programs-omnibus-covid-19-health-care-staff-vaccination>.

¹²⁵ Grabowski DC, Mor V. Nursing Home Care in Crisis in the Wake of COVID-19. *JAMA*. 2020;324(1):23. doi:10.1001/jama.2020.8524.

¹²⁶ Chidambaram P. Over 200,000 Residents and Staff in Long-Term Care Facilities Have Died From COVID-19. Kaiser Family Foundation. Published online February 3, 2022. <https://www.kff.org/policy-watch/over-200000-residents-and-staff-in-long-term-care-facilities-have-died-from-covid-19/>.

¹²⁷ The New York Times. Nearly One-Third of U.S. Coronavirus Deaths Are Linked to Nursing Homes. <https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html>. Published June 1, 2021.

¹²⁸ Vital and Health Statistics, Series 3, Number 47 (cdc.gov) (https://www.cdc.gov/nchs/data/series/sr_03/sr03-047.pdf).

¹²⁹ MMWR. Rates of COVID-19 Among Residents and Staff Members in Nursing Homes—United States, May 25–November 22, 2020 (cdc.gov) (<https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7002e2-H.pdf>).

¹³⁰ Infection prevention and control in nursing homes during COVID-19: An environmental scan—PMC (nih.gov) (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8810224/>).

¹³¹ Vital and Health Statistics, Series 3, Number 47 (cdc.gov) (https://www.cdc.gov/nchs/data/series/sr_03/sr03-047.pdf).

¹³² <https://www.govinfo.gov/content/pkg/FR-2024-05-10/pdf/FR-2024-05-10.pdf>.

antiviral treatments for COVID-19 and influenza may also help prevent more serious outcomes in individual residents.

Like other settings where health care is delivered, LTC facilities are part of an ecosystem caring for individuals in their community. This interdependency is especially highlighted during times of health care system strain. Insight into LTC facility capacity helps ensure capabilities are available to meet health care needs with quality care through enhanced planning, technical assistance, resource allocation, and coordination.¹³³ Health care coalitions (HCCs) are one example of local health care partners working together to increase local health care resilience during respiratory illness surges and more.¹³⁴ HCCs plan and respond together, sharing real-time information and providing technical assistance to support their partners.¹³⁵ Collaborative, data-driven approaches have helped to inform and direct action throughout the health care ecosystem, ultimately improving resident care and outcomes.

Data from LTC facilities is an important component to understanding potential bottlenecks in the health care ecosystem and ways to address them. During the COVID-19 PHE, hospitals struggled with being able to discharge patients to post-acute care, specifically LTC facilities. The availability of LTC facility capacity data helped to inform their response by monitoring triggers for patient load balancing, allocations of scarce resources, and requests for additional resources or mutual aid.¹³⁶ LTC facilities, hospitals, and other health care partners also use the information for planning purposes, identifying how their facility may be impacted and preparing accordingly.¹³⁷ Information sharing across the health care ecosystem helps the health care community to prepare for, and effectively respond to, respiratory illness surges in ways that maintain the

safety and availability of critical care services.

Additionally, since the start of the PHE, data reported under our requirements at § 483.80(g)(1) through (3) have been used by LTC facilities and their local health systems to take actions aimed at protecting residents. Facilities can view all reported data and generate reports within the CDC's NHSN application. This allows facilities to review their data in real time and implement any applicable mitigation strategies/infection control practices, based on the counts they are seeing to help reduce outbreak occurrences. LTC facilities have used the CDC's NHSN dashboards and reports to track new cases and up-to-date vaccination status of residents in the facility and take action by identifying areas where they need to strengthen infection and control practices, explore vaccination progress, and consider targeted quality improvement activities as part of their Quality Assurance and Performance Improvement (QAPI) initiatives. LTC facilities can use NHSN to create custom data reports and analyses, tailoring the information for purposes and improvements that best meet their needs for protecting the residents in their care.¹³⁸

4. Benefits of Data Collection at the Regional and State Levels

COVID-19 and other respiratory illness case, hospitalization, and vaccination data together provide critical situational awareness for regional and State leadership to inform a national strategy in response to the ongoing public health threat that respiratory illnesses including COVID-19 pose to residents. At the State and regional levels, public health departments and Quality Improvement Organizations (QIOs) have used these data to provide outreach and technical support directly to LTC facilities with high case and hospitalization counts and offer additional resources and support. QIOs use COVID-19 case and vaccination data to identify LTC facility outbreaks, provide 1:1 infection control assistance, and direct any other COVID-19 reduction assistance requested by those nursing homes. These data will continue to be critical to support the ongoing work of the QIOs. They will plan and provide technical assistance and training to LTC facilities identified

by CMS for performance improvement based on quality measurement and enforcement data. The QIOs will also work on strengthening the quality management systems in LTC facilities, leadership and governance, culture of safety, workforce planning and focused clinical outcomes. Additionally, resident vaccination data direct the education and assistance efforts of partners like the QIOs and LTC associations to improve vaccination uptake in facilities with the lowest up-to-date vaccination rates among residents and staff. For example, the Nursing Home Command Center, in charge of directing QIOs, reviews NHSN COVID-19 case and vaccination data daily and considers NHSN data to be the best source to identify nursing homes in need of assistance to improve resident outcomes.¹³⁹

In July 2020, the Federal Government launched a strike team initiative to address COVID-19 outbreaks in LTC facilities. This initiative relied upon data reported by LTC facilities to focus response efforts on the facilities with the highest number of cases. The Federal strike team initiative highlighted significant challenges faced by facilities and was foundational in identifying areas of infection prevention and control need, such as education for front line nursing staff, staffing shortages, and coordination among Federal State and local entities.¹⁴⁰ These efforts further emphasized that without data to direct assistance to places with the greatest need, response efforts and the limited resources, especially in non-emergency times of typical disease transmission, would be dispersed and far less effective. Building upon the 2020 Federal strike team efforts, a total of \$500 million, was made available in 2021, through Sections 9402 and 9818 of the American Rescue Plan (ARP) Act of 2021, Public Law 117-2, to State and local health departments through the CDC's Epidemiology and Laboratory Capacity (ELC) Cooperative Agreement (CK19-1904), as the "Nursing Home & Long-term Care Facility Strike Team and Infrastructure Project." This funding allowed States to continue dedicated support to LTC facilities and was used to build and maintain the infection prevention infrastructure necessary to

¹³³ <https://aspr.hhs.gov/HealthCareReadiness/StoriesfromtheField/Pages/Stories/Kentucky-Collaborates-Community.aspx>.

¹³⁴ <https://aspr.hhs.gov/HealthCareReadiness/HealthCareReadinessNearYou/Documents/HCC-FactSheet-April2021-508.pdf>.

¹³⁵ <https://aspr.hhs.gov/HealthCareReadiness/HealthCareReadinessNearYou/Documents/HCC-FactSheet-April2021-508.pdf>.

¹³⁶ Mitchell SH, Rigler J, Baum K. Regional Transfer Coordination and Hospital Load Balancing During COVID-19 Surges. *JAMA Health Forum*. 2022;3(2):e215048. doi:10.1001/jamahealthforum.2021.5048. <https://aspr.hhs.gov/HealthCareReadiness/StoriesfromtheField/Pages/Stories/HCC-Regional-Approach-Illinois.aspx>.

¹³⁷ <https://aspr.hhs.gov/HealthCareReadiness/StoriesfromtheField/Pages/Stories/Maryland-HCC-covid19.aspx>.

¹³⁸ Coverage with Influenza, Respiratory Syncytial Virus, and Updated COVID-19 Vaccines Among Nursing Home Residents—National Healthcare Safety Network, United States, December 2023 | *MMWR (cdc.gov)* (<https://www.cdc.gov/mmwr/volumes/72/wr/mm7251a3.htm>).

¹³⁹ Report to Congress, November 2023, for Fiscal Year 2022, The Administration, Cost, and Impact of the Quality Improvement Organization Program for Medicare Beneficiaries (<https://www.cms.gov/files/document/final-fy-2022-qio-rtc.pdf>).

¹⁴⁰ Protecting Nursing Home Residents from Covid-19: Federal Strike Team Findings and Lessons Learned | *NEJM Catalyst* (<https://catalyst.nejm.org/doi/full/10.1056/CAT.21.0144>).

support resident, visitor, and facility healthcare personnel safety. State and local strike teams illustrated the power of public health and healthcare stakeholders working together to share data and information and collaborate effectively respond to respiratory illness surges. Between August 2021 and July 2022, health departments conducted over 26,000 Nursing Home COVID-19 responses, including more than 5,000 onsite assessments and more than 5,000 investigations that included staff supported specifically by Strike Team funding. For example, States like Massachusetts have lauded the value of the strike team investments and asserted that improved State and Federal data infrastructure is needed to respond to future outbreaks and protect nursing home residents.¹⁴¹

5. Benefits of Data Collection at the Federal Level

At the Federal level, the CDC actively uses weekly NHSN data reports to provide direct outreach to LTC facilities with >8 COVID-19 hospitalizations and >20 cases. These weekly reports are sent to State health departments to provide actionable data including confirmed COVID-19 cases among residents and staff, COVID-19 related deaths among residents, COVID-19 hospitalizations among residents, vaccine coverage among residents and staff, and COVID-19 potential outbreak alerts among other data elements. CDC also monitors downloads of these reports and provides ongoing support to States and facilities with these data, showing that the data are actively being used and are found to be valuable to direct response and vaccination efforts to the LTC facilities that most need support and intervention. For example, vaccination data are critical for decision making, targeting outreach for vaccination campaigns efforts, insights into vaccination disparities¹⁴² and for vaccine effectiveness studies.¹⁴³ The availability of vaccination data from

LTC facilities, not only provides a window into national efforts for improving access to vaccines for the LTC industry, but also can indicate the effectiveness of vaccination training and education efforts with residents and families, that promote the benefits of vaccination to help ensure that residents will achieve the best outcome possible if infected with the SARS-CoV-2 virus.

NHSN data has also been used by the CDC and QIOs to contact facilities with high vaccination coverage to understand the successful strategies they employed and promote these strategies to other nursing homes via webinars and the development of tools and resources. Information from this outreach was used to identify and respond to vaccination barriers by creating tools and resources, such as the Healthcare Provider Toolkit, to help nursing homes educate their staff, residents, and families to remove barriers to vaccination.

Furthermore, COVID-19, influenza, and RSV vaccination data continue to be used for establishing policies that promote better protection for residents and staff. These data continue to serve as supporting evidence to make and revise recommendations regarding vaccination to improve the safety of residents and staff while balancing the burden to facilities to report. For example, early in the PHE, increasing staff vaccination rates was associated with lower incidence of COVID-19 cases and deaths among residents and staff in LTC facilities. However, as newer, more infectious, and transmissible variants of the virus emerged, increasing staff vaccination rates of the original 2-dose regimen of the COVID-19 vaccine as recommended in December 2020, was no longer associated with lower rates of adverse COVID-19 outcomes in nursing homes, resulting in updated recommendations to the public.¹⁴⁴

6. Proposed Continuation of Respiratory Illness Reporting for LTC Facilities

Given the value of respiratory illness and vaccination reporting during the COVID-19 PHE in supporting resident health and safety, we are considering the continued utility of LTC facility respiratory illness data to monitor and protect residents against respiratory illnesses and the ongoing need for such data in the “new normal” of diverse respiratory disease threats. While the COVID-19 PHE has ended, SARS-CoV-

2 continues to circulate throughout the globe and although epidemic waves are less severe than those of 2020 through early 2022, there was no epidemiologic bright line associated with the end of the PHE. While COVID-19 hospital admissions were modestly lower in January 2024 than they were at the July 2022 or December 2022 peaks,¹⁴⁵ adults 65 years and older represented more than half of COVID-19 hospitalizations during October 2023 to December 2023.¹⁴⁶ Additionally, during the 2023–2024 fall/winter respiratory virus season, COVID-19-associated hospitalizations among LTC facility residents peaked at a weekly rate that was more than eight times higher than the peak weekly rate among all U.S. adults aged ≥70 years.¹⁴⁷ At the same time, other respiratory viruses have also seen a resurgence, and the moderate COVID-19 burden coinciding with resurgent influenza and RSV has led to an overall hospitalization burden larger than observed during severe influenza and RSV seasons prior to the COVID-19 pandemic.¹⁴⁸

The elevated risks of respiratory viruses in the post-PHE era present ongoing threats, both direct and indirect, to resident health and safety. The result of this “new normal” will be more burdensome respiratory virus seasons for the foreseeable future, which promises to threaten the health and safety of LTC facility residents across the Nation.¹⁴⁹ In response to this changed landscape, public health agencies, such as the CDC, have shifted prevention and control strategies from a focus on specific viruses to an approach that addresses the threats presented by the broader respiratory virus season, including focused efforts to mitigate impacts on nursing home residents and staff.¹⁵⁰ Likewise, we believe it is vital

¹⁴⁵ https://covid.cdc.gov/covid-data-tracker/#trends_weeklyhospitaladmissions_select_00.

¹⁴⁶ CDC COVID Data Tracker: Hospital Admissions (<https://covid.cdc.gov/covid-data-tracker/#data-tracker-home>).

¹⁴⁷ Franklin D, Barbre K, Rowe TA, Reses HE, Massey J, Meng L, Dollard P, Dubendris H, Stillions M, Robinson L, Clerville JW, Jacobs Slifka K, Benin A, Bell JM. COVID-19 vaccination coverage and rates of SARS-CoV-2 infection and COVID-19-associated hospitalization among residents in nursing homes. *MMWR Morb Mortal Wkly Rep* 2024;73:339–344. DOI: <http://dx.doi.org/10.15585/mmwr.mm7315a3>.

¹⁴⁸ Respiratory Disease Season Outlook (<https://www.cdc.gov/forecast-outbreak-analytics/about/season-outlook.html>).

¹⁴⁹ Respiratory Disease Season Outlook (<https://www.cdc.gov/forecast-outbreak-analytics/about/season-outlook.html>).

¹⁵⁰ See <https://www.cdc.gov/respiratory-viruses/index.html> and data summaries of respiratory virus burden at <https://www.cdc.gov/respiratory-viruses/data-research/dashboard/snapshot.html> and

¹⁴¹ <https://doi.org/10.1111/jgs.18402>.

¹⁴² Haanschoten E, Dubendris H, Reses HE, Barbre K, Meng L, Benin A, Bell JM. Disparities in COVID-19 Vaccination Status Among Long-Term Care Facility Residents—United States, October 31, 2022–May 7, 2023. *MMWR Morb Mortal Wkly Rep*. 2023 Oct 6;72(40):1095–1098. doi: 10.15585/mmwr.mm7240a4. PMID: 37796756; PMCID: PMC10564329.

¹⁴³ Wong E, Barbre K, Wiegand RE, Reses HE, Dubendris H, Wallace M, Dollard P, Edwards J, Soe M, Meng L, Benin A, Bell JM. Effectiveness of Up-to-Date COVID-19 Vaccination in Preventing SARS-CoV-2 Infection Among Nursing Home Residents—United States, November 20, 2022–January 8, 2023. *MMWR Morb Mortal Wkly Rep*. 2023 Jun 23;72(25):690–693. doi: 10.15585/mmwr.mm7225a4. PMID: 37347711; PMCID: PMC10328477.

¹⁴⁴ Sinha S, Konetzka RT. Association of COVID-19 Vaccination Rates of Staff and COVID-19 Illness and Death Among Residents and Staff in US Nursing Homes. *JAMA Netw Open*. 2022;5(12):e2249002. doi:10.1001/jamanetworkopen.2022.49002.

to maintain national surveillance of these emerging and evolving respiratory illnesses as a means of guiding infection control interventions to keep residents safe. As such, we propose to continue some of the reporting requirements finalized in November 2021 and set to expire in December 2024. Specifically, we propose to revise the infection prevention and control requirements for LTC facilities to extend reporting in NHSN for a limited subset of the current COVID-19 elements and also require reporting for data related to influenza and RSV.

Specifically, we propose to replace the existing reporting requirements for LTC facilities at § 483.80(g)(1)(i) through (ix) and (g)(2) with new requirements to report information addressing respiratory illnesses. Beginning on January 1, 2025, facilities would be required to electronically report information about COVID-19, influenza, and RSV in a standardized format and frequency specified by the Secretary. Currently, we propose to continue weekly reporting through the CDC's NHSN. To the extent to be determined by the Secretary, through this rulemaking cycle, we propose that the data elements for which reporting would be required include all of the following:

- Facility census (defined as the total number of residents occupying a bed at this facility for at least 24 hours during the week of data collection).
- Resident vaccination status for a limited set of respiratory illnesses including but not limited to COVID-19, influenza, and RSV.
- Confirmed, resident cases of a limited set of respiratory illnesses including but not limited to COVID-19, influenza, and RSV (overall and by vaccination status).
- Hospitalized residents with confirmed cases of a limited set of respiratory illnesses including but not limited to COVID-19, influenza, and RSV (overall and by vaccination status).

These proposals are scaled back and tailored from the current post-COVID-19 PHE requirements, continuing the collection of the minimal necessary data to maintain a level of situational awareness that would protect resident health and safety in LTC facilities across the country while reducing reporting burden on those facilities. We are also interested in the utility of additional reporting on limited demographic data and solicit public comment on whether the collection of data regarding race, ethnicity, and socioeconomic status

should be explicitly included as part of these proposed requirements for ongoing reporting beginning on January 1, 2025. We are particularly interested in comments that address the ways these additional data elements could be used to better protect resident and community health and safety both during and outside of a declared PHE. In addition, we are interested in comments on how to protect resident privacy within demographic groups and how to best use the data to inform public health efforts without stigmatizing demographic groups.¹⁵¹ Lastly, we welcome comments that address system readiness and capacity to collect and report these data.

In determining the data elements to propose for ongoing reporting, we considered the data elements that proved most actionable and informative over the course of the COVID-19 PHE, with evidence of protecting health and safety, as well as more recent lessons that have emerged during the 2023–2024 respiratory virus response.¹⁵² ¹⁵³ We also considered ways to balance the burden of reporting on LTC facilities with the need to maintain a level of situational awareness that will benefit residents, their families, and their communities.

In the absence of a declared national PHE for an acute respiratory illness, we propose that LTC facilities would continue to report these data on a weekly basis through a format specified by the Secretary with continued reporting through the CDC's NHSN. Sustained data collection and reporting outside of emergencies would help ensure that LTC facilities maintain a functional reporting capacity that could be mobilized quickly when a new threat emerges to inform and direct response efforts (for example, resource allocations) that protect residents and their communities. These data collections would also provide the baseline information necessary to forecast, detect, quantify and,

ultimately, direct responses to signals of strain within regions and LTC facilities.

Unlike the previous and sunseting LTC reporting requirements, the requirements proposed in this rule are not tied to a specific PHE declaration. PHE declarations are valuable tools for marshalling nimble and fast emergency responses. However, there are many respiratory disease threats to LTC facility operations and resident safety that would not necessarily be subject to a PHE declaration nor have significant potential to become a PHE. In those instances, routine data about cases and hospitalizations due to respiratory viruses like COVID-19, influenza, and RSV are critical to inform technical assistance, infection prevention and control support, and resource allocations to support LTC facilities and safeguard their residents.

We welcome public comments on our proposals, and on ways that reporting burden can be minimized while still providing adequate data. We also welcome feedback on any challenges of collecting and reporting these data; ways that CMS could reduce reporting burden for facilities; and alternative reporting mechanisms or quality reporting programs through which CMS could instead effectively and sustainably incentivize reporting. Finally, we welcome comments on the value of these data in protecting the health and safety of individuals receiving care and treatment and working in LTC facilities.

7. Proposed Collection of Additional Data Elements During a PHE

The COVID-19 PHE strained the healthcare system substantially, introducing new safety risks and negatively impacting patient and resident safety in the normal delivery of care. Data from the pandemic showed that the incidence of healthcare-associated infections would increase when COVID-19 hospitalizations were high,¹⁵⁴ a feedback loop between increased stress on hospitals, LTC facilities, illness in the community, and patient and resident health and safety.

¹⁵¹ Landers S, Kapadia F, Tarantola D. Monkeypox, After HIV/AIDS and COVID-19: Suggestions for Collective Action and a Public Health of Consequence, November 2022. *Am J Public Health*. 2022 Nov;112(11):1564–1566. doi: 10.2105/AJPH.2022.307100. PMID: 36223580; PMCID: PMC9558195. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9558195/>.

¹⁵² <https://emergency.cdc.gov/han/2023/han00503.asp>, <https://emergency.cdc.gov/han/2023/han00498.asp>.

¹⁵³ Coverage with Influenza, Respiratory Syncytial Virus, and Updated COVID-19 Vaccines Among Nursing Home Residents—National Healthcare Safety Network, United States, December 2023 | *MMWR (cdc.gov)* (https://www.cdc.gov/mmwr/volumes/72/wr/mm7251a3.htm#F1_down).

¹⁵⁴ Continued increases in the incidence of healthcare-associated infection (HAI) during the second year of the coronavirus disease 2019 (COVID-19) pandemic | *Infection Control & Hospital Epidemiology* | Cambridge Core; <https://www.nejm.org/doi/full/10.1056/NEJMp2118285>; The impact of coronavirus disease 2019 (COVID-19) on healthcare-associated infections in 2020: A summary of data reported to the National Healthcare Safety Network—*PubMed (nih.gov)* (<https://pubmed.ncbi.nlm.nih.gov/34473013/>); Impact of COVID-19 pandemic on central-line-associated bloodstream infections during the early months of 2020, National Healthcare Safety Network—*PubMed (nih.gov)* (<https://pubmed.ncbi.nlm.nih.gov/33719981/>).

Degradation in other measures of resident safety, including pressure ulcers and falls, further demonstrate how the strains associated with surge response adversely affect routine safety practices.^{155 156} Specifically in LTC facilities, the significant adverse health impacts on residents caused by COVID-19 went far beyond the direct effects of COVID-19 morbidity and mortality.¹⁵⁷ Given the unprecedented impacts of, and learnings derived from, the COVID-19 PHE, we believe that it is imperative to enhance preparedness and resiliency to improve health system responses to future threats, including pandemics that pose catastrophic risks to resident safety. As such, we propose additional data reporting that would be required in the event of an acute respiratory illness PHE, or after the Secretary's determination that a significant threat of one exists.

Accordingly, we propose that during a declared national, State, or local PHE for a respiratory infectious disease (or if the Secretary determines a significant threat for one exists) the Secretary may require facilities to report:

- Data up to a daily frequency without additional notice and comment rulemaking.
- Additional or modified data elements relevant to the PHE, including relevant confirmed infections among staff, supply inventory shortages, staffing shortages, and relevant medical countermeasures and therapeutic inventories, usage, or both.
- If the Secretary determines that an event is significantly likely to become a PHE for an infectious disease, the Secretary may require LTC facilities to report additional or modified data elements without notice and comment rulemaking.

We invite comments on if, during a PHE, there should be limits to the data the Secretary can require without notice and comment rulemaking, such as limits on the duration of additional reporting or the scope of the jurisdiction of reporting (that is, State or local PHEs). We also seek comments on whether and how the Secretary should still seek stakeholder feedback on additional elements during a PHE without notice and comment rulemaking and how HHS should notify LTC facilities of new

required infectious disease data. Furthermore, we invite comments on the evidence HHS should provide to demonstrate that—(1) an event is “significantly likely to become a PHE”; or (2) the increased scope of required data will be used to protect resident and community health and safety. We also invite comments on the utility and burden of specifically staffing and supply shortage data we propose to collect during national, State, or local PHE for a respiratory infectious disease (or if the Secretary determines a significant threat for one exists). Based on LTC facilities experience with the COVID-19 PHE, how could HHS collect this data specifically in a way that would be beneficial to LTC facilities?

8. Collaboration

To further reduce burden in the short term, we are working with the CDC to ensure LTC facilities can continue to use existing, established systems to report data in the interim. CDC will continue increasing the automation capabilities of the surveillance systems like NHSN and its ability to connect with other data submission techniques, vendors, and systems.¹⁵⁸ CDC is collaborating with LTC partner organizations and State health departments to pilot projects aimed at streamlining and modernizing vaccination data reporting. This includes efforts to automate reporting of LTC facility vaccination data from electronic health records to NHSN and to connect person-level vaccination data in NHSN to State Immunization Information Systems (IIS). These modernization efforts should reduce the reporting burden on facilities over time. In addition, CDC provides users with technical assistance, targeted data quality outreach and webinars, and continues to actively collaborate with users and partners to improve system design and functionality. For example, the development of the NHSN person-level vaccination forms allowed for complex definitions that change over time (for example, up to date with COVID-19 vaccines) to be applied automatically to and aggregate resident-level data.

CMS, CDC, and the Administration for Strategic Preparedness and Response (ASPR) recognize the immense value of partnerships with LTC facilities, State, Tribal, Local, and Territorial (STLT) health systems, associations, and other partners. Throughout the COVID-19 PHE, partners at all levels worked alongside CMS, CDC, and ASPR to

provide additional context, insight, and feedback based on conditions on the ground. This context helped data collections be more effective and helped provide a fuller picture than data alone. CMS, CDC, and ASPR are grateful for the many collaborations with partners on data and beyond. CDC, ASPR, and the Office of the National Coordinator for Health Information Technology (ONC) will explore opportunities to codify continued partnerships to prepare for and respond to incidents such as respiratory illnesses more effectively. We welcome public comment on ways that all public agencies involved in these types of data collections can be good partners.

VII. Provider Enrollment—Provisional Period of Enhanced Oversight

A. Background

1. Overview of Medicare Provider Enrollment

Section 1866(j)(1)(A) of the Act requires the Secretary to establish a process for the enrollment of providers and suppliers into the Medicare program. The overarching purpose of the enrollment process is to help confirm that providers and suppliers seeking to bill Medicare for services and items furnished to Medicare beneficiaries meet all applicable Federal and State requirements to do so. The process is, to an extent, a “gatekeeper” that prevents unqualified and potentially fraudulent individuals and entities from entering and inappropriately billing Medicare. Since 2006, we have undertaken rulemaking efforts to outline our enrollment procedures. These regulations are generally codified in 42 CFR part 424, subpart P (currently §§ 424.500 through 424.575 and hereafter occasionally referenced as subpart P). They address, among other things, requirements that providers and suppliers must meet to obtain and maintain Medicare billing privileges.

As outlined in § 424.510, one such requirement is that the provider or supplier must complete, sign, and submit to its assigned Medicare Administrative Contractor (MAC) the appropriate enrollment form, typically the Form CMS-855 (OMB Control No. 0938-0685). The Form CMS-855, which can be submitted via paper or electronically through the internet-based Provider Enrollment, Chain, and Ownership System (PECOS) process (System of Records notice (SORN): 09-70-0532, PECOS), collects important information about the provider or supplier. Such data includes, but is not limited to, general identifying

¹⁵⁵ Falls Risk in Long-Term Care Residents With Cognitive Impairment: Effects of COVID-19 Pandemic—PubMed ([nih.gov](https://pubmed.ncbi.nlm.nih.gov/38104633/)) (<https://pubmed.ncbi.nlm.nih.gov/38104633/>).

¹⁵⁶ <https://www.nejm.org/doi/full/10.1056/NEJMp2118285>.

¹⁵⁷ The Adverse Effects of the COVID-19 Pandemic on Nursing Home Resident Well-Being—PMC ([nih.gov](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7980137/)) (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7980137/>).

¹⁵⁸ For more information about USCDI+ <https://www.healthit.gov/topic/interoperability/uscdi-plus>.

information (for example, legal business name), licensure and/or certification data, ownership information, and practice locations. The application is used for a variety of provider enrollment transactions, including the following:

- Initial enrollment—The provider or supplier is—(1) enrolling in Medicare for the first time; (2) enrolling in another Medicare contractor's jurisdiction; or (3) seeking to enroll in Medicare after having previously been enrolled.

- Change of ownership—The provider or supplier is reporting a change in its ownership.

- Revalidation—The provider or supplier is revalidating its Medicare enrollment information in accordance with § 424.515. (Suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) must revalidate their enrollment every 3 years; all other providers and suppliers must do so every 5 years.)

- Reactivation—The provider or supplier is seeking to reactivate its Medicare enrollment and billing privileges after it was deactivated in accordance with § 424.540.

- Change of information—The provider or supplier is reporting a change in its existing enrollment information in accordance with § 424.516.

After receiving the provider's or supplier's initial enrollment application, CMS or the MAC reviews and confirms the information thereon and determines whether the provider or supplier meets all applicable Medicare requirements. We believe this screening process has greatly assisted CMS in executing its responsibility to prevent Medicare fraud, waste, and abuse.

As previously discussed, over the years we have issued various final rules pertaining to provider enrollment. These rules were intended not only to clarify or strengthen certain components of the enrollment process but also to enable us to take action against providers and suppliers: (1) engaging (or potentially engaging) in fraudulent or abusive behavior; (2) presenting a risk of harm to Medicare beneficiaries or the Medicare Trust Funds; or (3) that are otherwise unqualified to furnish Medicare services or items. Consistent with this, and as we discuss in section VIII.B. of this proposed rule, we are proposing a change to our existing Medicare provider enrollment regulations.

2. Legal Authorities

There are two principal categories of legal authorities for our proposed Medicare provider enrollment provisions:

- Section 1866(j) of the Act furnishes specific authority regarding the enrollment process for providers and suppliers.

- Sections 1102 and 1871 of the Act provide general authority for the Secretary to prescribe regulations for the efficient administration of the Medicare program.

B. Proposed Provisions—Provisional Period of Enhanced Oversight (PPEO)

1. Background

Section 1866(j)(3)(A) of the Act states that the Secretary shall establish procedures to provide for a provisional period of between 30 days and 1 year during which new providers and suppliers—as the Secretary determines appropriate, including categories of providers or suppliers—will be subject to enhanced oversight. (Per section 1866(j)(3)(A) of the Act, such oversight can include, but is not limited to, prepayment review and payment caps.) As authorized by section 1866(j)(3)(B) of the Act, we previously implemented such procedures through subregulatory guidance with respect to newly enrolling HHAs' requests for anticipated payments (RAP).¹⁵⁹ More recently, in July 2023 we began placing new hospices located in Arizona, California, Nevada, and Texas in a provisional period of enhanced oversight. (See <https://www.cms.gov/files/document/mln7867599-period-enhanced-oversight-new-hospices-arizona-california-nevada-texas.pdf> for more information.)

During the PPEO involving HHA RAPs, CMS received several stakeholder requests for clarification regarding the PPEO's scope. One of these concerned the meaning of the term "new" for purposes of applying a PPEO. While section 1866(j)(3)(B) of the Act states that we may implement procedures by program instruction, we finalized new § 424.527(a) in the CY 2024 HH PPS final rule to address this issue. Specifically, new § 424.527(a)(1) through (3) defined a "new" provider or supplier (again, exclusively for purposes of our PPEO authority under section 1866(j)(3) of the Act) as any of the following:

- A newly enrolling Medicare provider or supplier. (This includes providers that must enroll as a new provider per the change in majority ownership provisions in § 424.550(b).)

- A certified provider or certified supplier undergoing a change of ownership consistent with the

principles of 42 CFR 489.18. (This includes providers that qualify under § 424.550(b)(2) for an exception from the change in majority ownership requirements in § 424.550(b)(1) but which are undergoing a change of ownership under 42 CFR 489.18.)

- A provider or supplier (including an HHA or hospice) undergoing a 100 percent change of ownership via a change of information request under § 424.516.

We included these transactions within this definition because they have historically involved the effective establishment of a new provider or supplier for purposes of Medicare enrollment. For this reason, we have also received recent inquiries as to whether a reactivation should fall within the scope of § 424.527(a).

Under § 424.540 and the definition of "deactivate" in § 424.502, a deactivated provider's or supplier's enrollment and billing privileges are "stopped but can be restored upon the submission of updated information." This restoration, or reactivation, generally involves: (1) the completion of a full Form CMS–855 application; and (2) a CMS or MAC determination as to whether the provider or supplier meets all enrollment requirements. These two steps generally mirror what occurs with the initial and change of ownership applications referenced in § 424.527(a). Although a deactivation does not rise to the level of a revocation of Medicare enrollment and billing privileges under § 424.535—for a revocation bars the provider or supplier from reenrolling in Medicare for a period of 1 to 10 years (with certain exceptions)—a deactivated provider or supplier cannot resume billing Medicare until the requirements for reactivation are met. It has, in effect, been blocked from the Medicare program. Indeed, as with a provider or supplier that voluntarily terminated its Medicare enrollment and now seeks to rejoin the program via an initial, new enrollment application, a reactivating provider, too, is requesting to rejoin the program. Described otherwise, a reactivating provider or supplier is resuming its involvement in the Medicare program after a stoppage (which, at least for practical and operational purposes, amounts to a loss) of Medicare enrollment and billing privileges. From this standpoint, we thus believe that a reactivating provider or supplier is no less "new" (for provider enrollment purposes) than one that is initially enrolling or undergoing a change of ownership.

Our interpretation is also supported by the fact that a significant number of our grounds for deactivation under

¹⁵⁹ CMS eliminated the use of RAPs for HHAs; beginning January 1, 2022, CMS replaced RAP submissions with a Notice of Admission.

§ 424.540(a) involve conduct or inaction in which the provider or supplier—as with a revocation—is not adhering to Medicare enrollment requirements. These include, for example, the provider or supplier—

- Failing to report a change to the information supplied on the enrollment application within the required timeframe (§ 424.540(a)(2));
- Failing to timely respond to a revalidation request (§ 424.540(a)(3));
- Failing to maintain compliance with all enrollment requirements (§ 424.540(a)(4)); and
- Having a non-operational or otherwise invalid practice location (§ 424.540(a)(5)).

The provider or supplier can also be revoked under § 424.535(a) on any of these bases (for instance, under § 424.535(a)(1) relating to noncompliance). Because these bases are overlapping, it is CMS' principled view that reactivating providers and suppliers that were deactivated for any of these reasons should be subject to the same PPEO scrutiny. CMS has a legitimate oversight interest that the prior non-compliance has been corrected and that adherence will continue after their reactivation, which would be satisfied through the post-enrollment monitoring the PPEO affords.

Concerning our other deactivation grounds, § 424.540(a)(1) permits CMS to deactivate a provider or supplier that has not billed Medicare for 6 consecutive months. We recognize that there may be a legitimate reason for which a provider or supplier ceases billing Medicare for an extended period. (For example, a provider enrolls in Medicare strictly to enroll in and bill another health care program.) At the same time, a reactivation request after months of billing inactivity raises questions as to whether—

- The provider or supplier is and will remain compliant with Medicare enrollment requirements once reactivated following such a period of non-billing;
- Another party has compromised the provider's or supplier's deactivated enrollment and billing privileges and seeks to fraudulently bill Medicare via the latter's reactivated enrollment; or
- The provider or supplier had secured multiple billing numbers, one of which was revoked for improper activity, another was deactivated for non-billing, and the provider or supplier now seeks to reactivate the latter number to bill for services that were previously furnished under the revoked number.

CMS has indeed identified such scenarios in its program integrity oversight activities. We believe that using a PPEO to closely monitor reactivated providers or suppliers that had been deactivated under § 424.540(a)(1) would help prevent improper activity and help ensure program integrity where the PPEO applies.

Deactivation can also occur under § 424.540 if: (1) the provider or supplier is voluntarily withdrawing from the Medicare program (that is, voluntarily terminating its Medicare enrollment) (§ 424.540(a)(7)); (2) the provider is the seller (and is hence leaving the Medicare program) in an HHA change in majority ownership under § 424.550(b) (§ 424.540(a)(8)); or (3) an individual provider or supplier is deceased (§ 424.540(a)(6)). The same concerns we expressed regarding reactivations following a § 424.540(a)(1) deactivation apply to these three deactivation bases. If a reactivation request arrives after the provider or supplier was deactivated upon departing the Medicare program, the provider's or supplier's former enrollment may have been compromised by an unscrupulous party. Even if no improper conduct is involved and the voluntarily terminated provider or supplier simply wishes to reenter and resume billing Medicare, they are effectively returning to the program as a new provider or supplier after having departed. This situation is not appreciably different from that where the provider or supplier is enrolling in Medicare for the first time. Given this, we believe that providers and suppliers that are reactivating their enrollment after having left the Medicare program should be subject to the same PPEO analysis as other providers and suppliers who are treated as an initial enrollee for Medicare provider enrollment purposes, for consistency and uniformity.

For all the foregoing reasons, we propose to add a new paragraph (a)(4) to § 424.527 that includes providers and suppliers that are reactivating their enrollment and billing privileges under § 424.540(b). We have elected to address this issue via rulemaking in proposed § 424.527(a)(4). However, we retain the authority under section 1866(j)(3)(B) of the Act to establish and implement PPEO procedures via subregulatory guidance.

VIII. Collection of Information Requirements

A. Statutory Requirement for Solicitation of Comments

Under the Paperwork Reduction Act of 1995, we are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

B. Information Collection Requirements (ICRs)

In the CY 2024 HH PPS rule, we solicited public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs).

1. ICRs for HH QRP

As discussed in section III.D.3. of this proposed rule, we are proposing to collect four additional items as standardized patient assessment data elements and replace one item collected as a standardized patient assessment data element beginning with the CY 2027 HH QRP. The four assessment items proposed for collection are (1) Living Situation, (2) Food Runs Out, (3) Food Doesn't Last, and (4) Utilities. We also propose replacing the current Access to Transportation item with a revised Transportation (Access to Transportation) item beginning with the CY 2027 HH QRP as outlined in section III.D.5. of this proposed rule. All elements discussed will be collected at the start of care timepoint. We assumed the Living Situation and Utilities data elements require 0.3 minutes each of clinician time to complete. We assume the Food Runs Out and Food Doesn't Last data elements require 0.15 minutes each of clinician time to complete. We assume the replacement of the current Access to Transportation item with a revised Transportation will not result in a change in burden. Therefore, we estimated that there will be an increase

in clinician burden per OASIS assessment of 0.9 minutes at start of care.

As stated in section III.E. of this proposed rule, CMS is also proposing an update to the removal of the suspension of OASIS all-payer data collection to change all-payer data collection beginning with the start of care OASIS data collection timepoint instead of discharge timepoint. There is no

associated change in burden resulting from this proposal as burden for collection of for non-Medicare/non-Medicaid patients at all OASIS data collection timepoints was estimated in the CY 2023 HH PPS final rule.

The net effect of these proposals is an increase in four data elements collected at the start of care for the OASIS implemented on January 1, 2027.

For purposes of calculating the costs associated with the information

collection requirements, we obtained median hourly wages for these from the U.S. Bureau of Labor Statistics' May 2023 National Occupational Employment and Wage Estimates (https://www.bls.gov/oes/current/oes_nat.htm). To account for other indirect costs such as overhead and fringe benefits (100 percent), we have doubled the hourly wage. These amounts are detailed in table 41.

TABLE 41: U.S. BUREAU OF LABOR STATISTICS' MAY 2023 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation Title	Occupation Code	Median Hourly Wage (\$/hr)	Fringe Benefit (100%) (\$/hr)	Adjusted Hourly Wage (\$/hr)
Registered Nurse (RN)	29-1141	\$41.38	\$41.38	\$82.76
Physical therapists (PT)	29-1123	\$47.94	\$47.94	\$95.88
Speech-Language Pathologists (SLP)	29-1127	\$42.93	\$42.93	\$85.86
Occupational Therapists (OT)	29-1122	\$46.33	\$46.33	\$92.66
Miscellaneous Health Technologists and Technicians	29-2090	\$29.05	\$29.05	\$58.10

The OASIS is completed by RNs or PTs, or very occasionally by occupational therapists (OT) or speech language pathologists (SLP/ST). Data from 2021 show that the SOC/ROC OASIS is completed by RNs (approximately 77.14 percent of the time), PTs (approximately 22.16 percent of the time), and other therapists, including OTs and SLP/STs (approximately 0.7 percent of the time). Based on this analysis, we estimated a weighted clinician average hourly wage of \$85.73, inclusive of fringe benefits,

using the hourly wage data in table 41 $0.7714 \times 82.76 + 0.2216 \times 95.98 + 0.007 \times 89.26 = 85.74$. Individual providers determine the staffing resources necessary.

For purposes of estimating burden, we compare the item-level burden estimates for the OASIS that will be released on January 1, 2027, to the OASIS-E1 as anticipated for implementation as of January 1, 2025, and finalized in CY2024 HH PPS Final Rule. The first component needed to calculate burden is the total estimated assessments for

each year in question. Table 42 shows the total number of OASIS assessments that HHAs completed in CY 2023 at start of care and resumption of care. It also outlines the estimated assessments that are expected to be collected in 2025 based on a thirty percent increase in completed assessments required for all payer data submission requirements for (CY23 assessment total + CY23 assessment total * 0.3 = Estimated CY25 Assessment total based on all payer data collection).

TABLE 42. START OF CARE/RESUMPTION OF CARE OASIS SUBMISSIONS BASED ON CY 2023 & CY 2025 ESTIMATED OASIS DATA

Time Point	CY 2023 OASIS Assessments Completed	Estimated CY 2025 OASIS Assessments Based on All-Payer Data Collection
Start of Care	6,627,912	8,616,286
Resumption of Care	911,245	1,184,618
Total Assessments	7,539,157	9,800,904

The totals from table 42 are used to calculate the hourly burden estimates in table B3 based on the following calculations:

Start of Care

Estimated time spent per each 2025 OASIS-E1 SOC Assessment/Patient = 56.4 clinician minutes

200 data elements $\times$ (range of 0.15 to 0.3) minutes per data element = 56.4 minutes of clinical time spent to

complete data entry for the OASIS-E1 SOC assessment.

- 21 data elements counted as 0.15 minutes/data element (3.15 minutes)
- 9 data elements counted as 0.25 minutes/data element (2.25 minutes)
- 170 data elements counted as 0.30 minutes/data element (51 minutes)

Clinician Estimated hourly burden for all HHAs (11,904) for 2025 OASIS-E1 SOC assessments = 8,099,309 hours

56.4 clinician minutes per SOC assessment $\times$ 8,616,286 assessments = 485,958,530 minutes/60 minutes per hour = 8,099,309 hours for all HHAs

Estimated time spent per each 2027 OASIS SOC Assessment/Patient = 57.3 clinician minutes

204 data elements $\times$ (range of 0.15 to 0.3) minutes per data element = 57.3 minutes of clinical time spent to complete data entry for the OASIS SOC assessment.

- 23 data elements counted as 0.15 minutes/data element (3.45 minutes)
- 9 data elements counted as 0.25 minutes/data element (2.25 minutes)
- 172 data elements counted as 0.30 minutes/data element (51.6 minutes)

Clinician Estimated hourly burden for all HHAs (11,904) for 2027 OASIS SOC assessments = 8,228,553 hours

57.3 clinician minutes per SOC assessment $\times$ 8,616,286 assessments = 493,713,188 = minutes/60 minutes per hour = 8,228,553 hours for all HHAs

Resumption of Care

Estimated time spent per each 2025 OASIS-E1 ROC Assessment/Patient = 47.1 minutes

169 data elements $\times$ (range of 0.15 to 0.3) minutes per data element = 47.1 minutes of clinical time spent to complete data entry for the OASIS-E1 ROC assessment

- 19 data elements counted as 0.15 minute/data element (2.85 minutes)

- 9 data elements counted as 0.25 minute/data element (2.25 minutes)
- 140 data elements counted as 0.30 minute/data element (42 minutes)

Clinician Estimated Hourly Burden for all HHAs for 2025 OASIS-E1 ROC assessments = 823,310 hours

47.1 clinician minutes per ROC assessment $\times$ 1,184,618 ROC assessments = 55,795,508 minutes/60 minutes = 929,925 hours for all HHAs

Estimated time spent per each 2027 OASIS ROC Assessment/Patient = 48 minutes

173 data elements $\times$ (range of 0.15 to 0.3) minutes per data element = 48 minutes of clinical time spent to complete data entry for the OASIS ROC assessment

- 21 data elements counted as 0.15 minute/data element (3.15 minutes)
- 9 data elements counted as 0.25 minute/data element (2.25 minutes)
- 142 data elements counted as 0.30 minute/data element (42.6 minutes)

Clinician Estimated Hourly Burden for all HHAs for 2027 OASIS ROC assessments = 947,694 hours

48 clinician minutes per ROC assessment $\times$ 1,184,618 ROC assessments = 56,861,664 minutes/60 minutes = 947,694 hours for all HHAs

Table 43 summarizes the estimated clinician hourly burden for the OASIS that will be implemented in 2027 with this proposed rule's changes of an increase in four data elements at start of care and resumption of care compared to the anticipated 2025 OASIS-E1 burden. This is calculated by multiplying the total number of assessments by the increase in assessment time required. We calculate the 2025 and 2027 burden estimate in minutes and then calculate an hourly burden shown in table 43. We estimated a net increase of 147,013 hours of clinician burden across all HHAs or 12.35 hours (147,013/11,904) for each of the 11,904 active HHAs.

TABLE 43. SUMMARY OF ESTIMATED CLINICIAN HOURLY BURDEN FOR CY 2025 AND CY 2027

OASIS Assessment Type	Clinician Estimated SOC/ROC Hourly Burden – OASIS 2025	Clinician Estimated SOC/ROC Hourly Burden – OASIS 2027	Total Increase in Hours
Start of Care	8,099,309	8,228,553	+129,244
Resumption of Care	929,925	947,694	+17,769
Totals	9,029,234	9,176,247	+147,013

Table 44 summarizes the estimated clinician costs for the 2025 OASIS-E1 and the 2027 OASIS with the net addition of four data elements at start of care using CY 2023 BLS wage inputs. Total clinician cost for 2025 and 2027 is estimated by multiplying total hourly burden for each year as reported in table 43 by the weighted clinician average

hourly wage of \$85.74. We then calculate the difference in clinician estimated costs between 2027 and 2025. This calculates the estimated increase in costs associated with adding the four data elements at start of care and resumption of care. We estimate an increase in clinician costs \$12,604,894.62 between 2027 and 2025

related to the implementation of the proposals outlined in this proposed rule across all HHAs or a \$1,058.88 increase (12,604,894.62/11,904) for each of the 11,904 active HHAs. This increase in burden will begin with the January 1, 2027, OASIS assessments.

TABLE 44. SUMMARY OF ESTIMATED CLINICIAN COSTS FOR CY 2025 AND CY 2027

OASIS Assessment Type	Clinician Estimated Cost – OASIS-E1 2025	Clinician Estimated Cost – OASIS 2027	Total Cost Increase
Start of Care	\$ 694,434,753.66	\$ 705,516,134.22	+\$11,081,380.56
Resumption of Care	\$ 79,731,769.50	\$ 81,255,283.56	+\$1,523,514.06
Totals	\$ 774,166,523.16	\$ 786,771,417.78	+\$12,604,894.62

2. ICRs for the Expanded HHVBP Model

The RFI and the health equity update for the expanded HHVBP Model included in section IV. of this proposed rule do not result in an increase in costs to HHAs. Section 1115A(d)(3) of the Act

exempts Innovation Center model tests and expansions, which include the expanded HHVBP Model, from the provisions of the PRA. Specifically, this section provides that the provisions of the PRA do not apply to the testing and

evaluation of Innovation Center models or to the expansion of such models.

3. ICRs Related to Conditions of Participation (CoPs): Organization and Administration of Services (§ 484.105)

In section VII.A. of this proposed rule, we discuss our proposal to add a new standard at § 484.105(i), which would set forth a requirement for HHAs to establish an “acceptance to service” policy. This new standard would require the HHA to develop, implement, and maintain through an annual review a patient acceptance to service policy that addressed criteria related to the HHA’s capacity to provide patient care, including, but not limited to, anticipated needs of the referred prospective patient, case load and case mix of the HHA, staffing levels of the HHA, and competencies and skills of the HHA staff. In addition, we propose the HHA would have to make public accurate information about the services offered by the HHA and any limitations

related to the types of specialty services, service duration, and service frequency. We believe that most HHAs already have a policy related to the admission to service. The burden associated with this requirement is the burden required to develop, implement, and maintain an updated policy that would meet the requirements of this proposed rule, and the burden associated with making specified information available to the public.

Section 1861(o)(2) of the Act requires HHAs to have policies established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses. Therefore, we expect the HHA to utilize a physician

and nurse to create and update the HHA’s policies. We estimate there are 9,565 Medicare-certified HHAs and that this proposed new requirement would take 1 hour each of a physician and a registered nurse’s time on a one-time basis, for an HHA to develop an acceptance to service policy at a cost of \$321.84 per HHA (\$82.76 + \$239.08) and \$3,078,400 for all HHA’s (\$791,599 + \$2,286,800). We also estimate the HHA nurse would review the acceptance to service policy on an annual basis. This annual review would take 5 minutes for an HHA nurse at a cost of \$7 per HHA (\$82.76 × 5/60 minute = \$6.90) or \$65,999 for all HHAs (\$6.90 × 9,565 = \$65,999) to fulfill this requirement.

TABLE 45: U.S. BUREAU OF LABOR STATISTICS’ MAY 2023 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation Title	Occupation Code	Median Hourly Wage (\$/hr)	Fringe Benefit (100%) (\$/hr)	Adjusted Hourly Wage (\$/hr)
Registered Nurse (RN) https://www.bls.gov/oes/current/oes291141.htm	29-1141	\$41.38	\$41.38	\$82.76
Physician https://www.bls.gov/oes/current/oes291229.htm	29-1229	\$119.54	\$119.54	\$239.08
Medical Administrative Assistant https://www.bls.gov/oes/current/oes436013.htm	46-6013	\$20.85	\$20.85	\$41.70

TABLE 46: SUMMARY OF ESTIMATED COSTS FOR THE ACCEPTANCE TO SERVICE POLICY

Estimated Burden § 484.105: Acceptance to Service Policy	Total Number of HHA’s	Net Total
82.76	9,565	\$791,599
\$239.08	9,565	\$2,286,800
\$321.84(one time cost)	9,565	\$3,078,400
\$6.90 (annually)	9,565	\$65,999
\$10.43 (one time cost)	9,565	\$99,763
\$3.48 (annually)	9,565	\$33,286

In addition, we estimate this proposed new requirement would take 15 minutes on a one-time basis for an HHA to the specified information public at a cost of \$10.43 per HHA or \$99,763 for all HHA’s, based on the assumption that the HHA administrative professional will process this task. The average hourly rate for an administrative employee is \$41.70, therefore it is \$10.43 per HHA (\$41.70 hour × 15/60

minutes = \$10.43) or \$99,763 for all HHA’s (\$10.43 × 9,565) to fulfill the requirement. We also estimate the HHA administrative professional would review this website annually to assure the continued accuracy of the posted information. This annual review would take 5 minutes at a cost of \$3.48 per HHA (\$41.70 × 5/60 minute = \$3.48) or \$33,286 for all HHA’s (3.48 × 9,565 = \$33,286) to fulfill this requirement.

Administrative professional: <https://www.bls.gov/oes/current/oes436013.htm>.

4. ICRs for Provider Enrollment Provisions

Section 1866(j)(3)(A) of the Act states that the Secretary shall establish procedures to provide for a provisional period of between 30 days and 1 year during which new providers and

suppliers—as the Secretary determines appropriate, including categories of providers or suppliers—will be subject to enhanced oversight. These procedures have been codified in § 424.527. As explained in section VII. of this proposed rule, we are proposing to expand the definition of “new provider or supplier” in § 424.527(a) (solely for purposes of applying a provisional period of enhanced oversight (PPEO)) to include providers and suppliers that are reactivating their Medicare enrollment and billing privileges under § 424.540(b). We do not anticipate any ICR burdens associated with this provision, for we are merely expanding an existing regulatory definition.

5. ICRs Related to LTC Requirements for Acute Respiratory Illness Reporting § 483.80(g)

The ICR burden currently associated with § 483.80(g) is included under OMB control number 0938–1363; expiration date: April 30, 2026.

In section VII.B. of this proposed rule we discuss our proposals related to LTC requirements for acute respiratory illness reporting. At § 483.80(g)(1)(i) through (ix) and (g)(2), we propose to replace the existing reporting requirements for LTC facilities with new requirements to report information addressing respiratory illnesses. Beginning on January 1, 2025, facilities would be required to electronically report information about COVID–19, influenza, and RSV in a standardized format and frequency specified by the Secretary. To the extent to be determined by the Secretary, through this rulemaking cycle, we propose that the data elements for which reporting would be required include—

- Facility census;
- Resident vaccination status for a limited set of respiratory illnesses including but not limited to COVID–19, influenza, and RSV;
- Confirmed, resident cases of a limited set of respiratory illnesses including but not limited to COVID–19, influenza, and RSV (overall and by vaccination status); and
- Hospitalized residents with confirmed cases of a limited set of respiratory illnesses including but not limited to COVID–19, influenza, and RSV (overall and by vaccination status.).

In the absence of a declared national PHE for an acute respiratory illness, we propose that LTC facilities would continue to report these data on a weekly basis through a format specified by the Secretary and specifically we intend to continue reporting through the

CDC’s NHSN. There may be instances in which the Secretary may determine a need to change reporting frequency, such as during a future PHE, and we would provide appropriate notice and guidance at that time.

These proposals are scaled back and tailored from the current post-COVID–19 PHE requirements, continuing the collection of the minimal necessary data to maintain a level of situational awareness that would protect resident health and safety in LTC facilities across the country while reducing reporting burden on those facilities. However, during a declared Federal, state, or local PHE for a respiratory infectious disease we also propose that the Secretary may require facilities to report:

- Data up to a daily frequency without additional notice and comment rulemaking.
- Additional or modified data elements relevant to the PHE, including relevant confirmed infections among staff, supply inventory shortages, and relevant medical countermeasures and therapeutics inventories, usage, or both, and additional demographic factors.

Since the infection prevention and control program (IPCP) is the responsibility of the infection preventionist (IP), we anticipate that the IP would be responsible for reviewing and updating the policies and procedures for the facility’s IPCP to comply with these new proposals. We estimate that it would require 2 hours of the IP’s time to update the facility’s policies and procedures to ensure that they reflect the proposed requirements. In analyzing the ICRs related to this proposal we obtained salary information from the May 2023 National Occupational Employment and Wage Estimates, BLS at https://www.bls.gov/oes/current/oes_nat.htm. We have calculated the estimated hourly rate for an IP using the occupation code for a registered nurse (29–1141) based on the national mean salary increased by 100 percent to account for overhead costs and fringe benefits ($\$45.42 \times 2 = \$90.84$ (rounded to \$91). According to CMS, there are currently 14,926 LTC facilities as of April 2024.¹⁶⁰

Based on this salary information and facility data, we estimate that total annual burden hours for all LTC facilities to review and update their current policies and procedures would be 29,852 hours (2 hours $\times$ 14,926 facilities) at a cost of \$2,716,532 (29,852

$\times$ \$91) or \$182 ($\$91 \times 2$ hours) per facility annually.

In addition, LTC facilities will need to continue locating the required information and electronically reporting in the frequency specified to the NHSN. Currently, the ICR associated with this reporting requirement under OMB control #0938–1363 estimates a total burden cost of \$55,972,800 (1 hour $\times$ 52 weeks $\times$ \$69 (IP 2022 salary) $\times$ 15,600 LTC facilities as of 2022) based on weekly reporting. While the number of required data elements for ongoing reporting have decreased from the current post-COVID–19 PHE reporting requirements set to expire December 2024, we acknowledge that the data elements and reporting frequency could increase or decrease due to what the Secretary deems necessary based on changes in circumstance or given another PHE and these changes would impact this burden estimate. For instance, weekly data reporting could be decreased to bi-weekly reporting or the increased reporting of additional data elements during a PHE could be activated and remain active for less than or more than a year depending on the circumstances. Since we cannot predict with certainty how often the Secretary would require data reporting for a future PHE, we are including two burden estimates to cover a range in frequency of reporting. The lower range is based on weekly reporting and the higher range is based on daily reporting.

Based on the assumption of a weekly reporting frequency and 1 hour of the IP’s time to locate and electronically report the information, we estimate that total annual burden hours for all LTC facilities to comply would be 776,152 hours (1 hour $\times$ 52 weeks $\times$ 14,926 facilities) at a cost of \$70,629,832 (776,152 total hours $\times$ \$91) or \$4,732 ($\$91 \times 1$ hour $\times$ 52 weeks) per facility annually.

Based on the assumption of a daily reporting frequency, we estimate that total annual burden hours for all LTC facilities to comply would be 5,447,990 hours (1 hour $\times$ 365 days a year $\times$ 14,926 facilities) at a cost of \$495,767,090 (5,447,990 total hours $\times$ \$91) or \$33,215 ($\$91 \times 1$ hour $\times$ 365 days a year) per facility annually.

In summary the total annual burden for all LTC facilities for these proposed ICRs is 806,004 to 5,477,842 hours at an estimated cost of \$73,346,364 to \$498,483,622 or 54 to 367 hours at an estimated cost of \$4,914 to \$33,397 per

¹⁶⁰ https://qcor.cms.gov/active_nh.jsp?which=0&report=active_nh.jsp, report ran 4/24/2024.

facility annually. We will submit the OMB for approval under OMB control
revised information collection request to number 0938–1363.

TABLE 47: TOTAL BURDEN FOR § 483.80(g) ICRs

LTC Requirements Section	Number of LTC Facilities	Hourly Wage Rate	Burden Hours Per LTC Facility	Cost Estimate Per LTC Facility	Burden Hours For All LTC Facilities	Cost Estimate For All LTC Facilities
§483.80(g)(1) and (2) Policies and Procedures	14,926	\$91	2	\$182	29,852	\$2,716,532
§483.80(g)(1) and (2) Electronically Reporting	14,926	\$91	52 to 365	\$4,732 to \$33,215	776,152 to 5,447,990	\$70,629,832 to \$495,767,090
Totals	14,926	\$91	54 to 367	\$4,914 to \$33,397	806,004 to 5,477,842	\$73,346,364 to \$498,483,622

We welcome public comments on our ICR burden estimates, and on ways that reporting burden can be minimized while still providing adequate data. We also welcome feedback on any challenges of collecting and reporting these data; ways that CMS could reduce reporting burden for facilities; and alternative reporting mechanisms or quality reporting programs through which CMS could instead effectively and sustainably incentivize reporting. Lastly, we welcome comments that address system readiness and capacity to collect and report these data.

C. Submission of PRA-Related Comments

We have submitted a copy of this final rule to OMB for its review of the rule's information collection requirements. The requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections, as previously discussed, please visit the CMS website at <https://www.cms.hhs.gov/PaperworkReductionActof1995>, or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements.

IX. Regulatory Impact Analysis

A. Statement of Need

1. HH PPS

Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of home health services paid under Medicare. In addition, section 1895(b) of the Act requires: (1) the computation of a standard prospective payment amount include all costs for home health services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited cost report data available to the Secretary; (2) the prospective payment amount under the

HH PPS to be an appropriate unit of service based on the number, type, and duration of visits provided within that unit; and (3) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs. Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the home health applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act requires the standard prospective payment amount be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of appropriate case-mix adjustment factors for significant variation in costs among different units of services. Lastly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to home health services furnished in a geographic area compared to the applicable national average level.

Section 1895(b)(3)(B)(iv) of the Act provides the Secretary with the authority to implement adjustments to the standard prospective payment amount (or amounts) for subsequent years to eliminate the effect of changes in aggregate payments during a previous year or years that were the result of changes in the coding or classification of different units of services that do not reflect real changes in case-mix. Section 1895(b)(5) of the Act provides the Secretary with the option to make changes to the payment amount otherwise paid in the case of outliers because of unusual variations in the type or amount of medically necessary care. Section 1895(b)(3)(B)(v) of the Act requires HHAs to submit data for purposes of measuring health care quality and links the quality data

submission to the annual applicable percentage increase.

Sections 1895(b)(2) and 1895(b)(3)(A) of the Act, as amended by sections 51001(a)(1) and 51001(a)(2) of the BBA of 2018 respectively, required the Secretary to implement a 30-day unit of service, for 30-day periods beginning on and after January 1, 2020. Section 1895(b)(3)(D)(i) of the Act, as added by section 51001(a)(2)(B) of the BBA of 2018, requires the Secretary to annually determine the impact of differences between assumed behavior changes, as described in section 1895(b)(3)(A)(iv) of the Act, and actual behavior changes on estimated aggregate expenditures under the HH PPS with respect to years beginning with 2020 and ending with 2026. Section 1895(b)(3)(D)(ii) of the Act requires the Secretary, at a time and in a manner determined appropriate, through notice and comment rulemaking, to provide for one or more permanent increases or decreases to the standard prospective payment amount (or amounts) for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures, as determined under section 1895(b)(3)(D)(i) of the Act. Additionally, 1895(b)(3)(D)(iii) of the Act requires the Secretary, at a time and in a manner determined appropriate, through notice and comment rulemaking, to provide for one or more temporary increases or decreases to the payment amount for a unit of home health services for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures, as determined under section 1895(b)(3)(D)(i) of the Act. The HH PPS wage index utilizes the wage adjustment factors used by the Secretary for purposes of sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act for hospital wage adjustments.

2. HH QRP

Section 1895(b)(3)(B)(v) of the Act authorizes the HH QRP, which requires

HHA's to submit data in accordance with the requirements specified by CMS. Failure to submit data required under section 1895(b)(3)(B)(v) of the Act with respect to a program year will result in the reduction of the annual home health market basket percentage increase otherwise applicable to an HHA for the corresponding calendar year by 2 percentage points.

3. Expanded HHVBP Model

In the CY 2022 HH PPS final rule (86 FR 62292 through 62336) and codified at 42 CFR part 484, subpart F, we finalized our policy to expand the HHVBP Model to all Medicare certified HHAs in the 50 States, territories, and District of Columbia beginning January 1, 2022. CY 2022 was a pre-implementation year. CY 2023 was the first performance year in which HHAs individual performance on the applicable measures will affect their Medicare payments in CY 2025. In this proposed rule, we include a request for information (RFI) related to the future measure concepts for the expanded HHVBP Model. We also provide an update on potential future approaches for integrating health equity that are being considered for the expanded HHVBP Model.

4. Home IVIG Items and Services

Division FF, section 4134 of the CAA, 2023 (Pub. L. 117–328) mandated that CMS establish a permanent, bundled payment for items and services related to administration of IVIG in a patient's home. The permanent, bundled home IVIG items and services payment is effective for home IVIG infusions furnished on or after January 1, 2024. Payment for these items and services is required to be a separate bundled payment made to a supplier for all items and services furnished in the home during a calendar day. This payment amount may be based on the amount established under the Demonstration. The standard Part B coinsurance and the Part B deductible apply. The separate bundled payment does not apply for individuals receiving services under the Medicare home health benefit. The CAA, 2023 provision clarifies that a supplier who furnishes these services meet the requirements of a supplier of medical equipment and supplies.

5. HHA CoP Changes: Establishing an Acceptance to Service Policy

In sections 1861(o) and 1891 of the Act, the Secretary has established in regulations the requirements that an HHA must meet to participate in the Medicare program. These requirements are set forth in regulations at 42 CFR

part 484, Home Health Services, and regulations at 42 CFR 440.70(d) specify that HHAs participating in the Medicaid program must also meet the Medicare Conditions of Participation (CoPs). Section 1861(o)(6) of the Act requires that an HHA must meet the CoPs specified in section 1891(a) of the Act, and other CoPs as the Secretary finds necessary in the interest of the health and safety of patients. The CoPs for HHAs protect all individuals under the HHA's care, unless a requirement is specifically limited to Medicare beneficiaries. As explained in section VI.A. of this proposed rule, we are proposing to add a new standard at § 484.105(i) that would require HHAs to develop, consistently apply, and maintain an acceptance to service policy, including specified factors, that would govern the process for accepting patients to service. We also propose that HHAs would be required to make specified information about their services and service limitations available to the public. In this proposed rule, we include a request for information (RFI) to obtain information from stakeholders on whether CMS should shift its longstanding policy and permit rehabilitative therapists to conduct the initial and comprehensive assessment for cases that have both therapy and nursing services ordered as part of the plan of care. In addition, we are seeking public comments on other factors that influence the patient referral and intake processes.

6. Provider Enrollment Provisions

Section 1866(j)(3)(A) of the Act states that the Secretary shall establish procedures to provide for a provisional period of between 30 days and 1 year during which new providers and suppliers—as the Secretary determines appropriate, including categories of providers or suppliers—will be subject to enhanced oversight. These procedures have been codified in 42 CFR 424.527. As explained in section VII. of this proposed rule, we are proposing to expand the definition of “new provider or supplier” in § 424.527(a) (solely for purposes of applying a provisional period of enhanced oversight (PPEO) to include providers and suppliers that are reactivating their Medicare enrollment and billing privileges under § 424.540(b).

7. LTC Requirements for Acute Respiratory Illness Reporting

Sections 1819(d)(3) and 1919(d)(3) of the Act explicitly require that LTC facilities develop and maintain an infection control program that is

designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public. In addition, sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act explicitly authorize the Secretary to issue any regulations he deems necessary to protect the health and safety of residents. As such, we are proposing streamlined weekly data reporting requirements for certain respiratory illnesses. We are also proposing additional, related data elements that could be activated in the event of a future acute respiratory illness PHE.

B. Overall Impact

We have examined the impacts of this proposed 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 on Modernizing Regulatory Review (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96 354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 14094 amends section 3(f) of Executive Order 12866 to define 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, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order.

A regulatory impact analysis (RIA) must be prepared for significant rules.

Based on our estimates, OMB'S Office of Information and Regulatory Affairs has determined this rulemaking is significant per section 3(f)(1) as measured by the \$200 million or more in any 1 year. Accordingly, we have prepared a regulatory impact analysis that to the best of our ability presents the costs and benefits of the rulemaking. Therefore, OMB has reviewed this proposed rule, and the Departments have provided the following assessment of their impact. We solicit comments on the regulatory impact analysis provided.

C. Detailed Economic Analysis

1. Effects of the Proposed Changes for the CY 2025 HH PPS

This rule proposes to update Medicare payments under the HH PPS for CY 2025. The net transfer impact related to the changes in payments under the HH PPS for CY 2025 is estimated to be –\$280 million (–1.7 percent). The \$280 million decrease in estimated payments for CY 2025 reflects the effects of the proposed CY 2025 home health payment update percentage of 2.5 percent (\$415 million increase), an estimated 3.6 percent decrease that reflects the effects of the permanent adjustment (\$595 million decrease), and an estimated 0.6 percent decrease that reflects the effects of an updated FDL (\$100 million decrease).

We use the latest data and analysis available. However, we do not adjust for future changes in such variables as number of visits or case-mix. This analysis incorporates the latest estimates of growth in service use and payments under the Medicare home health benefit, based primarily on Medicare claims data for periods that ended on or before December 31, 2023. We note that certain events may

combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to errors resulting from other changes in the impact time period assessed. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Table 48 represents how HHA revenues are likely to be affected by the proposed policy changes for CY 2025. For this analysis, we used an analytic file with linked CY 2023 OASIS assessments and home health claims data for dates of service that ended on or before December 31, 2023. The first column of table 48 classifies HHAs according to a number of characteristics including provider type, geographic region, and urban and rural locations. The second column shows the number of facilities in the impact analysis. The third column shows the payment effects of the permanent assumption adjustment on all payments. The aggregate impact of the permanent adjustment reflected in the third column does not equal the proposed –4.067 percent permanent adjustment because the adjustment only applies to the national, standardized 30-day period payments and does not impact payments for 30-day periods which are LUPAs. The fourth column shows the

payment effects of the recalibration of the case-mix weights offset by the case-mix weights budget neutrality factor. The fifth column shows the payment effects of updating the CY 2025 wage index (that is, the FY 2025 hospital pre-floor, pre-reclassified wage index for hospital cost reporting periods beginning on or after October 1, 2020, and before October 1, 2021 (FY 2021 cost report data)) with the revised OMB delineations and a 5-percent cap on wage index decreases. The aggregate impact of the changes in the fifth column is zero percent, due to the wage index budget neutrality factor. The sixth column shows the payment impacts of the proposed update to the LUPA add-on factors. The seventh column shows the payment effects of the proposed CY 2025 home health payment update percentage. The eighth column shows the payment effects of the revised FDL, and the last column shows the combined effects of all the proposed provisions.

Overall, it is projected that aggregate payments in CY 2025 would decrease by 1.7 percent which reflects the 3.6 percent decrease from the permanent adjustment, the 2.5 payment update percentage increase, and the 0.6 percent decrease from increasing the FDL. As illustrated in table 48, the combined effects of all changes vary by specific types of providers and by location. We note that some individual HHAs within the same group may experience different impacts on payments than others due to the distributional impact of the CY 2025 wage index, the percentage of total HH PPS payments that were subject to the LUPA or paid as outlier payments, and the degree of Medicare utilization.

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TABLE 48: CY 2025 HHA IMPACTS BY FACILITY TYPE AND AREA OF THE COUNTRY

	Number of Agencies	Permanent Adjustment	CY 2025 Case-Mix Weights Recalibration Neutrality Factor	CY 2025 Updated Wage Index (with 5% cap and OMB Delineations)	CY 2025 Proposed LUPA Add-On Factors Update	CY 2025 Proposed HH Payment Update Percentage	Fixed- Dollar Loss (FDL) Update	Total
All Agencies	9,565	-3.6%	0.0%	0.0%	0.0%	2.5%	-0.6%	-1.7%
Facility Type and Control								
Free-Standing/Other Vol/NP	865	-3.5%	0.0%	-0.5%	0.0%	2.5%	-0.7%	-2.2%
Free-Standing/Other Proprietary	7,029	-3.7%	0.0%	0.2%	0.0%	2.5%	-0.5%	-1.5%
Free-Standing/Other Government	149	-3.6%	0.0%	0.3%	0.0%	2.5%	-0.7%	-1.5%
Facility-Based Vol/NP	429	-3.4%	0.0%	-0.4%	0.0%	2.5%	-0.9%	-2.2%
Facility-Based Proprietary	44	-3.6%	0.2%	0.6%	0.0%	2.5%	-0.5%	-0.8%
Facility-Based Government	137	-3.5%	0.0%	0.3%	0.0%	2.5%	-0.7%	-1.4%
Subtotal: Freestanding	8,043	-3.6%	0.0%	0.1%	0.0%	2.5%	-0.6%	-1.6%
Subtotal: Facility-based	610	-3.4%	0.0%	-0.2%	0.0%	2.5%	-0.8%	-1.9%
Subtotal: Vol/NP	1,294	-3.5%	0.0%	-0.5%	0.0%	2.5%	-0.8%	-2.3%
Subtotal: Proprietary	7,073	-3.7%	0.0%	0.2%	0.0%	2.5%	-0.5%	-1.5%
Subtotal: Government	286	-3.5%	0.0%	0.3%	0.0%	2.5%	-0.7%	-1.4%
Facility Type and Control: Rural								
Free-Standing/Other Vol/NP	205	-3.5%	0.1%	0.7%	0.0%	2.5%	-0.7%	-0.9%
Free-Standing/Other Proprietary	731	-3.7%	0.2%	1.5%	0.0%	2.5%	-0.4%	0.1%
Free-Standing/Other Government	101	-3.5%	0.2%	0.9%	0.0%	2.5%	-0.8%	-0.7%
Facility-Based Vol/NP	187	-3.4%	0.1%	0.8%	0.0%	2.5%	-0.9%	-0.9%
Facility-Based Proprietary	14	-3.8%	0.5%	-0.6%	0.0%	2.5%	-0.4%	-1.8%
Facility-Based Government	100	-3.5%	0.1%	0.4%	0.0%	2.5%	-0.9%	-1.4%
Facility Type and Control: Urban								
Free-Standing/Other Vol/NP	660	-3.5%	0.0%	-0.7%	0.0%	2.5%	-0.7%	-2.4%
Free-Standing/Other Proprietary	6,290	-3.7%	0.0%	0.1%	0.0%	2.5%	-0.5%	-1.6%
Free-Standing/Other Government	48	-3.6%	-0.1%	-0.1%	0.0%	2.5%	-0.6%	-1.9%
Facility-Based Vol/NP	242	-3.4%	-0.1%	-0.6%	0.0%	2.5%	-0.9%	-2.5%
Facility-Based Proprietary	30	-3.6%	0.1%	0.9%	0.0%	2.5%	-0.6%	-0.7%
Facility-Based Government	37	-3.5%	-0.1%	0.2%	0.0%	2.5%	-0.7%	-1.6%
Facility Location: Urban or Rural								
Rural	1,338	-3.7%	0.2%	1.2%	0.0%	2.5%	-0.5%	-0.3%
Urban	7,307	-3.6%	0.0%	-0.1%	0.0%	2.5%	-0.6%	-1.8%
Facility Location: Region of the Country (Census Region)								
New England	298	-3.5%	-0.1%	-1.4%	0.0%	2.5%	-0.7%	-3.2%
Mid Atlantic	376	-3.6%	-0.1%	-1.2%	0.0%	2.5%	-0.6%	-3.0%
East North Central	1,418	-3.6%	0.0%	0.0%	0.0%	2.5%	-0.6%	-1.7%
West North Central	567	-3.5%	0.0%	0.9%	0.0%	2.5%	-0.8%	-0.9%

	Number of Agencies	Permanent Adjustment	CY 2025 Case-Mix Weights Recalibration Neutrality Factor	CY 2025 Updated Wage Index (with 5% cap and OMB Delineations)	CY 2025 Proposed LUPA Add-On Factors Update	CY 2025 Proposed HH Payment Update Percentage	Fixed-Dollar Loss (FDL) Update	Total
South Atlantic	1,546	-3.6%	0.0%	1.0%	0.0%	2.5%	-0.5%	-0.6%
East South Central	357	-3.7%	0.2%	2.2%	0.0%	2.5%	-0.4%	0.8%
West South Central	1,985	-3.7%	0.1%	1.3%	0.0%	2.5%	-0.6%	-0.4%
Mountain	702	-3.6%	-0.1%	1.3%	0.0%	2.5%	-0.7%	-0.6%
Pacific	2,273	-3.6%	0.0%	-1.9%	0.0%	2.5%	-0.6%	-3.6%
Outlying	43	-3.7%	0.5%	-1.2%	0.0%	2.5%	-0.5%	-2.4%
Facility Size (Number of 30-day Periods)								
< 100 periods	2,177	-3.6%	0.1%	0.1%	0.0%	2.5%	-0.7%	-1.6%
100 to 249	1,520	-3.6%	0.0%	-0.2%	0.0%	2.5%	-0.7%	-2.0%
250 to 499	1,693	-3.6%	0.0%	-0.1%	0.0%	2.5%	-0.6%	-1.8%
500 to 999	1,891	-3.6%	0.0%	0.0%	0.0%	2.5%	-0.6%	-1.7%
1,000 or More	2,284	-3.6%	0.0%	0.0%	0.0%	2.5%	-0.6%	-1.7%

Source: CY 2023 Medicare claims data for periods with matched OASIS records ending in CY 2023 (as of March 19, 2024).

Notes: The estimated 3.6 percent decrease related to the proposed permanent adjustment includes all payments, while the proposed -4.067 percent permanent adjustment only applies to the national, standardized 30-day period payments and does not impact payments for 30-day periods which are LUPAs. The "Proposed Wage Index" column reflects updated hospital wage index data (reflecting 2021 cost report data) with the revised OMB delineations from OMB Bulletin No. 23-01 and a 5-percent cap on wage index decreases. The "Proposed LUPA Add-On Factors Update" column has an impact range of -0.01 percent to -0.035 percent which is reflected in the table as 0.0 percent due to rounding. "The "Fixed Dollar Loss (FDL) Update" column reflects a change in the FDL from 0.27 to 0.38. Due to missing Provider of Services file information (from which home health agency characteristics are obtained), some subcategories in the impact tables have fewer agencies represented than the overall total (of 9,565): totals involving facility type or control only add up to 8,653 and totals involving urban/rural locations only add up to 8,645.

REGION KEY:

New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Middle Atlantic=Pennsylvania, New Jersey, New York

South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia

East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin

East South Central=Alabama, Kentucky, Mississippi, Tennessee

West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota

West South Central=Arkansas, Louisiana, Oklahoma, Texas

Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming

Pacific=Alaska, California, Hawaii, Oregon, Washington

Other=Guam, Puerto Rico, Virgin Islands

2. Effects of the Proposed Changes for the HH QRP for CY 2027

Failure to submit HH QRP data required under section 1895(b)(3)(B)(v) of the Act with respect to a program year will result in the reduction of the annual home health market basket percentage increase otherwise applicable to an HHA for the corresponding calendar year by 2 percentage points. For the CY 2023 program year, 820 of the 11,549 active Medicare-certified HHAs, or approximately 7.1 percent, did not receive the full annual percentage increase because they did not meet assessment submission requirements. The 820 HHAs that did not satisfy the reporting requirements of the HH QRP for the CY 2023 program year represent \$149 million in home health claims payment dollars during the reporting period out of a total \$16.4 billion for all HHAs.

This proposed rule proposes to collect four additional items as standardized patient assessment data elements and replace one item collected as a standardized patient assessment data element beginning with the CY 2027 HH QRP. The four assessment items proposed for collection are (1) Living Situation, (2) Food Runs Out, (3) Food Doesn't Last, and (4) Utilities. We also propose replacing the current Access to Transportation item with a revised Transportation (Access to Transportation) item beginning with the CY 2027 HH QRP. CMS is also proposing an update to the removal of

the suspension of OASIS all-payer data collection to change all-payer data collection beginning with the start of care OASIS data collection timepoint instead of discharge timepoint. The net effect of these proposals is an increase of four data elements at the start of care time point and a net increase in burden.

Section VIII.B.1. of this proposed rule provides a detailed description of the net increase in burdens associated with the proposed changes. We proposed that additions of data elements associated with the HH QRP proposals would begin with January 1, 2027, discharges. The cost impact of these proposed changes was estimated to be a net increase of \$12,604,894.62 in annualized cost to HHAs, discounted at 2 percent relative to year 2023, over a perpetual time horizon beginning in CY 2027. We described the estimated burden and cost reductions for these measures in section VIII. of this proposed rule. In summary, the implementation of proposals outlined in this proposed rule for the HH QRP is estimated to increase the burden on HHAs by \$1,058.88 per HHA annually, or \$12,604,894.62 for all HHAs annually.

3. Effects of the Expanded HH VBP Model

There are no proposed changes to the expanded HHVBP Model for CY 2025. Therefore, we assume there are no impacts resulting from this proposed rule. Furthermore, the public comments received related to the *Request for*

Information on Future Performance Measure Concepts for the Expanded HHVBP Model and the update on *Future Approaches to Health Equity in the Expanded HHVBP Model*, included in section IV. of this proposed rule, will be summarized in the final rule and may inform proposals through future rulemaking.

4. Impacts of Home IVIG Items and Services

The following analysis applies to the home IVIG items and services payment rate as set forth in section V.D.1. of this proposed rule as added by section 4134 of the CAA, 2023 and accordingly, describes the impact for CY 2025 only. Table 49 represents the estimated aggregate costs of home IVIG users for CY 2025. We used CY 2023 data to identify beneficiaries actively enrolled in the IVIG demonstration (that is, beneficiaries with Part B claims that contain the Q2052 HCPCS code) to estimate the number of potential CY 2025 active enrollees in the new benefit, which are shown in column 2. In column 3, CY 2023 claims for IVIG visits under the Demonstration were again used to estimate potential utilization under the new benefit in CY 2025. Column 4 shows the proposed CY 2025 home IVIG items and services rate. The fifth column estimates the cost to Medicare for CY 2025 (\$9,435,233). Table 50 represents the estimated impacts of the home IVIG items and services payment for CY 2025 by census region.

TABLE 49: ESTIMATED COSTS OF COVERED IVIG ITEMS AND SERVICES, CY 2025

Year	Number of Active Enrollees ¹	Number of IVIG Visits ¹	Proposed Nationwide Rate	Estimated Cost
CY 2025	1,933	21,892	\$430.99	\$9,435,233

¹The number of active enrollees and IVIG visits in CY 2023 was used to estimate utilization in CY 2024 and CY 2025. Claims data were extracted on March 20, 2024.

**TABLE 50—ESTIMATED IMPACTS OF THE HOME IVIG ITEMS AND SERVICES
PAYMENT BY REGION, CY 2025**

Region	States	Number of Active Enrollees ¹	Number of IVIG Visits ¹	Estimated CY 2025 Cost
New England	CT, ME, MA, NH, RI, VT	175	2,232	\$961,970
Middle Atlantic	NJ, NY, PA	219	2,593	\$1,117,557
South Atlantic	DE, DC, FL, GA, MD, NC, SC, VA, WV	504	5,220	\$2,249,768
East North Central	IL, IN, MI, OH, WI	159	1,803	\$777,075
East South Central	AL, KY, MS, TN	190	2,051	\$883,960
West North Central	IA, KS, MN, MO, NE, ND, SD	136	1,591	\$685,705
West South Central	AR, LA, OK, TX	196	2,168	\$934,386
Mountain	AZ, CO, ID, MT, NV, NM, UT, WY	148	1,696	\$730,959
Pacific	AK, CA, HI, OR, WA	214	2,538	\$1,093,853
Other	GU, PR, VI	0	0	\$0

¹The number of active enrollees in the IVIG Demonstration and their IVIG visits in CY 2023 was used to estimate utilization in CY 2025. CY 2023 claims data were extracted on March 20, 2024. Each IVIG claims is assigned to a single census division. There are eight beneficiaries who had a set of IVIG claims in CY 2023 with a portion of their claims in one census division and the remaining claims in a different census division.

5. HHA CoP Changes: Establishing an Acceptance to Service Policy

We propose to add a new standard § 484.105(i), which sets forth a requirement for HHAs to establish an acceptance to service policy. All cost associated with this policy are located in the section VIII. of this proposed rule (Collection of Information). There are no transfers associated with this requirement.

6. Provider Enrollment Provisions

For purposes of applying a PPEO, we are proposing to expand the definition of “new provider or supplier” in § 424.527(a) to include providers and suppliers that are reactivating their Medicare enrollment and billing privileges under § 424.540(b). However, we are unable to establish an estimate of any potential burden associated with this provision for two main reasons. First, we do not have sufficient data upon which we can formulate a burden projection. Second, we cannot predict the scope, extent, and length of any future PPEO or the provider or supplier type(s) to which it may apply. Accordingly, we solicit public comment from stakeholders on the potential burden of our expansion of § 424.527(a).

7. Effects of the Proposed LTC Requirements for Acute Respiratory Illness Reporting

We propose to update the requirements related to reporting acute respiratory illnesses for LTC facilities at

§ 483.80(g). All cost associated with this policy are located in the section IX. of this proposed rule (Collection of Information). There are no transfers associated with this requirement. We welcome public comments on our estimates, and on ways that reporting burden can be minimized while still providing adequate data. We also welcome feedback on any challenges of collecting and reporting these data; ways that CMS could reduce reporting burden for facilities; and alternative reporting mechanisms or quality reporting programs through which CMS could instead effectively and sustainably incentivize reporting. Lastly, we welcome comments that address system readiness and capacity to collect and report these data.

D. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on last year’s proposed rule will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this proposed rule. It is possible that not all commenters reviewed last year’s rule in detail, and it is also possible that some

reviewers chose not to comment on the proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this proposed rule. We welcome any comments on the approach used in estimating the number of entities reviewing this proposed rule.

We recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule. Therefore, for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule. Finally, in our estimates, we have used the 948 number of timely pieces of correspondence on the CY 2024 HH PPS proposed rule as our estimate for the number of reviewers of this proposed rule. We continue to acknowledge the uncertainty involved with using this number, but we believe it is a fair estimate due to the variety of entities affected and the likelihood that some of them choose to rely (in full or in part) on press releases, newsletters, fact sheets, or other sources rather than the comprehensive review of preamble and regulatory text. We seek comments on this assumption. Using the median hourly wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing the proposed rule is \$106.42 per hour, including overhead and fringe benefits (https://www.bls.gov/oes/current/oes_nat.htm). Assuming an average reading speed, we estimate that

it would take approximately 2.77 hours for the staff to review half of this proposed rule. For each entity that reviews this proposed rule, the estimated cost is \$294.78 (2.77 hours × \$106.42). Therefore, we estimate that the total cost of reviewing this proposed rule is \$279,451 (\$294.78 × 948 reviewers).

E. Alternatives Considered

1. HH PPS

For the CY 2025 HH PPS proposed rule, we considered alternatives to the provisions articulated in section II.C. of this proposed rule. As described in section II.C.1.b. of this proposed rule, we proposed a mapping of three OASIS items (therapies, vision, and pain) in order to impute the responses from the OASIS–E to the OASIS–D to create simulated 60-day episodes from 30-day periods. We considered not proposing the mapping methodology; however, to continue with the best reading of the law and the finalized methodology for assessing behavior changes we proposed the OASIS mapping.

As described in section II.C.1.g. of this proposed rule, to achieve appropriate payments, we calculated a permanent adjustment by determining what the 30-day base payment amount should have been in CYs 2020, 2021, 2022, and 2023 in order to achieve the same estimated aggregate expenditures as obtained from the simulated 60-day episodes. One alternative to the proposed – 4.067

percent permanent adjustment included halving the proposed permanent adjustment similar to how we finalized the permanent adjustment for CY 2024. Another alternative would be a phase-in approach, where we could reduce the permanent adjustment, by spreading out the CY 2025 permanent adjustment over a specified period of years, rather than halving the adjustment in CY 2025. Another alternative would be to delay the permanent adjustment to a future year. However, we believe that a reduction, a phase-in approach, or delay in the permanent adjustment would not be appropriate, as reducing, phasing in, or delaying the permanent adjustment would further impact budget neutrality and likely lead to a compounding effect creating the need for a larger reduction to the payment rate in future years.

We also considered proposing to implement the one-time temporary adjustment to reconcile retrospective overpayments in CYs 2020, 2021, 2022, and 2023. However, as stated previously in this proposed rule, we believe that implementing both the permanent and temporary adjustments to the CY 2025 payment rate may adversely affect HHAs given the magnitude of the adjustment to the payment rate in a single year. Likewise, section 1895(b)(3)(D)(iii) of the Act gives CMS the authority to make any temporary adjustment in a time and manner appropriate though notice and comment rulemaking. Therefore, we believe it is

best to propose only the implementation of the permanent decrease of 4.067 percent to the CY 2025 base payment rate.

Finally, we considered not proposing to adopt the OMB delineations listed in OMB Bulletin 23–01. However, we have historically adopted the latest OMB delineations in subsequent rulemaking after a new OMB Bulletin is released.

2. Home IVIG Items and Services

For the CY 2025 HH PPS proposed rule, we did not consider alternatives to implementing the home IVIG items and services payment for CY 2025 because section 1842(o)(8) of the Act requires the Secretary to establish a separate bundled payment to the supplier for all items and services related to the administration of intravenous immune globulin to an individual in the patient’s home during a calendar day effective January 1, 2024.

F. Accounting Statements and Tables

1. HH PPS

As required by OMB Circular A–4 (available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf), in table 51, we have prepared an accounting statement showing the classification of the transfers and benefits associated with the CY 2025 HH PPS provisions of this proposed rule.

TABLE 51: ACCOUNTING STATEMENT: HH PPS CLASSIFICATION OF ESTIMATED TRANSFERS AND BENEFITS, FROM CY 2024 TO CY 2025

Category	Transfers
Annualized Monetized Transfers	-\$280 million
Bearers of Transfer Gain	Medicare HHAs

2. HH QRP

As required by OMB Circular A–4 (available at [https://](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf)

www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf), in table 52, we have prepared an accounting statement

showing the classification of the costs associated with the ICRs for the proposed HH QRP provisions in CY 2027.

TABLE 52: HH QRP ESTIMATED COSTS FROM CY 2025 TO CY 2027

Category	Costs
The total economic impact of these proposals including the addition of one Living Situation item, two Food items, and one Utilities item, and the modification of the current Transportation item proposed for implementation in CY 2027	\$12,604,894.62 (2% Discount Rate)

3. Home IVIG Items and Services

As required by OMB Circular A–4 (available at [https://](https://www.omb.eop.gov/circulars/A4/a-4.pdf)

www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf), in table 53, we have prepared an accounting statement

showing the classification of the transfers and benefits associated with the CY 2025 IVIG provisions of this proposed rule.

TABLE 53: ACCOUNTING STATEMENT: IVIG CLASSIFICATION OF ESTIMATED TRANSFERS AND BENEFITS CY 2025

Category	Transfers
Annualized Monetized Transfers	\$9.4 million*
Bearers of Transfer Gain	Medicare DMEPOS suppliers

*Reflects the CY 2025 aggregate transfer impact of the home IVIG items and services payments.

G. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. In addition,

HHAs are small entities, as that is the term used in the RFA. Individuals and States are not included in the definition of a small entity.

The North American Industry Classification System (NAICS) was adopted in 1997 and is the current standard used by the Federal statistical agencies related to the U.S. business economy. We utilized the NAICS U.S.

industry title “Home Health Care Services” and corresponding NAICS code 621610 in determining impacts for small entities. The NAICS code 621610 has a size standard of \$19 million¹⁶¹ and approximately 96 percent of HHAs are considered small entities. Table 54 shows the number of firms, revenue, and estimated impact per home health care service category.

TABLE 54: NUMBER OF FIRMS, REVENUE, AND ESTIMATED IMPACT OF HOME HEALTH CARE SERVICES BY NAICS CODE 621610

NAICS Code	NAICS Description	Enterprise Size	Number of Firms	Receipts (\$1,000)	Estimated Average Impact (\$1,000) per Enterprise Size
621610	Home Health Care Services	<100	5,861	210,697	\$35.95
621610	Home Health Care Services	100-499	5,687	1,504,668	\$264.58
621610	Home Health Care Services	500-999	3,342	2,430,807	\$727.35
621610	Home Health Care Services	1,000-2,499	4,434	7,040,174	\$1,587.77
621610	Home Health Care Services	2,500-4,999	1,951	6,657,387	\$3,412.29
621610	Home Health Care Services	5,000-7,499	672	3,912,082	\$5,821.55
621610	Home Health Care Services	7,500-9,999	356	2,910,943	\$8,176.81
621610	Home Health Care Services	10,000-14,999	346	3,767,710	\$10,889.34
621610	Home Health Care Services	15,000-19,999	191	2,750,180	\$14,398.85
621610	Home Health Care Services	≥20,000	961	51,776,636	\$53,877.87
621610	Home Health Care Services	Total	23,801	82,961,284	\$3,485.62

Source: Data obtained from United States Census Bureau table “us_6digitnaics_rcptsiz_2017” (SOURCE: 2017 County Business Patterns and Economic Census) Release Date: 5/28/2021: <https://www2.census.gov/programs-surveys/susb/tables/2017/>

Notes: Estimated impact is calculated as Receipts (\$1,000)/Number of firms. For the total, this is the average estimated impact across all number of firms.

The economic impact assessment is based on estimated Medicare payments (revenues) and HHS’s practice in interpreting the RFA is to consider effects economically “significant” only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The

majority of HHAs’ visits are Medicare paid visits and therefore the majority of HHAs’ revenue consists of Medicare payments. Based on our analysis, we conclude that the policies proposed in this rule would result in an estimated total impact of 3 to 5 percent or more on Medicare revenue for greater than 5

percent of HHAs. Therefore, the Secretary has determined that this HH PPS proposed rule will have significant economic impact on a substantial number of small entities. Specifically, we estimate that the net impact of the policies in this proposed rule will have a significant impact on hospices in the

¹⁶¹ <https://www.sba.gov/sites/sbagov/files/2023-03/Table%20of%20Size%20StandardsEffective%20March%2017%2C%202023.xlsx>.

New England, Mid Atlantic, and Pacific regions, which is reflected in the last column in table 48 as a greater than 33 percent decrease in expenditures when comparing CY 2025 payments to estimated CY 2024 payments. The reason for the net decrease in CY 2025 is mostly driven by the impact of the permanent adjustment reflected in the third column of table 48. Further detail is presented in table 48, by HHA type and location.

Regarding options for regulatory relief, we note that section 1895(b)(3)(D)(i) of the Act requires CMS to annually determine the impact of differences between the assumed behavior changes finalized in the CY 2019 HH PPS final rule with comment period (83 FR 56455) and actual behavior changes on estimated aggregate expenditures under the HH PPS with respect to years beginning with 2020 and ending with 2026. Additionally, section 1895(b)(3)(D)(ii) and (iii) of the Act requires us to make permanent and temporary adjustments to the payment rate to offset for such increases or decreases in estimated aggregate expenditures through notice and comment rulemaking. While we find that the –4.067 percent permanent adjustment, described in section II.C.1.g. of this proposed rule, is necessary to offset the increase in estimated aggregate expenditures for CYs 2020 through 2023 based on the impact of the differences between assumed behavior changes and actual behavior changes, we will also continue to reprice claims, per the finalized methodology, and make any additional adjustments at a time and manner deemed appropriate in future rulemaking. As discussed previously, we also explored alternatives to the proposed –4.067 percent permanent adjustment including a phase-in approach, where we could reduce the permanent adjustment, by spreading out the CY 2025 permanent adjustment over a period of years. Another alternative would be to delay the permanent adjustment to a future year. However, we believe that a reduction to the permanent adjustment, a phase-in approach, or delay in the permanent adjustment would not be appropriate, as reducing, phasing in, or delaying the permanent adjustment would further impact budget neutrality and likely lead to a compounding effect creating the need for a larger reduction to the payment rate in future years. We also considered proposing to implement the one-time temporary adjustment to reconcile retrospective overpayments in CYs 2020, 2021, 2022, and 2023.

However, as stated previously in this proposed rule, we recognize that applying the full permanent and temporary adjustments to the CY 2025 payment rate may adversely affect HHAs, including small entities. We are soliciting comments on the overall HH PPS RFA analysis.

Among the over 7,500 HHAs that are estimated to qualify to compete in the expanded HHVBP Model, we estimate that the percent payment adjustment resulting from this proposed rule would be larger than 3 percent, in magnitude, for about 28 percent of competing HHAs (estimated by applying the proposed 5-percent maximum payment adjustment under the expanded Model to CY 2019 data). As a result, more than the RFA threshold of 5-percent of HHA providers nationally would be significantly impacted. We refer readers to tables 43 and 44 in the CY 2022 HH PPS final rule (86 FR 62407 through 62410) for our analysis of payment adjustment distributions by State, HHA characteristics, HHA size, and percentiles.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This proposed rule is not applicable to hospitals. Therefore, the Secretary has certified that this proposed rule would not have a significant economic impact on the operations of small rural hospitals.

H. Unfunded Mandates Reform Act (UMRA)

Section 202 of UMRA of 1995 UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2024, that threshold is approximately \$183 million. This proposed rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$183 million in any one year.

I. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct

requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. We have reviewed this proposed rule under these criteria of Executive Order 13132 and have determined that it would not impose substantial direct costs on State or local governments.

J. Conclusion

In conclusion, we estimate that the provisions in this proposed rule will result in an estimated net decrease in home health payments of 1.7 percent for CY 2025 (–\$280 million). The \$280 million decrease in estimated payments for CY 2025 reflects the effects of the proposed CY 2025 home health payment update percentage increase of 2.5 percent (\$415 million increase), a 0.6 percent decrease in payments due to the new higher FDL ratio, which will decrease outlier payments in order to target to pay no more than 2.5 percent of total payments as outlier payments (\$100 million decrease), and an estimated 3.6 percent decrease in payments that reflects the effects of the permanent behavior adjustment (\$595 million decrease). In addition, the estimated aggregate impacts of the home IVIG items and services payment for CY 2025 is \$9.4 million. Lastly, the implementation of the HH QRP proposed policy is estimated to increase the costs to HHAs by \$1,058.88 per HHA annually, or \$12,604,894.62 in the aggregate for HHAs annually.

X. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on June 12, 2024.

List of Subjects

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing

homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

- 1. The authority for part 424 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

- 2. Section 424.527 is amended by adding paragraph (a)(4) to read as follows:

§ 424.527 Provisional period of enhanced oversight.

(a) * * *

(4) A provider or supplier reactivating the provider's or supplier's Medicare enrollment and billing privileges in accordance with § 424.540(b).

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

- 3. The authority citation for part 483 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1395i, 1395hh and 1396r.

- 4. Section 483.80 is amended by revising paragraph (g) to read as follows:

§ 483.80 Infection control.

* * * * *

(g) *Respiratory illness reporting*—(1) *Ongoing reporting.* The facility must electronically report information on acute respiratory illnesses, including

influenza, SARS–CoV–2/COVID–19, and RSV.

(i) The report must be in a standardized format and frequency specified by the Secretary.

(ii) To the extent as required by the Secretary, this report must include all of the following data elements:

(A) Facility census (defined as the total number of residents occupying a bed at this facility for at least 24 hours during the week of data collection).

(B) Resident vaccination status for a limited set of respiratory illnesses, including but not limited to the following:

(1) *Influenza.*

(2) SARS–CoV–2/COVID–19.

(3) RSV.

(C) Confirmed, resident cases of a limited set of respiratory illnesses, including but not limited to the following:

(1) *Influenza.*

(2) SARS–CoV–2/COVID–19.

(3) RSV.

(D) Hospitalized residents with confirmed cases of a limited set of respiratory illnesses, including but not limited to the following:

(1) *Influenza.*

(2) SARS–CoV–2/COVID–19.

(3) RSV.

(2) *Public health emergency (PHE) reporting.* In the event that the Secretary has declared a national, State, or local PHE for an acute infectious illness or determined that a significant threat for one exists, the facility must also electronically report all of the following data elements in a standardized format and frequency specified by the Secretary:

(i) Relevant confirmed infections for staff.

(ii) Supply inventory shortages.

(iii) Staffing shortages.

(iv) Relevant medical countermeasures and therapeutic inventories, usage, or both.

PART 484—HOME HEALTH SERVICES

- 5. The authority citation for part 484 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

- 6. Section 484.105 is amended by adding paragraph (i) to read as follows:

§ 484.105 Condition of participation: Organization and administration of services.

* * * * *

(i) *HHA acceptance to service.* An HHA must do both of the following:

(1) Develop, implement, and maintain through an annual review, a patient acceptance to service policy that is applied consistently to each prospective patient referred for home health care, which addresses criteria related to the HHA's capacity to provide patient care, including, but not limited to, all of the following:

(i) Anticipated needs of the referred prospective patient.

(ii) Case load and case mix of the HHA.

(iii) Staffing levels of the HHA.

(iv) Skills and competencies of the HHA staff.

(2) Make available to the public accurate information regarding the services offered by the HHA and any limitations related to types of specialty services, service duration, or service frequency. The information is reviewed at least annually.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–14254 Filed 6–26–24; 4:15 pm]

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Part III

Department of the Treasury

Financial Crimes Enforcement Network

31 CFR Parts 1010, 1020, 1021, et al.

Anti-Money Laundering and Countering the Financing of Terrorism
Programs; Proposed Rule

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1010, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, and 1030

RIN 1506-AB52

Anti-Money Laundering and Countering the Financing of Terrorism Programs

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is proposing a rule to strengthen and modernize financial institutions' anti-money laundering and countering the financing of terrorism (AML/CFT) programs pursuant to a part of the Anti-Money Laundering Act of 2020 (AML Act). The proposed rule would require financial institutions to establish, implement, and maintain effective, risk-based, and reasonably designed AML/CFT programs with certain minimum components, including a mandatory risk assessment process. The proposed rule also would require financial institutions to review government-wide AML/CFT priorities and incorporate them, as appropriate, into risk-based programs, and would provide for certain technical changes to program requirements. This proposal also further articulates certain broader considerations for an effective and risk-based AML/CFT framework as envisioned by the AML Act. In addition to these changes, FinCEN is proposing regulatory amendments to promote clarity and consistency across FinCEN's program rules for different types of financial institutions.

DATES: Written comments may be submitted on or before September 3, 2024.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2024-0013.

- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2024-0013.

Please submit comments by one method only.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Scope

The proposed rule would amend FinCEN's regulations that prescribe the minimum requirements for AML/CFT programs for financial institutions (known as "program rules").¹ For the purposes of the program rules, "financial institutions" include: banks; casinos and card clubs (casinos); money services businesses (MSBs); brokers or dealers in securities (broker-dealers); mutual funds; insurance companies; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; operators of credit card systems; loan or finance companies; and housing government sponsored enterprises.²

II. Background

A. The Bank Secrecy Act

Enacted in 1970 and amended several times since, the Currency and Foreign Transactions Reporting Act, generally referred to as the Bank Secrecy Act (BSA),³ is designed to combat money laundering, the financing of terrorism, and other illicit finance activity risks (collectively, ML/TF). To fulfill the purposes of the BSA, Congress has authorized the Secretary of the Treasury

¹ The program rules are located at 31 CFR 1020.210 (banks), 1021.210 (casinos and card clubs), 1022.210 (money services businesses), 1023.210 (brokers or dealers in securities, or broker-dealers), 1024.210 (mutual funds), 1025.210 (insurance companies), 1026.210 (futures commission merchants and introducing brokers in commodities), 1027.210 (dealers in precious metals, precious stones, or jewels), 1028.210 (operators of credit card systems), 1029.210 (loan or finance companies), and 1030.210 (housing government sponsored enterprises).

² See 31 CFR 1010.100(t) and (ff) for a list of financial institutions defined by FinCEN with AML/CFT program requirements. On February 15, 2024, FinCEN proposed certain Bank Secrecy Act (BSA) requirements for investment advisers that, among other things, would add investment advisers in the definition of "financial institution" under the BSA and impose BSA program, reporting, and recordkeeping requirements. The proposed rule for certain investment advisers does not generally reflect proposals contained in this document and instead reflects current program requirements for financial institutions engaged in activity that is similar to, related to, or a substitute for activities of investment advisers. See Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers, 89 FR 12108 (Feb. 15, 2024), available at <https://www.federalregister.gov/documents/2024/02/15/2024-02854/financial-crimes-enforcement-network-anti-money-laundering-countering-the-financing-of-terrorism>.

³ Certain parts of the Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the BSA. These statutes are codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1960, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311-5314 and 5316-5336 and notes thereto.

(Secretary), among other things, to administer the BSA and require financial institutions to keep records and file reports that, among other purposes, "are highly useful in criminal, tax, or regulatory investigations, risk assessments, or proceedings," or in the conduct of "intelligence or counterintelligence activities, including analysis, to protect against terrorism."⁴ The Secretary has delegated the authority to implement, administer, and enforce compliance with the BSA and its associated regulations to the Director of FinCEN (Director).⁵ Through the exercise of this delegated authority, FinCEN is authorized to require each financial institution to establish an AML program to ensure compliance with the BSA and guard against ML/TF.⁶

Since its original enactment, Congress has expanded the BSA to address other aspects of AML/CFT compliance. In 1992, the Annunzio-Wylie Anti-Money Laundering Act⁷ gave the Secretary authority to require financial institutions, as defined in the BSA regulations, to "carry out" AML programs and to prescribe minimum standards for such programs, including: "(A) the development of internal policies, procedures, and controls, (B) the designation of a compliance officer, (C) an ongoing employee training program, and (D) an independent audit function to test programs."⁸ Later, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) further amended the BSA, reinforcing the framework established earlier by the Annunzio-Wylie Anti-Money Laundering Act, to require, among other things, customer identification program requirements and the expansion of AML program rules to cover certain other industries (e.g., credit unions and futures commission merchants).⁹ The USA PATRIOT Act also made it mandatory for financial institutions to maintain AML programs that meet minimum prescribed standards.¹⁰ Over

⁴ 31 U.S.C. 5311(1).

⁵ Treasury Order 180-01 (Jan. 14, 2020), Paragraph 3, available at <https://home.treasury.gov/about/general-information/orders-and-directives/treasury-order-180-01>.

⁶ 31 U.S.C. 5318(a)(2), (h)(1), and (h)(2).

⁷ Section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Public Law 102-550, 106 Stat. 3672 (Oct. 28, 1992).

⁸ 31 U.S.C. 5318(h)(1), as added by section 1517(b) of the Annunzio-Wylie Anti-Money Laundering Act, Public Law 102-550 (Oct. 28, 1992).

⁹ 31 U.S.C. 5312(a)(2)(E) and 31 U.S.C. 5312(c), as added by section 321 of the USA PATRIOT Act, Public Law 107-56, 115 Stat. 272 (Oct. 26, 2001).

¹⁰ 31 U.S.C. 5318(h), as added by section 352 of the USA PATRIOT Act (Pub. L. 107-56).

time, FinCEN incorporated these standards and implemented additional requirements for certain financial institutions, such as customer due diligence (CDD) requirements, into the program rules.¹¹ Finally, the BSA was further amended by the AML Act and codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311–5314 and 5316–5336 and notes thereto.

B. The AML Act

On January 1, 2021, Congress enacted the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (FY21 NDAA), of which the AML Act was a component.¹² Congress noted in its Joint Explanatory Statement (JES) of the Committee of Conference accompanying the FY21 NDAA that: “the current [AML/CFT] regulatory framework is an amalgamation of statutes and regulations that are grounded in the [BSA], which the Congress enacted in 1970. This decades-old regime, which has not seen comprehensive reform and modernization since its inception, is generally built on individual reporting mechanisms (*i.e.*, currency transaction reports (CTRs) and suspicious activity reports (SARs)) and contemplates aging, decades-old technology, rather than the current, sophisticated AML compliance systems now managed by most financial institutions.”¹³ Congress further stated that the AML Act “comprehensively update[s] the BSA for the first time in decades and provide[s] for the establishment of a coherent set of risk-based priorities.”¹⁴ Among other objectives, Congress intended for the AML Act to require “more routine and systemic coordination, communication, and feedback among financial institutions, regulators, and law enforcement to identify suspicious financial activities, better focusing bank resources to the AML task, which will increase the likelihood for better law enforcement outcomes.”¹⁵ The AML Act also notes in section 6002 that one

of its purposes is “to encourage technological innovation and the adoption of new technology by financial institutions to more effectively counter money laundering and the financing of terrorism.”¹⁶

With respect to financial institutions’ AML/CFT programs, section 6101(b) of the AML Act makes several changes to the BSA’s AML program requirements.

First, section 6101(b) amends the BSA at 31 U.S.C. 5318(h)(2)(B) with the following, “[i]n prescribing the minimum standards for [AML/CFT programs], and in supervising and examining compliance with those standards, the Secretary of the Treasury, and the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (12 U.S.C. 6809)) shall take into account” certain factors, which are further described in Section III.A.

Second, section 6101(b) requires the Secretary, in consultation with the Attorney General, appropriate Federal functional regulators, relevant State financial regulators, and relevant national security agencies, to establish and make public government-wide anti-money laundering and countering the financing of terrorism priorities (AML/CFT Priorities) and, in consultation with the Federal functional regulators and relevant State financial regulators, to promulgate regulations, as appropriate, to incorporate those priorities into revised program rules. FinCEN issued the AML/CFT Priorities on June 30, 2021.¹⁷ Further, section 6101(b) requires that the incorporation of the AML/CFT Priorities, as appropriate, into risk-based AML/CFT programs must be included as a measure on which financial institutions are supervised and examined for compliance with those obligations.

Third, section 6101(b) expands the BSA’s program rule requirement to

include a reference to CFT in addition to AML.

Fourth, section 6101(b) provides that the duty to establish, maintain, and enforce an AML/CFT program shall remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to, oversight and supervision by, the Secretary and the appropriate Federal functional regulator.

As described in more detail below, in proposing this rule, FinCEN has taken into account the factors specified in section 6101(b), and the proposed rule would implement the new statutory requirements.¹⁸

C. FinCEN’s Effectiveness Advance Notice of Proposed Rulemaking (ANPRM)

Prior to the enactment of the AML Act, FinCEN published an ANPRM seeking public comment on potential regulatory amendments to increase the effectiveness of the current program rules (Effectiveness ANPRM).¹⁹ The Effectiveness ANPRM sought public comment on a number of issues, including whether FinCEN should define an “effective and reasonably designed”²⁰ AML program as one that: (1) “identifies, assesses, and reasonably mitigates the risks resulting from illicit financ[e] activity—including terrorist financing, money laundering, and other related financial crimes—consistent with both the institution’s risk profile and the risks communicated by relevant government authorities as national AML priorities;”²¹ (2) “assures and monitors compliance with the recordkeeping and reporting requirements of the BSA;”²² and (3) “provides information with a high degree of usefulness to government authorities consistent with both the financial institution’s risk assessment and the risks communicated by relevant government authorities as national AML priorities.”²³ The Effectiveness ANPRM signaled FinCEN’s intention, even prior to the AML Act, for AML/CFT programs to provide financial institutions greater flexibility in the allocation of resources and greater alignment of priorities across industry and government, resulting in the enhanced effectiveness and efficiency of AML/CFT programs.²⁴

¹⁶ AML Act, section 6002(3) (Purposes).

¹⁷ See AML/CFT Priorities (June 30, 2021), available at <https://www.fincen.gov/news/news-releases/fincen-issues-first-national-aml-cft-priorities-and-accompanying-statements>. As required by 31 U.S.C. 5318(h)(4)(C), the AML/CFT Priorities are consistent with Treasury’s National Strategy for Combating Terrorist and Other Illicit Financing (May 16, 2024), available at <https://home.treasury.gov/news/press-releases/jy2346>. The AML/CFT Priorities are supported by Treasury’s National Risk Assessments on Money Laundering, Terrorist Financing, and Proliferation Financing (Feb. 7, 2024), available at <https://home.treasury.gov/news/press-releases/jy2080>. As also required by 31 U.S.C. 5318(h)(4)(B), the Secretary, in consultation with the Attorney General, Federal functional regulators, relevant State financial regulators, and relevant national security agencies, must update the AML/CFT Priorities not less frequently than once every four years.

¹¹ See Customer Due Diligence Requirements for Financial Institutions, 81 FR 29398 (May 11, 2016).

¹² Public Law 116–283 (Jan. 1, 2021).

¹³ H.R. Rep. No. 6395 (2020) at pp. 731–732 (Joint Explanatory Statement of the Committee of Conference), available at <https://docs.house.gov/billssthisweek/20201207/116hrpt617-Joint-ExplanatoryStatement.pdf>.

¹⁴ *Id.*

¹⁵ *Id.* See also Government Accountability Office (GAO) report, “Anti-Money Laundering: Better Information Needed on Effectiveness of Federal Efforts” (Feb. 2024), available at <https://www.gao.gov/products/gao-24-106301>, for further description of outcomes of illicit finance investigations by Federal law enforcement agencies.

¹⁸ 31 U.S.C. 5318(h)(2)(B).

¹⁹ Anti-Money Laundering Program Effectiveness, 85 FR 58023 (Sept. 17, 2020), available at <https://www.federalregister.gov/documents/2020/09/17/2020-20527/anti-money-laundering-program-effectiveness>.

²⁰ *Id.* at 58026.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 58023.

Additionally, the Effectiveness ANPRM sought comment on whether FinCEN should amend its regulations to explicitly require financial institutions to implement risk assessment processes and whether FinCEN should publish AML priorities that financial institutions would incorporate into their risk assessments.²⁵ Congress enacted the AML Act shortly after FinCEN received comments on the Effectiveness ANPRM, and as a result, many of the Effectiveness ANPRM's proposals have been superseded by statutory amendments.

FinCEN received 111 comments in response to the Effectiveness ANPRM during the 60-day comment period. While responses to specific questions and proposals varied, many commenters generally supported the goals of the Effectiveness ANPRM. There was broad agreement that the rulemaking was an important opportunity to modernize AML programs in order to manage ML/TF risks more effectively and efficiently. Commenters requested that FinCEN avoid amending its regulations in a manner that would increase overall AML compliance costs.

Some comments covered specific topics that would later be addressed in section 6101 of the AML Act and that are related to the proposed rule. For example, many commenters supported the Effectiveness ANPRM's concepts of "effective" and "reasonably designed" AML programs. However, some commenters requested additional information or action from FinCEN, noting that prioritizing and allocating resources can be challenging if there is regulatory ambiguity or unclear or inconsistent examiner expectations. Other commenters recommended that any requirements for effective and reasonably designed programs be tailored based on a financial institution's size, activities, or other characteristics.

Commenters also offered a variety of views on the Effectiveness ANPRM's risk assessment proposal, with some commenters noting that conducting a risk assessment is standard industry practice. However, a common concern was that a regulation requiring a risk assessment would be too prescriptive, rather than allowing for an appropriate level of flexibility. Many commenters also advocated for the flexibility to assess risks in a manner tailored to the financial institution's size, activities, or other characteristics.

Finally, commenters expressed widespread concern about added burden on financial institutions,

especially burden related to updating AML programs to incorporate national AML priorities. Even though many commenters generally supported the publication of national AML priorities, multiple commenters emphasized the difficulties financial institutions would face if they had to update their AML programs too frequently. Several commenters also requested that FinCEN provide more information on how financial institutions would be required to incorporate the national AML priorities into their AML programs.

D. Other Prior Work

FinCEN has also gained information and experience relevant to the proposed rule through: (1) the recommendations from the AML Effectiveness (AMLE) working group of the Bank Secrecy Act Advisory Group (BSAAG);²⁶ (2) other work related to the AML Act; and (3) work related to the Corporate Transparency Act (CTA).²⁷ In preparing the proposed rule, FinCEN consulted with the Department of Justice, relevant Departmental offices and operating bureaus of the Department of the Treasury (Treasury), Federal functional regulators, relevant State financial regulators, and relevant national security agencies.²⁸

²⁶ The BSAAG was established by the Annunzio-Wylie Anti-Money Laundering Act. The BSAAG consists of representatives from Federal agencies and interested persons and financial institutions subject to the regulatory requirements of the BSA. The BSAAG is the means by which the Treasury receives advice on the reporting requirements of the BSA and informs private sector representatives on how the information they provide is used.

²⁷ The CTA is Title LXIV of the FY21 NDAA. Division F of the FY21 NDAA is the AML Act, which includes the CTA. Section 6403 of the CTA, among other things, amends the BSA by adding a new section 5336, Beneficial Ownership Information Reporting Requirements, to subchapter II of Chapter 53 of Title 31, United States Code.

²⁸ With this proposed rulemaking, FinCEN consulted with the Federal functional regulators and relevant State financial regulators as required under AML Act, section 6101(b). Additionally, as noted in the "Interagency Statement on the Issuance of the AML/CFT National Priorities," (June 30, 2021), available at <https://www.fincen.gov/news/news-releases/fincen-issues-first-national-amlcft-priorities-and-accompanying-statements>, "although not required by the AML Act, the [Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC), collectively, the "Agencies,"] plan to revise their BSA regulations, as necessary, to address how the AML/CFT Priorities will be incorporated into banks' BSA requirements." To promote consistency and clarity, FinCEN consulted with the Agencies, and other Federal functional regulators, including the Federal Housing Finance Agency (FHFA), the Commodity Futures Trading Commission (CFTC), the Internal Revenue Service (IRS), and the staff of the Securities and Exchange Commission (SEC). FinCEN also consulted with relevant Departmental offices and operating bureaus of the United States Department of the Treasury, including, among

III. Overview of the Proposed Rule

The AML Act provides FinCEN with an opportunity to reevaluate the requirements of AML/CFT programs at financial institutions as part of the broader initiative to "strengthen, modernize, and improve" the U.S. AML/CFT regime.²⁹ Among other objectives, the proposed rule seeks to promote effectiveness, efficiency, innovation, and flexibility with respect to AML/CFT programs; support the establishment, implementation, and maintenance of risk-based AML/CFT programs; and strengthen the cooperation between financial institutions and the government. FinCEN, in consultation with the appropriate Federal functional regulators, intends for these updates to: (1) reinforce the risk-based approach for AML/CFT programs; (2) make AML/CFT programs more dynamic and responsive to evolving ML/TF risks; (3) ultimately render AML/CFT programs more effective in achieving the purposes of the BSA;³⁰ and (4) reinforce the focus of AML/CFT programs toward a more risk-based, innovative, and outcomes-oriented approach to combating illicit finance activity risks and safeguarding national security, as opposed to public perceptions that such programs are focused on mere technical compliance with the requirements of the BSA.

The proposed rule would also establish a new statement, explained further in the section-by-section analysis, describing the purpose of the AML/CFT program requirement, which is to ensure that a financial institution implements³¹ an effective, risk-based, and reasonably designed AML/CFT program to identify, manage, and mitigate illicit finance activity risks that: complies with the BSA and the requirements and prohibitions of FinCEN's implementing regulations; focuses attention and resources in a manner consistent with the risk profile of the financial institution; may include consideration and evaluation of

others, the Office of Terrorism and Financial Intelligence (TFI), the Office of Domestic Finance, the Office of Terrorist Financing and Financial Crimes (TFFC), and the Office of Foreign Assets Control (OFAC), and other government stakeholders such as State financial regulators, the Department of Justice (DOJ), and other relevant law enforcement and national security agencies.

²⁹ See *supra* note 13.

³⁰ 31 U.S.C. 5311.

³¹ Consistent with its long-standing and authoritative interpretation, FinCEN continues to interpret the term "implement" throughout the proposed rule to mean not only to develop and create an "effective, risk-based, and reasonably designed" AML/CFT program, but also to effectuate that program and ensure that it is followed in practice.

²⁵ *Id.* at 58028.

innovative approaches to meet its AML/CFT compliance obligations; provides highly useful reports or records to relevant government authorities; protects the financial system of the United States from criminal abuse; and safeguards the national security of the United States, including by preventing the flow of illicit funds in the financial system. Additionally, as discussed further below, the proposed rule would amend the program rule for financial institutions to incorporate the AML/CFT Priorities into a new mandatory risk assessment process as part of effective, risk-based, and reasonably designed AML/CFT programs.

A. Factors That FinCEN Considered Pursuant to Section 6101(b)(2)(B) of the AML Act

Effective, risk-based, and reasonably designed AML/CFT programs are critical for protecting national security and the integrity of the U.S. financial system. As described in section 6101(b)(2)(B)(ii) of the AML Act, effective AML/CFT programs safeguard national security and generate significant public benefits by preventing the flow of illicit funds in the financial system and by assisting law enforcement and national security agencies with the identification and prosecution of persons attempting to launder money and undertake other illicit activity through the financial system.³² Likewise, section 6101(b)(2)(B)(ii) of the AML Act provides that AML/CFT programs should be “reasonably designed to assure and monitor compliance” with the BSA and its implementing regulations and be risk-based.³³ As described in more detail in section IV of this supplementary information section, the proposed rule advances these objectives by explicitly requiring financial institutions to have “effective, risk-based, and reasonably designed” AML/CFT programs and by describing the minimum components for an AML/CFT program to be effective, risk-based, and reasonably designed. By including “effective, risk-based, and reasonably designed” as an explicit regulatory requirement, FinCEN intends to provide clarity that AML/CFT programs must be effective, risk-based, and reasonably designed in order to promote and ultimately yield useful outcomes that support the purposes of the BSA.³⁴

FinCEN and the Agencies have previously encouraged financial institutions to adopt risk-based AML/

CFT programs,³⁵ but the proposed rule would codify this expectation into the program rules as described above and explicitly require financial institutions to develop a risk assessment process that would serve as the basis for the financial institution’s risk-based AML/CFT program. The risk assessment process would need to identify, evaluate, and document the financial institution’s risks, including consideration of: (1) the AML/CFT Priorities, as appropriate; (2) the ML/TF risks of the financial institution, based on its business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and (3) reports filed by financial institutions pursuant to 31 CFR chapter X. As described in more detail in section IV of this supplementary information section, the proposed rule also includes a provision that financial institutions update their risk assessment, using the process proposed in this rule, on a periodic basis, including, at a minimum, when there are material changes to their ML/TF risk profiles.

FinCEN intends for a financial institution’s risk assessment process to promote programs that are appropriately risk-based and tailored to the AML/CFT Priorities and the financial institution’s risk profile. Under the proposed rule, financial institutions would be required to integrate the results of their risk assessment process into their risk-based internal policies, procedures, and controls. This requirement would also enable financial institutions to focus their attention and resources in a manner consistent with the risk profile of the financial institution that takes into account higher-risk and lower-risk customers and activities. The proposed rule also includes a requirement for financial institutions to incorporate the reports filed with FinCEN pursuant to this chapter into their risk assessment process. This internal feedback mechanism would ensure that financial institutions are considering their BSA filings as part of the ongoing risk assessment process, which would better enable financial institutions to manage their ML/TF risks. The specifics of a financial institution’s particular risk assessment process should be

determined by each institution based on its own customers and business activities; as stated in section 6101(b) of the AML Act, risk-based programs generally should ensure that financial institutions direct more attention and resources to higher-risk customers and activities. FinCEN anticipates that in doing so, the proposed rule would promote a more risk-based and more effective AML/CFT regime.

FinCEN recognizes that financial institutions are committing substantial resources and funds for a public benefit, notably, to fulfill the purposes of the BSA and support law enforcement and national security efforts.³⁶ The AML Act requires the Secretary and Federal functional regulators, in establishing minimum standards for AML/CFT programs, to consider that financial institutions are spending private compliance funds for a public and private benefit, including protecting the U.S. financial system from illicit finance activity risks.³⁷ Through this proposed rule, FinCEN seeks to ensure that private compliance funds are focused in a manner consistent with the risk profile of the financial institution, generate highly useful reports and information to relevant government authorities in countering money laundering and the financing of terrorism, and safeguard the national security of the United States, including by preventing the flow of illicit funds in the financial system. As discussed in the next section, the AML Act requires the Secretary to implement a number of provisions to enhance BSA reporting, such as reviewing, streamlining, and assessing BSA recordkeeping and reporting thresholds and filing processes, that would act in concert with the proposed rule to promote a more risk-based and more effective AML/CFT regime.³⁸

³⁶ FinCEN notes a June 2019 Senate Banking hearing in which testimony by a financial institution representative summarized the results of an empirical study of 19 U.S. financial institutions and their spending of private compliance funds towards AML/CFT compliance. Specifically, the study revealed 19 U.S. financial institutions employing 14,000 individuals, spending approximately \$2.4 billion and utilizing as many as over 20 different information technology systems per financial institution. See Senate Committee on Banking, Housing, and Urban Affairs full hearing entitled, “Outside Perspectives on the Collection of Beneficial Ownership Information” (June 20, 2019), available at <https://www.banking.senate.gov/hearings/outside-perspectives-on-the-collection-of-beneficial-ownership-information>. See also *infra* section VII.4.a.

³⁷ AML Act, section 6101(b) (Establishment of national exam and supervision priorities—Anti-money laundering programs).

³⁸ AML Act, sections 6204 (Streamlining requirements for currency transaction reports and suspicious activity reports) and 6205 (Currency

Continued

³² 31 U.S.C. 5318(h)(2)(B)(iii).

³³ 31 U.S.C. 5318(h)(2)(B)(iv).

³⁴ 31 U.S.C. 5311(2); 31 U.S.C. 5318(h)(2).

³⁵ See Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Supervision (July 22, 2019), available at <https://www.fincen.gov/news/news-releases/joint-statement-risk-focused-bank-secrecy-actanti-money-laundering-supervision>, in which FinCEN and the Agencies remind financial institutions that compliance programs are to be risk-based in order to enable directing of attention and resources commensurate with their risk profile.

The proposed rule is also consistent with the BSA's requirement for the Secretary to consider the extension of financial services to the underbanked and facilitating financial transactions while preventing criminal persons from abusing formal or informal financial services networks.³⁹ Through its emphasis on risk-based AML/CFT programs, the proposed rule seeks to provide financial institutions with the flexibility to serve a broad range of customers and avoid one-size-fits-all approaches to customer risk that can lead to financial institutions declining to provide financial services to entire categories of customers. For instance, declining to provide services to entire categories of customers without appropriately considering the risks posed by the particular customer. Such excluded customers may include correspondent banks, money services businesses, non-profits serving high-risk jurisdictions, individuals from specific ethnic or religious communities, or justice-impacted individuals. Specifically, by basing an AML/CFT program on a risk assessment process that takes into account a financial institution's specific business activities, the proposed rule seeks to provide financial institutions with the flexibility to extend financial services based on their individual evaluation of their ML/TF risks and their ability to manage their customer relationships, among other considerations. This flexibility would allow such financial institutions to respond to changing circumstances and evolving risk profiles, including through the use of emerging technologies that support financial transactions across communities and borders, which may enable financial institutions to reach underbanked individuals, maintain financial relationships with underserved communities, and facilitate financial activities that serve international humanitarian and development needs. An effective, risk-based, and reasonably designed AML/CFT program may enable, as a general matter, the extension of financial services to appropriately identified and risk-managed non-profit organizations, money services businesses, correspondent banks, and other individuals or companies that have been historically subject to barriers in accessing or maintaining financial services.

The proposed rule would also provide financial institutions with the ability to

transaction reports and suspicious activity reports thresholds review).

³⁹ 31 U.S.C. 5318(h)(2)(B)(ii).

modernize their AML/CFT programs to responsibly innovate while still managing ML/TF risks, as the financial services industry continues to innovate over time. Consistent with previous guidance,⁴⁰ FinCEN encourages financial institutions to manage customer relationships on a case-by-case basis, and the proposed rule would provide financial institutions with the framework to make such evaluations and provide financial services accordingly.

FinCEN views the proposed rule as an important component and furtherance of Treasury's April 2023 de-risking strategy report to support financial inclusion, as appropriate. The report identified a range of customer types and their challenges related to obtaining and maintaining bank accounts and other financial services.⁴¹ The report discusses implications of de-risking, which can increase the use of financial services that exist outside of that regulated financial system and thereby undermine the purposes of the BSA by making it harder to detect and deter illicit finance. Moreover, de-risking hampers the flow of development funding and humanitarian relief causing economic damage in strategically important regions. The report highlights the importance of effective, risk-based, and reasonably designed AML/CFT programs in promoting financial inclusion and mitigating the effects of de-risking to national security and law enforcement interests.

B. Proposed Rule and Broader Implementation of the AML Act

The proposed rule, by modernizing program rules toward a more effective and risk-based AML/CFT regime, would be a key step in the broader implementation of the AML Act. Other key steps that FinCEN is pursuing include promoting feedback loops among FinCEN, law enforcement, financial institutions, and financial regulators, as appropriate; creating more opportunities for public-private partnerships; developing and implementing examiner training; reinforcing support for risk-focused supervision and examination; encouraging innovation and pilot programs; and continuing to promote a culture of compliance.

⁴⁰ See Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence (July 6, 2022), available at <https://www.fincen.gov/news/news-releases/joint-statement-risk-based-approach-assessing-customer-relationships-and>.

⁴¹ See the U.S. Department of the Treasury 2023 De-Risking Strategy, available at <https://home.treasury.gov/news/press-releases/jy1438>.

In particular, FinCEN intends for the proposed rule to work in concert with other sections of the AML Act. Briefly, as described further below, these include sections 6103 (FinCEN Exchange), 6107 (Establishment of FinCEN Domestic Liaisons), and 6206 (Sharing of threat pattern and trend information), in which the AML/CFT Priorities and their incorporation into risk-based programs are to feed into "critical feedback loops."⁴²

Various feedback loops currently exist between the U.S. government and financial institutions, though prior to the AML Act, they have been limited in scope, frequency, and the type of feedback shared.⁴³ For example, law enforcement provides feedback in terms of subjects of law enforcement interest through the section 314(a) process to over 34,000 points of contact at over 14,000 financial institutions.⁴⁴ As another example of a current feedback loop, law enforcement may issue subpoenas to financial institutions on subjects of law enforcement investigations that may be based upon or referenced in the BSA reports filed by financial institutions. Other examples of current feedback loops include government efforts through which law enforcement establishes public-private partnerships with financial institutions to target financial networks and third-party facilitators that launder illicit proceeds, such as the U.S. Immigration and Customs Enforcement–Homeland Security Investigations' "Project Cornerstone" and the Federal Bureau of Investigation's (FBI's) Money Mule Initiative.⁴⁵

Additionally, Treasury, FinCEN, financial regulators, and law enforcement provide informal feedback to financial institutions on broader

⁴² See *supra* note 13.

⁴³ In addition to the more recent programs from the AML Act, FinCEN has had several information sharing initiatives in place prior to this legislation. These initiatives include the BSAAG, the Law Enforcement Awards Program, the section 314 Program, FinCEN Advisories, and FinCEN Exchange. See Kenneth A. Blanco, Testimony for the Record, U.S. Senate Committee on Banking, Housing and Urban Affairs (Nov. 29, 2018), available at <https://www.fincen.gov/news/testimony/testimony-fincen-director-kenneth-blanco-senate-committee-banking-housing-and-urban>.

⁴⁴ See FinCEN's 314(a) Fact Sheet, Financial Crimes Enforcement Network, U.S. Department of the Treasury, available at <https://www.fincen.gov/sites/default/files/shared/314factsheet.pdf>.

⁴⁵ See Cornerstone, U.S. Immigration and Customs Enforcement–Homeland Security Investigations, U.S. Department of Homeland Security, available at <https://www.ice.gov/outreach-programs/cornerstone>; see Money Mule Initiative, U.S. Department of Justice, available at <https://www.justice.gov/civil/consumer-protection-branch/money-mule-initiative>.

trends in AML/CFT threat patterns and best practices to address those risks, such as through direct communications to financial institutions, remarks at conferences, and participation in industry events. FinCEN and other components of Treasury's Office of Terrorism and Financial Intelligence also use BSA data to provide feedback to both domestic and international financial institutions through the issuance of guidance, advisories, trend analyses, enforcement actions, risk assessments, and remarks by Treasury officials. Recognizing the key role of this feedback in establishing, implementing, and maintaining effective, risk-based, and reasonably designed AML/CFT programs, FinCEN will continue building on existing efforts to provide feedback to financial institutions.

In addition to the required publication of the AML/CFT Priorities, several provisions of the AML Act advance this goal of feedback loops, including: (1) the recognition of the FinCEN Exchange as a public-private information sharing partnership among law enforcement agencies, national security agencies, financial institutions, and FinCEN;⁴⁶ (2) the requirement for FinCEN to establish an Office of Domestic Liaison with liaisons located across the country to facilitate information sharing between financial institutions and FinCEN, as well as their Federal functional regulators, State bank supervisors, and State credit union supervisors;⁴⁷ (3) the establishment of a supervisory team of relevant Federal agencies, private sector experts, and other stakeholders to examine strategies to increase cooperation between the public and private sectors;⁴⁸ (4) the requirement for FinCEN to periodically publish threat pattern and trend information regarding the preparation, use, and value of SARs filed by financial institutions;⁴⁹ (5) the requirement that the Attorney General provide an annual report on the use of BSA data derived from financial institutions' BSA reporting;⁵⁰ and (6) the requirement that FinCEN, to the extent practicable, provide particularized feedback to financial institutions on their SARs.⁵¹

Taken together, these provisions of the AML Act and the proposed rule provide a starting point for more robust feedback loops among FinCEN, law enforcement, financial regulators, and financial institutions. A more robust feedback loop would further enable financial institutions to generate highly useful BSA reports that can assist relevant government authorities with investigations,⁵² prosecutions, and convictions; identification of trends and typologies of illicit finance activity; national risk assessments; enforcement; anti-corruption efforts; the validation of information received from other sources; and engagement with foreign jurisdictions and other stakeholders. Financial institutions recognize the general utility of BSA reports in maintaining the integrity of the U.S. financial system, but have requested particularized feedback.⁵³ Notably, section 6203 of the AML Act requires FinCEN, in coordination with financial regulators and the Department of Justice, to solicit feedback, to the extent practicable, from financial institutions on SARs and discuss general trends in suspicious activity observed by FinCEN.⁵⁴

The AML Act also recognizes the importance of supervision and examination of financial institutions in the success of AML/CFT programs and

supervisors on feedback solicited under this AML Act provision.

⁵² Internal Revenue Service Criminal Investigation (IRS-CI) noted how the agency uses BSA data in its financial crime investigations. More than 83 percent of IRS-CI criminal investigations over a three-year period that were recommended for prosecution had a primary subject with a related BSA filing. Convictions in those cases resulted in average prison sentences of 38 months, \$7.7 billion in asset seizures, \$256 million in restitution, and \$225 million in asset forfeitures. See IRS press release, "BSA data serves key role in investigating financial crimes" (Jan. 18, 2023), available at <https://www.irs.gov/compliance/criminal-investigation/bsa-data-serves-key-role-in-investigating-financial-crimes>. Also, FinCEN reported in its FinCEN Year in Review for Fiscal Year 2022 that BSA filings from Fiscal Year 2020 through Fiscal Year 2022 supported a significant portion of investigations by the FBI. Specifically, BSA filings supported 46 percent of active investigations of transnational criminal organizations, 39.6 percent of active Organized Crime Drug Enforcement Task Force investigations with FBI participations, 36.3 percent of active complex financial crimes investigations, 27.5 percent of active public corruption investigations, 20.6 percent of active international terrorism investigations, and 15.7 percent of active FBI investigations. See "FinCEN Year in Review for FY 2022," available at <https://www.fincen.gov/news/news-releases/fincen-fiscal-year-2022-review>.

⁵³ See GAO report, "Bank Secrecy Act: Agencies and Financial Institutions Share Information but Metrics and Feedback Not Regularly Provided" (Aug. 2019), available at <https://www.gao.gov/assets/gao-19-582.pdf>.

⁵⁴ AML Act, section 6203(a) (Law enforcement feedback on suspicious activity reports).

the integrity of the U.S. financial system more broadly.⁵⁵ To further those objectives with the proposed rule, and to supplement existing training delivered with the Agencies, FinCEN intends to consult with law enforcement stakeholders across Federal, State, Tribal, and local law enforcement agencies, and the Federal Financial Institutions Examination Council (FFIEC), to establish annual Federal examiner training as required under 31 U.S.C. 5334, as added by section 6307 of the AML Act.⁵⁶ FinCEN intends for this training to achieve the following statutory purposes: train examiners on potential risk profiles and warning signs examiners may encounter during examinations; provide financial crime patterns and trends; address de-risking and the effects of de-risking on the provision of financial services; and reinforce the purpose of AML/CFT programs, and why such programs are necessary for regulatory, supervisory, law enforcement, and national security agencies, and the risks those programs seek to mitigate. Additionally, this training can help examiners evaluate whether AML/CFT programs are appropriately tailored to address ML/TF risk rather than focused on perceived check-the-box exercises. Examiner training on the high-level context for the purpose of AML/CFT programs would also focus on the overall effectiveness of AML/CFT programs and consider the highly useful quality of their outputs, in addition to a focus on compliance with the BSA and FinCEN's implementing regulations.

In addition to examiner training, FinCEN intends to increase the frequency and level of engagement with financial regulators. The AML Act requires FinCEN's Domestic Liaison to solicit and receive feedback from "financial institutions and examiners of Federal functional regulators regarding their examinations under the Bank Secrecy Act and communicate that feedback to FinCEN, the Federal functional regulators, and State bank supervisors."⁵⁷ Moreover, in coordination with financial regulators, FinCEN's Domestic Liaison, among other things, is expected to perform outreach to financial institutions,

⁵⁵ For example, the AML Act notes that the incorporation of the AML/CFT Priorities, as appropriate, into the risk-based programs established by financial institutions shall be included as a measure on which a financial institution is supervised and examined for compliance with the BSA. 31 U.S.C. 5318(h)(4)(E).

⁵⁶ 31 U.S.C. 5334, as added by AML Act, section 6307 (Training for examiners on anti-money laundering and countering the financing of terrorism).

⁵⁷ 31 U.S.C. 310(g)(5)(A)(iii).

⁴⁶ 31 U.S.C. 310(d).

⁴⁷ 31 U.S.C. 310(f) and (g).

⁴⁸ AML Act, section 6214 (Encouraging information sharing and public-private partnerships).

⁴⁹ AML Act, section 6206 (Sharing of threat pattern and trend information).

⁵⁰ AML Act, section 6201 (Annual [Attorney General] reporting requirements).

⁵¹ AML Act, section 6203 (Law enforcement feedback on suspicious activity reports). FinCEN intends to coordinate with the Department of Justice, appropriate Federal functional regulators, State bank supervisors, or State credit union

receive feedback from financial institutions and examiners regarding their examinations, act as a liaison between financial institutions and financial regulators with respect to information sharing matters involving the BSA and regulations promulgated thereunder, and promote coordination and consistency of supervisory guidance from FinCEN and financial regulators.⁵⁸ The AML Act requires FinCEN, to the extent practicable, to solicit feedback from a variety of financial institutions “to review the [SARs] filed by those financial institutions and discuss trends in suspicious activity observed by FinCEN,” and provide such feedback to financial regulators during the regularly scheduled examination.⁵⁹ FinCEN views these measures as complements to the proposed rule in terms of effective supervision and examination.

One of the AML Act’s purposes is to “encourage technological innovation and the adoption of new technology by financial institutions to more effectively counter money laundering and the financing of terrorism.”⁶⁰ FinCEN recognizes that automated transaction monitoring systems have the potential to generate a significant number of alerts that are not necessarily indicative of suspicious activity.⁶¹ While FinCEN and the Agencies have previously encouraged responsible innovation,⁶² a number of sections in the AML Act “provide[] for dedicated staff and multiple fora to support public-private collaboration and advancement” of innovation.⁶³ For example, section 6207 of the AML Act establishes a BSAAG subcommittee on innovation and technology to “encourage and support technological innovation in the areas of [AML/CFT] and proliferation; and to reduce [] obstacles to innovation that may arise from existing regulations, guidance, and examination practices related to [BSA] compliance.”⁶⁴ Also,

section 6209 requires FinCEN to pursue a testing methods rulemaking that considers innovative approaches such as machine learning or other enhanced data analytics processes for systems used by financial institutions for BSA compliance, that may include automated transaction monitoring systems.

This proposed rule encourages innovation to detect and disrupt illicit finance activity, and better direct private compliance funds and resources in a more risk-based manner. The proposed rule’s specific inclusion of encouraging innovation is consistent with FinCEN’s prior and ongoing commitment to work with financial institutions to explore innovative ways for financial institutions to increase AML/CFT program efficiency and effectiveness. For example, even prior to the AML Act, as part of FinCEN’s broader focus on innovation, FinCEN has considered applications for exceptive relief from financial institutions seeking to automate certain BSA reporting processes. FinCEN and the Agencies also issued a statement in December 2018 that encouraged banks and credit unions to take innovative approaches to combat money laundering, terrorist financing, and other illicit finance threats.⁶⁵ In light of the AML Act’s purpose to encourage technological innovation and adoption of new technology by financial institutions, FinCEN will continue to coordinate, as appropriate, with Federal functional regulators to evaluate similar applications in the future and seek to act as a resource for financial institutions interested in pursuing pilot programs or otherwise introducing innovative approaches to their AML/CFT programs.

The effectiveness of implementation of the proposed rule by financial institutions would, to a large extent, depend on the strength of their cultures of compliance. As described in FinCEN’s 2014 advisory,⁶⁶ a culture of

compliance involves demonstrable support and visible commitment from leadership, the dedication of adequate resources to AML/CFT compliance, effective information sharing throughout the financial institution, qualified and independent testing, and understanding across leadership and staff levels of the importance of BSA reports. Together with appropriate resourcing,⁶⁷ adherence to these principles is critical to ensuring that AML/CFT programs are not mere “paper programs” that do not, in practice, affect financial institutions’ decision-making with respect to illicit finance activity risks. A strong culture of compliance not only depends on an independent compliance function that is sufficiently empowered by senior management with effective oversight by the board of directors, or by an equivalent governing body, but also on the prioritization of AML/CFT compliance throughout the organization. This prioritization allows AML/CFT compliance to be appropriately embedded into financial institutions’ commercial decision-making—particularly with respect to the products and services offered by the financial institution—rather than a mere checklist item to be considered after-the-fact. A financial institution’s culture of compliance can support implementation of each of the required program components as well as the effectiveness of the program as a whole.

FinCEN is committed to working with financial institutions, financial regulators, law enforcement, and other stakeholders to provide financial institutions with the regulatory framework and guidance necessary to establish, implement, and maintain effective, risk-based, and reasonably designed AML/CFT programs. Additionally, FinCEN views this rulemaking and related work pursuant to the AML Act to be part of a long-term broader initiative to modernize and strengthen AML/CFT programs; communication with financial institutions; and risk-focused examination and supervision for compliance with FinCEN’s program

shared with compliance staff to further BSA/AML efforts; (4) the institution devotes adequate resources to its compliance function; (5) the compliance program is effective by, among other things, ensuring that it is tested by an independent and competent party; and (6) its leadership and staff understand the purpose of its BSA/AML efforts and how its reporting is used.”), available at <https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2014-a007>. As part of a broader effort to modernize the AML/CFT regime, alongside this proposed rule, FinCEN is reviewing this and other guidance and welcomes views on whether and what type of additional guidance is needed.

⁶⁷ See *infra* section IV.D.3 for further discussion on appropriate resourcing.

⁵⁸ 31 U.S.C. 310(g)(5)(A)(i), (iii) and (iv).

⁵⁹ See *supra* note 54.

⁶⁰ See *supra* note 16.

⁶¹ See *supra* note 36. In 2017, 17 U.S. financial institutions “collectively reviewed approximately 16 million AML alerts and filed over 633,000 SARs, with an implied aggregate conversion rate to SARs of 4 percent.”

⁶² The AML Act builds on prior interagency efforts encouraging financial institutions to take innovative approaches to combating money laundering, terrorist financing, and other illicit finance activity threats. See Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), available at <https://www.fincen.gov/news/news-releases/treasury-fincen-and-federal-banking-agencies-issue-joint-statement-encouraging>.

⁶³ See *supra* note 13 at 732–733.

⁶⁴ AML Act, section 6207 (Subcommittee of Innovation and Technology) requires the establishment of a Subcommittee on Innovation and

Technology within BSAAG to “encourage and support technological innovation in the area of anti-money laundering and countering the financing of terrorism and proliferation; and to reduce [] obstacles to innovation that may arise from existing regulations, guidance, and examination practices related to compliance of financial institutions with the Bank Secrecy Act.”

⁶⁵ See *supra* note 62.

⁶⁶ See FIN–2014–A007, *Advisory to U.S. Financial Institutions on Promoting a Culture of Compliance* (Aug. 11, 2014) (“A financial institution can strengthen its BSA/AML compliance culture by ensuring that (1) its leadership actively supports and understands compliance efforts; (2) efforts to manage and mitigate BSA/AML deficiencies and risks are not compromised by revenue interests; (3) relevant information from the various departments within the organization is

rules and other applicable BSA requirements.

IV. Section-by-Section Analysis

The section-by-section analysis describes the specific proposed changes to the program rules. Section IV.A. describes the proposed introductory statement on the purpose of an AML/CFT program requirement. Section IV.B. addresses the proposed incorporation of CFT into the program rules. Section IV.C. discusses the proposed definition of “AML/CFT Priorities.” Section IV.D. describes the proposed components of an effective, risk-based, and reasonably designed AML/CFT program, including: (1) a risk assessment process; (2) internal policies, procedures, and controls; (3) a qualified AML/CFT officer; (4) ongoing employee training; (5) periodic independent testing; and (6) other components, depending on the type of financial institution. Section IV.E. describes the proposed requirement that financial institutions have documented AML/CFT programs that will be made available to relevant agencies. Section IV.F. covers the proposed AML/CFT board approval and oversight requirements.

A. Statement on the Purpose of an AML/CFT Program Requirement

FinCEN is proposing a statement at 31 CFR 1010.210(a) describing the purpose of an AML/CFT program requirement, which is to ensure a financial institution implements an effective, risk-based, and reasonably designed AML/CFT program to identify, manage, and mitigate illicit finance activity risks that: complies with the BSA and the requirements and prohibitions of FinCEN’s implementing regulations; focuses attention and resources in a manner consistent with the risk profile of the financial institution; may include consideration and evaluation of innovative approaches to meet its AML/CFT compliance obligations; provides highly useful reports or records to relevant government authorities; protects the financial system of the United States from criminal abuse; and safeguards the national security of the United States, including by preventing the flow of illicit funds in the financial system.

While the proposed statement of purpose is new, it is not intended to establish new obligations separate and apart from the specific requirements set out for each type of financial institution in the proposed rule or impose additional costs or burdens beyond those requirements. Rather, this language is intended to summarize the overarching goals of requiring financial institutions to have effective, risk-based,

and reasonably designed AML/CFT programs, which are reflected in the specific requirements for each financial institution. These goals include financial institutions appropriately identifying, managing, and mitigating risk in order to prevent the flow of illicit funds in the financial system in a risk-based manner as well as providing highly useful reports to relevant government authorities, or in cases where financial institutions may not have reporting obligations under the BSA, highly useful records to relevant government authorities. The proposed statement of purpose is also intended to encourage responsible innovation and reinforce the risk-based nature of these programs so financial institutions can focus their resources and attention in a manner consistent with their risk profiles, taking into account higher-risk and lower-risk customers and activities.

B. Inserting the Term “CFT” Into the Program Rules

Section 6101(b)(2)(A) of the AML Act amends 31 U.S.C. 5318(h)(1) to reference “countering the financing of terrorism”⁶⁸ in addition to “anti-money laundering” when describing the requirement to establish an AML/CFT program. FinCEN proposes to update 31 CFR chapter X to reflect this new statutory language, including by adding a new definition of “AML/CFT program” at proposed 31 CFR 1010.100(ooo). The new definition would define “AML/CFT program” as a system of internal policies, procedures, and controls meant to ensure ongoing compliance with the BSA and the requirements and prohibitions of 31 CFR chapter X and to prevent an institution from being used for money laundering, terrorist financing, or other illicit finance activity risks. The proposed rule also would replace existing parallel terms in 31 CFR chapter X such as “anti-money laundering program” and “compliance program” with the defined term “AML/CFT program.”

The inclusion of “CFT” in the program rules is not anticipated to establish new obligations, insofar as the USA PATRIOT Act already requires financial institutions to account for risks related to terrorist financing. Accordingly, FinCEN expects that any changes to existing AML/CFT programs from these amendments described in

this subsection are likely to be technical in nature.

C. Defining “AML/CFT Priorities”

As required under 31 U.S.C. 5318(h)(4)(A), FinCEN published the AML/CFT Priorities on June 30, 2021. The AML/CFT Priorities focus on threats to the U.S. financial system and national security and are related to predicate crimes associated with money laundering, terrorist financing, and other illicit finance activity risks. FinCEN is proposing to add a new definition of “AML/CFT Priorities” at 31 CFR 1010.100(nnn) to support the promulgation of regulations pursuant to 31 U.S.C. 5318(h)(4)(D). According to the proposed definition, “AML/CFT Priorities” would refer to the most recent statement of AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4). In consultation with the Attorney General, Federal functional regulators, and relevant national security agencies, FinCEN is required to update the AML/CFT Priorities not less frequently than once every four years.⁶⁹

The proposed definition of “AML/CFT Priorities” would not itself establish new obligations, and FinCEN does not anticipate that inclusion of this definition alone would impose additional costs or burdens on financial institutions. However, as described in the next section, the proposed rule’s requirements for incorporating AML/CFT Priorities as part of a risk assessment process would introduce new obligations.

D. “Effective, Risk-Based, and Reasonably Designed” AML/CFT Program Requirements

The AML Act notes that effective AML/CFT programs safeguard national security and generate significant public benefits by preventing the flow of illicit funds in the financial system and assisting law enforcement and national security agencies with the identification and prosecution of persons attempting to launder money and undertake other illicit finance activity through the financial system.⁷⁰ The AML Act further provides that AML/CFT programs are to be “risk-based” and “reasonably designed to assure and monitor compliance with the requirements of [the BSA].”⁷¹ FinCEN is proposing to

⁶⁹ 31 U.S.C. 5318(h)(4)(B).

⁷⁰ 31 U.S.C. 5318(h)(2)(B)(iii).

⁷¹ 31 U.S.C. 5318(h)(2)(B)(iv). See also 31 U.S.C. 5311(2) (stating that one of the purposes of the BSA is to “prevent the laundering of money and the financing of terrorism through the establishment by financial institutions of reasonably designed risk-based programs to combat money laundering and the financing of terrorism”).

⁶⁸ Countering the financing of terrorism (CFT) includes laws, rules, regulations, or other measures intended to detect and disrupt the solicitation, collection, or provision of funds to support terrorist acts or terrorist organizations, or other violent extremist groups.

implement these statutory provisions by explicitly requiring financial institutions to establish, implement, and maintain effective, risk-based, and reasonably designed AML/CFT programs. For AML/CFT programs to be risk-based requires financial institutions to identify and understand their exposure to ML/TF risks through a risk assessment process, explained further below, that considers internal measures of risk based upon an evaluation of business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations. Financial institutions would integrate the results of their risk assessment process into risk-based internal policies, procedures, and controls in order to manage and mitigate their ML/TF risks, provide useful information to government authorities, and further the purposes of the BSA.

Most of FinCEN's program rules already specify that financial institutions are required to have a reasonably designed program; reasonably designed "policies, procedures, and internal controls;" or both.⁷² For example, existing program rules, at various points, require that financial institutions' *AML programs* must be "reasonably designed" and that financial institutions' "*policies, procedures, and internal controls*" must be "reasonably designed" (emphasis added).⁷³ Because of the key importance of this concept in the AML Act, the proposed rule standardizes the requirement for a "reasonably designed" AML/CFT program for all financial institutions regulated under the BSA

and subject to program rule requirements to avoid any potential perceived differences between the two previous articulations of the requirement. However, explicitly requiring AML/CFT programs to be effective and risk-based will be a change for some financial institutions.⁷⁴

An effective, risk-based, and reasonably designed AML/CFT program would focus attention and resources in a manner consistent with the financial institution's risk profile that takes into account higher-risk and lower-risk customers and activities, and would need to include, at a minimum: (1) a risk assessment process that serves as the basis for the financial institution's AML/CFT program; (2) reasonable management and mitigation of risks through internal policies, procedures, and controls; (3) a qualified AML/CFT officer; (4) an ongoing employee training program; (5) independent, periodic testing conducted by qualified personnel of the financial institution or by a qualified outside party; and (6) other requirements depending on the type of financial institution, such as CDD requirements.

Congress made clear that risk-based AML/CFT programs are to "better focus[] [financial institutions'] resources to the AML task."⁷⁵ The proposed rule intends to achieve these objectives for AML/CFT programs that can identify, manage, and mitigate illicit finance activity risks, but also direct attention and resources in a risk-based manner.⁷⁶ This approach to attention and resources is reflected at the overall program requirement for an effective, risk-based, and reasonably designed AML/CFT program that is to influence every program component. While financial institutions may have previously applied a risk-based approach to risk management and resource allocation, the proposed rule establishes a relationship between the two concepts, and proposes a risk assessment process as a requirement to structure and rationalize a reasonable

approach. This process would facilitate a financial institution's ability to identify illicit finance activity risks and suspected illicit activity so a financial institution can better focus attention and resources, assess customer risks in a more sophisticated and refined manner, and provide more targeted, highly useful BSA reports to law enforcement and national security agencies. Moreover, the proposed rule contemplates any risk-based considerations of a financial institution's attention and resources to be subject to an appropriate governance framework that is documented or otherwise supported.

As explained in the subsections that follow, the ways in which financial institutions approach the implementation of these components can be crucial to whether the resulting AML/CFT program is effective, risk-based, and reasonably designed. Each of the components does not function in isolation; instead, each component complements the other components, and together form the basis for an AML/CFT program that is effective, risk-based, and reasonably designed in its entirety. This holistic approach extends to the collection and use of information to identify and mitigate ML/TF risks, the consideration of resources, and the ongoing calibration of the AML/CFT program consistent with financial institution's risk assessment process.

Additionally, as described in the proposed rule, financial institutions would have to establish, implement, and maintain effective, risk-based, and reasonably designed AML/CFT programs. The current program rules use inconsistent terms across financial institutions to describe establishing, implementing, and maintaining AML/CFT programs. For example, some program rules use "develop" instead of "implement."⁷⁷ FinCEN is therefore proposing to apply the same set of terms to all the program rules to improve consistency. FinCEN does not intend for these changes to substantively change current regulatory expectations.

1. Risk Assessment Process

The majority of the proposed AML/CFT program components are substantially similar to the existing statutory and regulatory requirements for financial institutions. However, FinCEN is proposing certain additions

⁷² See applicable program rules located at 31 CFR 1021.210(b)(1) (casinos), 1022.210(a) and (d)(1) (MSBs), 1023.210(b)(1) (broker-dealers), 1024.210(a) and (b)(1) (mutual funds), 1025.210(a) (insurance companies), 1026.210(b)(1) (futures commission merchants and introducing brokers in commodities), 1027.210(a)(1) (dealers in precious metals, precious stones or jewels), 1028.210(a) (operators of credit card systems), 1029.210(a) (loan or finance companies), and 1030.210(a) (housing government sponsored enterprises) (each requiring that a financial institution's AML program as a whole; its implementation of internal policies, procedures, and controls as part of the AML/CFT program; or both must be "reasonably designed"). In addition, banks with a Federal functional regulator must have compliance programs that are "reasonably designed to assure and monitor [for compliance with the BSA]" pursuant to 12 U.S.C. 1818(s), 12 U.S.C. 1786(q)(1), and the Agencies' regulations at 12 CFR 21.21(c)(1), 208.63(b), 326.8(b)(1), and 748.2(b)(1). There is currently no such requirement for banks lacking a Federal functional regulator.

⁷³ Compare 31 CFR 1022.210(a) (MSBs) with 31 CFR 1023.210(b)(1) (brokers or dealers in securities). See section IV that further describes existing FinCEN regulations requiring "reasonably designed" compliance programs, internal controls, or both.

⁷⁴ There are references to effective programs in the program rules for financial institutions located at 31 CFR 1022.210 (MSBs); 1025.210 (insurance companies); 1027.210 (dealers in precious metals, precious stones, or jewels); 1028.210 (operators of credit card system); 1028.210 (loan or finance companies); and 1030.210 (housing government sponsored enterprises). Program rules explicitly requiring effective programs will be a change for the program rules for financial institutions located at 31 CFR 1020.210 (banks); 1021.210 (casinos and card clubs); 1023.210 (brokers or dealers in securities); 1024.210 (mutual funds); and 1026.210 (futures commission merchants and introducing brokers in commodities).

⁷⁵ See *supra* note 13.

⁷⁶ See 31 U.S.C. 5318(h)(2)(B)(iv)(II), as added by AML Act section 6101(b)(2)(B)(ii).

⁷⁷ For example, compare 31 CFR 1021.210(b)(1) (casinos) with 31 CFR 1023.210(a) (broker-dealers) in which casino program rules require each casino to "develop and implement" a written program whereas broker-dealer program rules require the broker-dealer to "implement[] and maintain[]" a written program.

and modifications to modernize and strengthen financial institutions' AML/CFT programs. In particular, FinCEN is proposing a risk assessment process requirement that would facilitate a financial institution's understanding of its specific illicit finance activity risks and enable more dynamic identification, prioritization, and management of those ML/TF risks. Under the proposed rule, a risk assessment process would need to include consideration of the AML/CFT Priorities, among other items, to account for emerging and evolving ML/TF risks. The results of the risk assessment process would then inform the other components of a financial institution's AML/CFT program.

Under the proposed rule, to have an effective, risk-based, and reasonably designed AML/CFT Program, a financial institution would need to establish a risk assessment process to serve as the basis of the AML/CFT program. While many financial institutions identify, evaluate, and document their ML/TF risks through a risk assessment process that may be conducted on a periodic basis, and may be documented as a point-in-time exercise, FinCEN intends for financial institutions to utilize a dynamic and recurrent risk assessment process not only to assess and understand a financial institution's ML/TF risks, but also to reasonably manage and mitigate those risks. Specifically, the proposed rule would require the financial institution's risk assessment process to identify, evaluate, and document the financial institution's ML/TF risks, including consideration of: (1) the AML/CFT Priorities issued by FinCEN, as appropriate; (2) the ML/TF risks of the financial institution based on the financial institution's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and (3) reports filed by the financial institution pursuant to 31 CFR chapter X. Financial institutions would have to review and update their risk assessment using the process proposed in this rule on a periodic basis, including, at a minimum, and particularly when there are material changes to the financial institution's ML/TF risks.

The inclusion of a risk assessment process that serves as the basis of a risk-based AML/CFT program is supported by several provisions of the AML Act, including section 6101(b), which states that AML/CFT programs should be risk-based,⁷⁸ and section 6202, which contemplates a risk assessment process by requiring SARs to "be guided by the compliance program of a covered

financial institution with respect to the Bank Secrecy Act, including the risk assessment processes of the covered institution that should include a consideration of [the AML/CFT Priorities]."⁷⁹ Additionally, FinCEN, other domestic supervisory agencies,⁸⁰ and international bodies such as the Financial Action Task Force (FATF)⁸¹ have noted that a risk assessment process can be a critical tool for a reasonably designed AML/CFT program because financial institutions need to understand the risks they face to effectively mitigate those risks and achieve compliance with the BSA or foreign AML/CFT laws. While a risk assessment process is common practice among many financial institutions, the requirement that financial institutions have a risk assessment process when developing their AML/CFT programs is not stated in a uniform manner for financial institutions under the current program rules.⁸² Therefore, the

⁷⁹ 31 U.S.C. 5318(g)(5)(C).

⁸⁰ See *supra* note 35. The Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision in 2019 (joint supervision statement) underscored the importance of a risk-based approach to AML/CFT compliance. The joint supervision statement noted that a risk-based AML/CFT program enables a bank to allocate compliance resources commensurate with its risk. The joint supervision statement further emphasized that a well-developed risk assessment assists examiners in understanding a bank's risk profile and evaluating the adequacy of its AML/CFT program.

⁸¹ The FATF, of which the United States is a founding member, is an international, inter-governmental task force whose purpose is the development and promotion of international AML/CFT standards and the effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, the financing of proliferation, and other related threats to the integrity of the international financial system. The FATF assesses over 200 jurisdictions against its minimum standards, known as FATF Recommendations. In its interpretive note to FATF Recommendation 1 on assessing risks and applying a risk-based approach, FATF noted that "[b]y adopting a risk-based approach, competent authorities [and] financial institutions . . . should be able to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified, and would enable them to make decisions on how to allocate their own resources in the most effective way." Available at <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>. Further, as detailed in FATF Recommendation 1 and in accompanying non-binding guidance, financial institutions and designated non-financial businesses and professions (DNFBPs) need not conduct a stand-alone proliferation financing (PF) risk assessment if existing processes (for example, within the framework of their existing targeted financial sanctions and/or compliance programs) can adequately identify proliferation financing risks and ensure mitigation measures are commensurate with those risks. The proposed rule would be consistent with FATF guidance on this topic.

⁸² The current program rules referring to some form of risk assessment are located at 31 CFR 1025.210(b)(1) (insurance companies); 31 CFR 1027.210(b) (dealers in precious metals, precious

proposed rule's addition of a risk assessment process to the program rules will be a new explicit regulatory requirement for some types of financial institutions, as described below.

Under some program rules, financial institutions—such as insurance companies and loan and finance companies—are explicitly required to "[i]ncorporate policies, procedures, and internal controls based upon . . . [an] assessment of the . . . risks associated with its products and services."⁸³ Under other program rules, financial institutions—such as casinos and MSBs—must develop either policies, procedures, and internal controls, or independent testing "commensurate with the risks" posed by their products.⁸⁴ Because a risk assessment process is a necessary predicate to developing risk-based internal policies, procedures, and controls for this proposed rule, FinCEN has determined this latter category of program rules to implicitly require risk assessment processes. The proposed rule's addition of a risk assessment process to the program rules will be a new, explicit regulatory requirement for some types of financial institutions, specifically banks, casinos, MSBs, broker-dealers, mutual funds, futures commission merchants, and introducing brokers in commodities.⁸⁵ Though many types of financial institutions have risk assessment processes despite the absence of a formal requirement, the proposed rule would put into regulation existing expectations and practices. Thus, the proposed rule standardizes the requirement for a risk assessment process across the different types of financial institutions subject to program rules.

For a financial institution that already has a risk assessment process as a matter of practice, the proposed rule may not be a change from its current practice.

stones, or jewels); 31 CFR 1028.210(b) (operators of credit card systems); 31 CFR 1029.210(b)(1) (loan or finance companies); and 31 CFR 1030.210(b)(1) (housing government sponsored enterprises). Note there is significant variation in the specific language in the regulations.

⁸³ See applicable program rules located at 31 CFR 1025.210 (insurance companies); 1029.210 (loan or finance companies).

⁸⁴ See applicable program rules located at 31 CFR 1021.210 (casinos and card clubs); 1022.210 (MSBs); 1025.210 (insurance companies); 1027.210 (dealers in precious metals, precious stones, or jewels); 1028.210 (operators of credit card system); 1029.210 (loan or finance companies); and 1030.210 (housing government sponsored enterprises).

⁸⁵ The current program rules without explicit risk assessment requirements are located at 31 CFR 1020.210 (banks); 1021.210 (casinos and card clubs); 1022.210 (MSBs); 1023.210 (broker-dealers); 1024.210 (mutual funds); and 1026.210 (futures commission merchants and introducing brokers in commodities).

⁷⁸ 31 U.S.C. 5318(h)(2)(B)(iv)(II).

However, the proposed rule would explicitly require the risk assessment process to incorporate the AML/CFT Priorities, as appropriate, the ML/TF risks of the financial institution, and a review of the reports filed by the financial institution pursuant to 31 CFR chapter X. In general, financial institutions that are not explicitly required to have a risk assessment process as part of their current program rules would have new obligations under the proposed rule. Thus, the costs or burdens of implementation would be based on a financial institution's risk profile; however, the risk-based nature of the proposed rule is intended to enable a financial institution to better focus its attention and resources in a manner consistent with its risk profile, as discussed further in this section.

With respect to the implementation of an AML/CFT program that is based on a risk assessment process, each AML/CFT program would be different in practice because it would depend on the specific applicable activities and risk profile of a financial institution. Consequently, consistent with section 6101(b) of the AML Act, under the proposed rule, a financial institution would need to focus its attention and resources in a manner consistent with its risk profile, taking into account higher-risk and lower-risk customers and activities.⁸⁶ A financial institution's risk assessment process can provide valuable insight into how limited compliance resources and attention can be effectively and efficiently deployed to address identified risks, and to comply with the requirements of the BSA and promote outcomes for law enforcement and national security purposes. In addition, the inclusion of the AML/CFT Priorities into the risk assessment process can help financial institutions understand areas in which their efforts are more likely to support areas of national importance. Through this particular type of risk-based approach, a financial institution can further tailor its AML/CFT program so that it improves the ability to address current and emerging risks, responds to changes in risk profile, and maximizes the public and private benefits of its compliance efforts.

Finally, a financial institution would have flexibility in how it would document the results of the risk assessment process. As proposed, a financial institution would not be required to establish a single, consolidated risk assessment document solely to comply with the proposed rule. Rather, various methods and approaches

could be used to ensure that a financial institution is appropriately documenting its risks.⁸⁷ Regardless of the approach, the information obtained through the risk assessment process should be sufficient to enable the financial institution to establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

a. Factors for Consideration

i. The AML/CFT Priorities

The AML/CFT Priorities set out the priorities for the AML/CFT policy as required by the AML Act. Section 6101 of the AML Act provides that the review and incorporation by a financial institution of the AML/CFT Priorities, as appropriate, into a financial institution's AML/CFT program must be included as a measure on which a financial institution is supervised and examined for compliance with the financial institution's obligations under the BSA and other AML/CFT laws and regulations.⁸⁸ FinCEN is implementing this statutory requirement by proposing that financial institutions review and consider the AML/CFT Priorities as part of their risk assessment process. The inclusion of the AML/CFT Priorities in the risk assessment process is meant to ensure that financial institutions understand their exposure to risks in areas that are of particular importance at a national level, which may help financial institutions develop more effective, risk-based, and reasonably designed AML/CFT programs. The proposed rule notes that under 31 U.S.C. 5318(h)(4)(B), FinCEN is required to update the AML/CFT Priorities not less frequently than once every four years. Whenever the AML/CFT Priorities are updated, financial institutions would not be required to incorporate prior versions of the AML/CFT Priorities. Financial institutions would only be required to incorporate the most up-to-date set of AML/CFT

Priorities into their risk-based AML/CFT programs.

FinCEN anticipates that some financial institutions may ultimately determine that their business models and risk profiles have limited exposure to some of the threats addressed in the AML/CFT Priorities, but instead have greater exposure to other ML/TF risks. Additionally, some financial institutions' risk assessment processes may determine that their AML/CFT programs already sufficiently take into account some, or all, of the AML/CFT Priorities. In any case, any changes in costs or burdens would be based on the results of a risk assessment process and its impact on the AML/CFT program, including how to review and, as appropriate, take into account the AML/CFT Priorities before making these determinations.

ii. Identifying and Evaluating ML/TF and Other Illicit Finance Activity Risks

FinCEN does not intend for a financial institution to exclusively focus their risk assessment process on the AML/CFT Priorities. Rather, the AML/CFT Priorities are among many factors that financial institutions should consider when assessing their institution-specific risks. In addition to the AML/CFT Priorities, the proposed rule would require a risk assessment process to also incorporate consideration of other illicit finance activity risks of the financial institution based on its business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations.⁸⁹ These factors are generally consistent with current risk assessment processes of some financial institutions.

Although FinCEN believes that some financial institutions are generally familiar with these concepts, "distribution channels" may be a new term for some financial institutions. FinCEN considers "distribution channels" to refer to the methods and tools through which a financial institution opens accounts and provides products or services, including, for example, through the use of remote or other non-face-to-face means.

The term "intermediaries" may also be a new term for some financial institutions. Since financial institutions have a variety of financial relationships beyond customers and counterparties, such as service providers, vendors, or third parties, that may pose ML/TF risks

⁸⁷ In sections 2.1 and 2.2 of FATF Guidance for a Risk-Based Supervision (Mar. 2021), available at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-supervision.html>, FATF described some approaches for financial institutions to consider in assessing their ML/TF risks. One common approach involves assessing inherent risks, mitigation efforts, and residual risks. According to FATF, inherent risks refer to "ML/TF risks intrinsic to a [financial institution's] business activities before any AML/CFT controls are applied"; mitigation efforts refer to "measures in place within [a financial institution] to mitigate ML/TF risks"; and residual risks refer to "ML/TF risks that remain after AML/CFT systems and controls are applied to address inherent risks."

⁸⁸ 31 U.S.C. 5318(h)(4)(E).

⁸⁹ The program rule for dealers in precious metals, precious stones, or jewels (31 CFR 1027.210) will retain the current risk assessment factors that are tailored to the practices at these financial institutions.

⁸⁶ 31 U.S.C. 5318(h)(2)(B)(iv)(II).

to the U.S. financial system, the proposed rule includes the term “intermediary” so that financial institutions could consider customer and non-customer relationships into their risk assessment process. FinCEN considers “intermediaries” to include broadly other types of financial relationships beyond customer relationships that allow financial activities by, at, or through a financial institution. An intermediary can include, but not be limited to, a financial institution’s brokers, agents, and suppliers that facilitate the introduction or processing of financial transactions, financial products and services, and customer-related financial activities.⁹⁰

Thus, for certain financial institutions, such as banks, an “intermediary” can include an intermediary financial institution, which is a receiving financial institution other than the transmitter’s financial institution or the recipient’s financial institution, in relation to certain funds transfer requirements applicable to banks.⁹¹ FinCEN notes that an intermediary may have its own independent obligations to comply with the BSA if it meets the definition of a financial institution subject to the BSA and FinCEN’s implementing regulations.⁹² FinCEN welcomes comments on whether additional clarity is warranted and whether any other factors should be considered.

Aside from the AML/CFT Priorities, financial institutions also may find other sources of information to be relevant to their risk assessment processes. These may include information obtained from other financial institutions, such as emerging

risks and typologies identified through section 314(b) information sharing⁹³ or payment transactions that other financial institutions returned or flagged due to ML/TF risks that the originating financial institution may not have identified. It also could include internal information that a financial institution maintains. Such internal information may include, for example, the locations from which its customers access the financial institution’s product, services, and distribution channels, such as the customer internet protocol (IP) addresses or device logins and related geolocation information.

Additional sources of information that may be useful to consider can include feedback from FinCEN, law enforcement, and financial regulators, as applicable. For example, if a financial institution receives feedback from law enforcement about a report it has filed or potential risks at the financial institution, the financial institution should incorporate that information into its risk assessment process. Similarly, financial institutions may consider information identified from responding to section 314(a) requests. Additionally, a financial institution may find that there are FinCEN advisories or guidance that are particularly relevant to the financial institution’s business activities. In that case, it would be appropriate for the financial institution to consider the information contained in relevant advisories or guidance when evaluating its ML/TF risks.

Regardless of the source of information, the risk assessment process contemplates steps to ensure the information on which they are relying to assess risks is reasonably current, complete, and accurate. Similarly, the analysis performed in connection with the risk assessment process—particularly any analysis that relies on the exercise of discretion or judgment—should be documented, and subject to oversight and governance. A financial institution’s taking of such steps would support the conclusion that the financial institution’s AML/CFT program is effective, risk based, and reasonably designed to determine the financial institution’s ML/TF risk profile. A financial institution designing its required internal policies, procedures, and controls to reasonably manage and mitigate ML/TF risks would further support such a conclusion. FinCEN welcomes comments on whether additional clarity is needed

regarding the timeliness, completeness, and accuracy of the information, analysis, and documentation required as part of the risk assessment process.

iii. Review of Reports Filed Pursuant to 31 CFR Chapter X

As the risk assessment process would serve as the foundation for a risk-based AML/CFT program, the proposed rule would require financial institutions to review and evaluate reports filed by the institution with FinCEN pursuant to 31 CFR chapter X, such as SARs, CTRs, Forms 8300, and other relevant BSA reports. These reports can assist financial institutions in identifying known or detected threat patterns or trends to incorporate into their risk assessments and apply to their risk-based policies, procedures and internal controls. This type of review may also help financial institutions minimize a type of SAR filing characterized by some industry sources as a “defensive filing” and focus on generating highly useful reports to relevant government authorities. Financial institutions not subject to SAR requirements should consider the suspicious activity that their AML/CFT programs have identified.⁹⁴ Since the detection of suspicious activities and filing of reports are among the most important cornerstones of AML/CFT programs, many financial institutions may already incorporate a review of SARs and CTRs into their AML/CFT programs, as SARs and CTRs can provide a more complete understanding of a customer’s or the financial institution’s overall ML/TF risk profile and signal areas of emerging risk as their products and services evolve and change.

FinCEN would welcome comments on the benefits and burdens that this added provision to review reports filed by the financial institution may present.

b. Frequency

The proposed rule would require financial institutions to update their risk assessment using the process proposed in the rule, on a periodic basis, including, at a minimum, when there are material changes to the financial institution’s risk profile. Generally, a periodic basis would be frequent enough to ensure the risk assessment process accurately reflects the ML/TF risks of the financial institution and any changes to the AML/CFT Priorities, or events that change the financial

⁹⁰ While intermediaries in the financial institution context generally are not tied to customer relationships, in other contexts, FinCEN has also referred to an “intermediary” as: “a customer that maintains an account for the primary benefit of others, such as the intermediary’s own underlying clients. For example, certain correspondent banking relationships may involve intermediation whereby the respondent bank of a correspondent bank acts on behalf of its own clients. Intermediation is also very common in the securities and derivatives industries. For example, a broker-dealer may establish omnibus accounts for a financial intermediary (such as an investment adviser) that, in turn, establishes sub-accounts for the intermediary’s clients, whose information may or may not be disclosed to the broker-dealer.” Customer Due Diligence Requirements for Financial Institutions, 79 FR 45151, 45160 (proposed Aug. 4, 2014).

⁹¹ See 31 CFR 1010.410 for funds transfer recordkeeping requirements concerning payment orders by banks. See 31 CFR 1010.410(f)(1)–(2) for certain funds transfer requirements applicable to a transmitter’s financial institution and intermediary financial institution.

⁹² See 31 CFR chapter X for financial institutions subject to applicable BSA requirements.

⁹³ See FinCEN’s 314(b), Financial Crimes Enforcement Network, U.S. Department of the Treasury, available at <https://www.fincen.gov/section-314b>.

⁹⁴ For example, certain types of financial institutions, such as operators of credit card systems, are not subject to the BSA requirement to file SARs. Should these financial institutions voluntarily file SARs, those reports should be reviewed as part of the risk assessment process.

institution's risk profile in light of those priorities.⁹⁵ This requirement includes updating the risk assessment using the process proposed in this rule in response to events or other circumstances that materially change the financial institution's risk profile. The proposed rule would not specify the frequency for when a financial institution is to update its risk assessment, but a financial institution may find advantages in articulating and defining a minimum risk-based schedule.

At a minimum, financial institutions would be required to have their risk assessment updated using the process proposed in this rule, when there are material changes in their products, services, distribution channels, customers, intermediaries, and geographic locations. For example, a financial institution might need to update its risk assessment using the process proposed in this rule, when new products, services, and customer types are introduced or existing products, services, and customer types undergo material changes, or the financial institution as a whole expands or contracts through mergers, acquisitions, sell-offs, dissolutions, and liquidations. Given the variety of financial institution types, risk profiles, and activities, some financial institutions may decide to maintain continuous approaches to their risk assessment, while other financial institutions may determine to employ a regularly scheduled point-in-time reviews of their risk assessment. However, regardless of the specific frequency of updating their risk assessment, effective, risk-based, and reasonably designed AML/CFT programs require financial institutions to reasonably incorporate current, complete, and accurate information responsive to ML/TF developments into their risk assessment process, and not simply maintain static risk assessments.

FinCEN welcomes comments on whether additional clarity is needed regarding the similarities and differences between a risk assessment process and a risk assessment, particularly with respect to the frequency and material changes warranting financial institutions to update their risk assessment using the process proposed in this rule.

⁹⁵ See *supra* note 17. As defined in the proposed rule, the AML/CFT Priorities refer to the most recent statement of AML/CFT National Priorities issued pursuant to 31 U.S.C. 5318(h)(4), which are required to be updated at least once every four years. Financial institutions would have to ensure that their risk assessment processes take into account changes to the AML/CFT Priorities as they become available.

2. Internal Policies, Procedures, and Controls

The proposed rule would require AML/CFT programs to “reasonably manage and mitigate [ML/TF] risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the [BSA]” and its implementing regulations. The BSA requires financial institutions to develop “internal policies, procedures, and controls” as part of their AML/CFT programs.⁹⁶ Consistent with this statutory obligation, FinCEN regulations already require financial institutions to have internal controls to ensure compliance, and the majority of the current program rules also refer to policies and procedures.⁹⁷ The proposed rule would update the requirements to apply more uniform language, consistent with the formulation of “internal policies, procedures, and controls” from 31 U.S.C. 5318(h)(1)(A), across financial institutions. The proposed rule would recognize the critical role that internal policies, procedures, and controls have in managing and mitigating risk, and would explicitly state that internal policies, procedures, and controls must be commensurate with a financial institution's risks.⁹⁸ Also, as discussed further below, the proposed rule would also explicitly provide that financial institutions may use innovative approaches to meet compliance obligations under the BSA.

The proposed rule would require financial institutions to reasonably manage and mitigate illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks. The level of sophistication of the internal policies, procedures, and controls should be commensurate with the size, structure, risk profile, and complexity of the financial institution. However, the proposed rule would not specifically set out the means to do so. Rather, the proposed rule would require financial institutions to reasonably manage and

mitigate risks using internal policies, procedures, and controls based on their institution-specific ML/TF risks using the required risk assessment process. An effective, risk-based, and reasonably designed AML/CFT program would incorporate the results of the risk assessment process through appropriate changes to internal policies, procedures, and controls to manage ML/TF risks. Some financial institutions may determine that their AML/CFT programs already have sufficient internal policies, procedures, and controls commensurate with their respective risks in light of FinCEN's existing regulations. In any case, while the proposed rule may not impose new obligations, any changes in the costs or burdens would be based on how the risk assessment process impacts the AML/CFT program.

Additionally, the proposed rule provides financial institutions with the regulatory flexibility to consider innovative approaches to comply with BSA requirements, including determining not only the total amount of resources, but also the nature of those resources. The proposed rule's inclusion of innovation reflects one of the AML Act's key purposes of “encourage[ing] technological innovation and the adoption of new technology by financial institutions to more effectively counter money laundering and financing of terrorism.”⁹⁹ Consistent with this purpose set out in the AML Act, FinCEN aims to encourage instances where a financial institution finds it beneficial to consider and evaluate technological innovation and, as warranted by the financial institution's risk profile, implement new technology or innovative approaches in combating financial crime. Additionally, a financial institution may find it beneficial to consider whether the AML/CFT program appropriately uses the financial institution's existing internal capabilities, technologies, product lines, and data. For example, if the financial institution's marketing or relationship management teams use internet or app-based data for commercial purposes, it would be reasonable for that financial institution's AML/CFT program to consider using similar technology or approaches in managing and mitigating the financial institution's ML/TF risks.

In addition to informing resource and innovation considerations, the risk assessment process must also support the ongoing implementation and maintenance of internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the

⁹⁶ 31 U.S.C. 5318(h)(1)(A).

⁹⁷ See applicable program rules located at 31 CFR 1022.210(d)(1) (MSBs), 1023.210(b)(1) (broker-dealers), 1024.210(b)(1) (mutual funds), 1025.210(b)(1) (insurance companies), 1026.210(b)(1) (futures commission merchants and introducing brokers in commodities), 1027.210(b)(1) (dealers in precious metals, precious stones, or jewels), 1028.210(b)(1) (operators of credit card systems), 1029.210(b)(1) (loan or finance companies), and 1030.210(b)(1) (housing government sponsored enterprises).

⁹⁸ Proposed 31 CFR 1028.210 would retain the existing elements of the internal policies, procedures, and controls that are specific to the operators of credit card systems.

⁹⁹ See *supra* note 16.

BSA and its implementing regulations. For example, as explained previously, the risk assessment process should include a review of reports filed pursuant to the BSA. A financial institution's ongoing and historical review of suspicious transactions that it has identified may help the financial institution determine whether new procedures or more targeted controls would identify certain suspicious activity more quickly or with greater precision. Such a review could improve the financial institution's ability to assess and identify ML/TF risks, generate highly useful reports, and focus attention and resources in a manner consistent with the risk profile of the financial institution that takes into account higher-risk and lower-risk customers and activities.

In light of proposed requirements to maintain an updated risk assessment using the process proposed in this rule, a financial institution may find a basis to update its internal policies, procedures, and controls, including based on the financial institution's review of BSA reports and underlying suspicious activities. For example, a financial institution may decide to incorporate typology or similar information into its internal policies, procedures, and controls after reviewing a suspicious transaction that was identified only after another financial institution had rejected or flagged it for AML/CFT-related reasons. Consistent with the risk-based approach to internal policies, procedures, and controls, a financial institution would update those controls, provided that the financial institution can ensure its internal policies, procedures, and controls continue to be commensurate with its risk profile. This risk-based approach to maintaining internal policies, procedures, and controls, as a program component, allows financial institutions to reasonably manage and mitigate AML/CFT risk.

3. AML/CFT Officer

The proposed rule would provide that an AML/CFT program must designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance with the requirements and prohibitions of the BSA and FinCEN's implementing regulations (hereinafter referred to as the AML/CFT officer, formerly referred to as the BSA officer). Consistent with 31 U.S.C. 5318(h)(1)(B), all financial institutions that are required to have an AML/CFT program must already have a designated AML/CFT officer, although there are slight variations in the specific language used in the program rules for

different types of financial institutions. The proposed rule provides technical changes to promote clarity and consistency across the program rules. Additionally, FinCEN is updating the reference from "BSA officer" to "AML/CFT officer" to formally reflect the CFT considerations for this role under section 6101 of the AML Act.¹⁰⁰ This change also is consistent with the updated terminology of AML/CFT program.

Inherent in the statutory requirement that a financial institution designate an AML/CFT officer as part of a program reasonably designed to achieve compliance with the BSA is the expectation that the designated individual is qualified to ensure and monitor compliance with the BSA and FinCEN's implementing regulations. Accordingly, for an AML/CFT program to be effective and reasonably designed to ensure and monitor compliance with the BSA, the compliance officer must be qualified. Whether an individual is sufficiently qualified as an AML/CFT officer will depend, in part, on the financial institution's ML/TF risk profile, as informed by the results of the risk assessment process. Among other criteria, a qualified AML/CFT officer would have the expertise and experience to adequately perform the duties of the position, including having sufficient knowledge and understanding of the financial institution as informed by the risk assessment process, U.S. AML/CFT laws and regulations, and how those laws and regulations apply to the financial institution and its activities.

In addition, the AML/CFT officer's position in the financial institution's organizational structure must enable the AML/CFT officer to effectively implement the financial institution's AML/CFT program. The actual title of the individual responsible for day-to-day AML/CFT compliance is not determinative, and the AML/CFT officer for these purposes need not be an "officer" of the financial institution. The individual's authority, independence, and access to resources within the financial institution, however, are critical. Importantly, an AML/CFT officer should have decision-making capability regarding the AML/CFT program and sufficient stature within the organization to ensure that the program meets the applicable

requirements of the BSA. The AML/CFT officer's access to resources may include the following: adequate compliance funds and staffing with the skills and expertise appropriate to the financial institution's risk profile, size, and complexity; an organizational structure that supports compliance and effectiveness; and sufficient technology and systems to support the timely identification, measurement, monitoring, reporting, and management of the financial institution's ML/TF and other illicit finance activity risks. An AML/CFT officer that has multiple additional job duties or conflicting responsibilities that adversely impact the officer's ability to effectively coordinate and monitor day-to-day AML/CFT compliance generally would not fulfill this requirement.

To promote consistency and reduce redundancy, the proposed rule would remove some examples of what it means to coordinate and monitor day-to-day compliance with AML/CFT requirements that are currently listed in the program rules for MSBs; insurance companies; dealers in precious metals, precious stones, or jewels; operators of credit card systems; loan or finance companies; and housing government sponsored enterprises.¹⁰¹ For example, those program rules currently provide that an AML/CFT officer is responsible for updating the financial institution's AML/CFT program and ensuring that employees are educated or trained in accordance with the financial institution's AML/CFT program training obligation. Although these responsibilities would no longer be listed in the rule text for those programs, they would reasonably be within the scope of responsibilities of an AML/CFT officer by virtue of the proposed rule's requirements for an effective, risk-based, and reasonably designed AML/CFT program.

Likewise, the proposed rule would remove redundant provisions in the current program rules for dealers in precious metals, precious stones, or jewels; operators of credit card systems; loan or finance companies; and housing government sponsored enterprises that require AML/CFT officers to ensure that the financial institution's AML/CFT program is implemented effectively.¹⁰²

¹⁰¹ See applicable program rules located at 31 CFR 1022.210(d)(2) (MSBs), 1025.210(b)(2) (insurance companies), 1027.210(b)(2) (dealers in precious metals, precious stones, or jewels), 1028.210(b)(2) (operators of credit card systems), 1029.210(b)(2) (loan or finance companies), and 1030.210(b)(2) (housing government sponsored enterprises).

¹⁰² See applicable program rules located at 31 CFR 1027.210(b)(2)(i) (dealers in precious metals,

¹⁰⁰ 31 U.S.C. 5318(h)(1), as amended by AML Act, section 6101(b)(2)(A) (Establishment of national exam and supervision priorities), which now references "countering the financing of terrorism" in addition to "anti-money laundering" when describing the requirement to establish an AML program.

Although the proposed rule would remove that specific language, the AML/CFT officer would nonetheless be required to ensure that the program is implemented effectively by virtue of the proposed rule's requirement that AML/CFT officers coordinate and monitor day-to-day compliance.

Similarly, the proposed rule would delete an unnecessary reference from current 31 CFR 1022.210(d)(2)(i) that provides that an MSB's AML/CFT officer must ensure that the MSB properly files reports, and creates and retains records, in accordance with the BSA. These activities are and would remain part of the AML/CFT officer's duty to monitor and coordinate day-to-day compliance, so it is not necessary to separately list them in the rule. This deletion and the removal of the other redundant references will ensure the program rules use consistent language across different types of financial institutions.

Therefore, these provisions of the proposed rule related to AML/CFT officers would not impose new obligations on financial institutions. Any changes in costs or burdens associated with this program component under the proposed rule would be based on how the risk assessment process impacts the AML/CFT program.

4. Training

The BSA requires AML/CFT programs to include an "ongoing employee training program."¹⁰³ This statutory requirement is reflected in the current program rules, which all contain a training requirement. The proposed rule would amend these requirements to provide that, to be effective, risk-based, and reasonably designed, an AML/CFT program would need to include an ongoing employee training program that is also risk-based. The training program would be focused on areas of risk as identified by the risk assessment process and whose periodicity of training would be dependent on a financial institution's risk profile.¹⁰⁴ FinCEN recognizes that financial

precious stones, or jewels), 1028.210(b)(2)(i) (operators of credit card systems), 1029.210(b)(2)(i) (loan or finance companies); and 1030.210(b)(2)(i) (housing government sponsored enterprises).

¹⁰³ 31 U.S.C. 5318(h)(1)(C).

¹⁰⁴ The current training requirements are at 31 CFR 1020.210(a)(2)(iv) and (b)(2)(iv) (banks), 1021.210(b)(2)(iii) (casinos), 1022.210(d)(3) (MSBs), 1023.210(b)(4) (broker-dealers), 1024.210(b)(4) (mutual funds), 1025.210(b)(3) (insurance companies), 1026.210(b)(4) (futures commission merchants and introducing brokers in commodities), 1027.210(b)(3) (dealers in precious metals, precious stones, or jewels), 1028.210(b)(3) (operators of credit card systems), 1029.210(b)(3) (loan or finance companies), and 1030.210(b)(3) (housing government sponsored enterprises).

institutions may have employees and non-employees who may have a variety of roles and responsibilities in relation to the AML/CFT program. The risk-based nature of an AML/CFT program provides flexibility for financial institutions to identify both employees and non-employees who must be trained on an ongoing basis. The proposed rules, however, would retain certain provisions addressing methods of training for insurance companies, loan or finance companies, and housing government sponsored enterprises that are specific to these types of financial institutions.¹⁰⁵

Although financial institutions are already required to have training as part of their AML/CFT programs, there is some variation in the specific text of the different program rules.¹⁰⁶ For example, the proposed rule conforms to the statutory formulation of "ongoing employee training" whereas the current rules are directed at appropriate persons or appropriate personnel. Other than to remain consistent with the BSA, FinCEN intends these changes to have no substantive impact on the training requirements. As another example, the current rules for casinos and MSBs specify that training must include the identification of unusual or suspicious transactions, which are topics that FinCEN would expect AML/CFT programs for all financial institutions to cover in training.¹⁰⁷ Likewise, the current rules for MSBs; dealers in precious metals, precious stones, or jewels; and operators of credit card systems include "education" in addition to training.¹⁰⁸ FinCEN does not view the distinction between "training" and "education" to be substantive and would expect training to include relevant education. The proposed rule

¹⁰⁵ See applicable program rules located at 31 CFR 1025.210(b)(3) (insurance companies), 1029.210(b)(3) (loan or finance companies), and 1030.210(b)(3) (housing government sponsored enterprises).

¹⁰⁶ See applicable program rules located at 31 CFR 1020.210(a)(2)(iv) and (b)(2)(iv) (banks), 1021.210(b)(2)(iii) (casinos), 1022.210(d)(3) (MSBs), 1023.210(b)(4) (broker-dealers), 1024.210(b)(4) (mutual funds), 1025.210(b)(3) (insurance companies), 1026.210(b)(4) (futures commission merchants and introducing brokers in commodities), 1027.210(b)(3) (dealers in precious metals, precious stones, or jewels), 1028.210(b)(3) (operators of credit card systems), 1029.210(b)(3) (loan or finance companies), and 1030.210(b)(3) (housing government sponsored enterprises).

¹⁰⁷ See applicable program rules located at 31 CFR 1021.210(b)(2)(iii) (casinos) and 1022.210(d)(3) (MSBs).

¹⁰⁸ See applicable program rules located at 31 CFR 1022.210(d)(3) (MSBs), 1027.210(b)(3) (dealers in precious metals, precious stones, or jewels), and 1028.210(b)(3) (operators of credit card systems).

would therefore remove these references to promote consistency.

Another variation in the current program rules is the inclusion of the term "ongoing." The BSA specifies that the employee training program be "ongoing"¹⁰⁹ and the current rules that apply to several types of financial institutions specify that training must be "ongoing,"¹¹⁰ while the other program rules do not include the word "ongoing."¹¹¹ As with other components of an effective, risk-based, and reasonably designed AML/CFT program, the training requirement would be based on a financial institution's risk assessment process, and the content of the training and frequency with which it would occur would depend on the financial institution's risk profile and the roles and responsibilities of the persons receiving the training.

As part of the relationship and interaction between and among program components, FinCEN generally would expect the contents of training to be responsive to the results of the risk assessment process and incorporate current developments and changes to AML/CFT regulatory requirements or information available to the financial institution. Examples for sources of training information are the AML/CFT Priorities; relevant Treasury and FinCEN actions and publications; the financial institution's internal policies, procedures, and controls; and an understanding of the financial institution's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations in terms of ML/TF risks, including any material changes to the financial institutions' ML/TF risk profile.¹¹² Overall, the training program should be sufficiently targeted to the roles and responsibilities of employees. While the proposed rule's training requirement is

¹⁰⁹ 31 U.S.C. 5318(h)(1)(C).

¹¹⁰ See applicable program rules located at 31 CFR 1023.210(b)(4) (broker-dealers), 1024.210(b)(4) (mutual funds), 1025.210(b)(3) (insurance companies), 1026.210(b)(4) (futures commission merchants and introducing brokers in commodities), 1027.210(b)(3) (dealers in precious metals, precious stones, or jewels), 1029.210(b)(3) (loan or finance companies), and 1030.210(b)(3) (housing government sponsored enterprises).

¹¹¹ See applicable program rules located at 31 CFR 1020.210(a)(2)(iv) and (b)(2)(iv) (banks), 1021.210(b)(2)(iii) (casinos), 1022.210(d)(3) (MSBs), and 1028.210(b)(3) (operators of credit card systems).

¹¹² As discussed earlier, in this context, material changes to a financial institution's ML/TF risks can refer to changes in the ML/TF risk profile due to the introduction of new, or expansion of existing products, services, customer types and geographic locations, and changes in other relevant risk assessment criteria.

not a new obligation, any costs or burdens associated with this program component would be based on how the risk assessment process impacts the AML/CFT program.

5. Independent Testing

The AML Act did not change the BSA's requirement that each financial institution includes an independent audit function to test its AML/CFT program.¹¹³ Based on this statutory requirement, the program rules already require such programs to include independent testing.¹¹⁴ The proposed rule would modify the existing program rules to require each financial institution's program to include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the financial institution or by a qualified outside party. FinCEN considers these changes to be consistent with long-standing requirements for independent testing and not substantive, but invites comments on their impact, if any, on the current program rules. Similar to other program components, any costs or burdens associated with this program component would be based on how the risk assessment process impacts the AML/CFT program.

The purpose of independent testing is to assess the financial institution's compliance with AML/CFT statutory and regulatory requirements, relative to its risk profile, and to assess the overall adequacy of the AML/CFT program. This evaluation helps to inform the financial institution's board of directors and senior management of weaknesses or areas in need of enhancement or stronger controls. Typically, this evaluation includes a conclusion about the financial institution's overall compliance with AML/CFT statutory and regulatory requirements and sufficient information for the reviewer (e.g., board of directors, senior management, AML/CFT officer, outside auditor, or an examiner) to reach a conclusion about the overall adequacy of the AML/CFT program. Under the proposed rule, independent testing could be conducted by qualified personnel of the financial institution,

such as an internal audit department, or by a qualified outside party, such as outside auditors or consultants.

Additionally, while financial institutions retain some flexibility regarding *who* conducts the audit or testing, the proposed rule would continue to require that testing be independent. Financial institutions that do not employ outside auditors or consultants or that do not have internal audit departments may comply with this requirement by using qualified internal staff who are not involved in the function being tested. For these financial institutions and financial institutions with other types of arrangements for independent testing, the AML/CFT officer or any party who directly, and in some cases, indirectly reports to the AML/CFT officer, or an equivalent role, would generally not be considered sufficiently independent.¹¹⁵ Any individual conducting the testing, whether internal or external, would be required to be independent of other parts of the financial institution's AML/CFT program, including its oversight. For financial institutions that engage outside auditors or consultants, the financial institution would be required to ensure that the outside parties conducting the independent testing are not involved in functions related to the AML/CFT program at the financial institution that may present a conflict of interest or lack of independence, such as AML/CFT training or the development or enhancement of internal policies, procedures, and controls. Additionally, for the purposes of the independent testing component, qualified outside parties would not include government agencies, entities,

or instrumentalities, such as a financial institution's Federal or State functional regulators. Financial institutions with less complex operations, and lower risk profiles may consider utilizing a shared resource as part of a collaborative arrangement to conduct testing, as long as the testing is independent.¹¹⁶

The proposed rule also would require any party who conducts independent testing to be "qualified." The current rules for broker-dealers, mutual funds, and futures commission merchants and introducing brokers in commodities already explicitly require outside parties conducting the independent testing to be qualified,¹¹⁷ but under this proposed rule, having qualified parties conduct independent testing will be a standardized requirement for all financial institutions. The knowledge, expertise, and experience necessary for a party to be qualified to conduct independent testing would depend, in part, on the financial institution's ML/TF risk profile. As with the AML/CFT officer component, FinCEN generally would expect qualified independent testers to have the expertise and experience to satisfactorily perform such a duty, including having sufficient knowledge of the financial institution's risk profile and AML/CFT laws and regulations.

FinCEN would expect the frequency of the periodic independent testing to vary based on each financial institution's risk profile, changes to its risk profile, and overall risk management strategy, as informed by the financial institution's risk assessment process.¹¹⁸ More frequent independent testing may be appropriate when errors or deficiencies in some aspect of the AML/CFT program have been identified or to verify or validate mitigating or remedial actions. A financial institution may find it appropriate to conduct additional independent testing when there are material changes in the financial institution's risk profile, systems, compliance staff, or processes. Additionally, the frequency of

¹¹⁵ This is consistent with current 31 CFR 1022.210, which provides that independent testing review may be conducted by an officer or employee of the MSB so long as the tester is not the AML/CFT officer. Similarly, current 31 CFR 1025.210, 1029.210, and 1030.210 provide that independent testing at insurance companies, loan or finance companies, and housing government sponsored enterprises, respectively, may be conducted by a third party or by any officer or employee of the financial institution, other than the AML/CFT officer. Likewise, 31 CFR 1027.210(b)(4) and 1028.210(b)(4) provide that independent testing of a dealer in precious metals, precious stones, or jewels or an operator of a credit card system, respectively, can be conducted by an officer or employee of the institution, so long as the tester is not the AML/CFT officer or a person involved in the operation of the AML/CFT program. The criteria to meet the independent requirement for independent testing at U.S. operations of foreign financial institutions may include a review of the reporting arrangements between the party conducting the independent testing and the AML/CFT Officer, or equivalent management function such as a head of business line or a general manager, to assess any conflicts of interests and the level of independence with the party conducting the independent testing.

¹¹³ 31 U.S.C. 5318(h)(1)(D).

¹¹⁴ See applicable program rules located at 31 CFR 1020.210(a)(2)(ii) and (b)(2)(ii) (banks), 1021.210(b)(2)(ii) (casinos), 1022.210(d)(4) (MSBs), 1023.210(b)(2) (broker-dealers), 1024.210(b)(2) (mutual funds), 1025.210(b)(4) (insurance companies), 1026.210(b)(2) (futures commission merchants or introducing broker in commodities), 1027.210(b)(4) (dealers in precious metals, precious stones, or jewels), 1028.210(b)(4) (operators of a credit card system), 1029.210(b)(4) (loan or finance companies), and 1030.210(b)(4) (housing government sponsored enterprises).

¹¹⁶ See Interagency Statement on Sharing Bank Secrecy Act Resources (Oct. 3, 2018), available at <https://www.fincen.gov/news/news-releases/interagency-statement-sharing-bank-secrecy-act-resources>.

¹¹⁷ See applicable program rules located at 31 CFR 1023.210(b)(2) (broker-dealers), 1024.210(b)(2) (mutual funds), and 1026.210(b)(2) (futures commission merchants and introducing brokers in commodities).

¹¹⁸ This is consistent with the requirements in current 31 CFR 1021.210 (casinos), 1022.210 (MSBs), 1025.210 (insurance companies), 1027.210 (dealers in precious metals, precious stones, or jewels), 1028.210 (operators of credit card systems), 1029.210 (loan or finance companies), and 1030.210 (housing government sponsored enterprises).

independent testing may be influenced by other factors, such as the regulations of self-regulatory organizations (SROs) applicable to certain types of financial institutions.¹¹⁹

While this program component is not a new obligation under the proposed rule, any additional costs or burdens associated with this component would be based on a risk assessment process and the impact on the AML/CFT program and a financial institution's risk profile.

6. Other Components of an Effective, Risk-Based, and Reasonably Designed AML/CFT Program

The proposed rule would retain additional existing AML/CFT program rule requirements with minimal conforming changes. These provisions are generally only applicable to certain types of financial institutions but are still important parts of the program rules. For example, some of the existing program rules contain provisions related to CDD, the use of automated systems, suspicious activity reporting, recordkeeping, the role of agents and brokers, and other topics. These provisions would remain substantively unchanged.

With respect to the CDD requirements, the proposed rule would retain the current CDD provisions for banks, broker-dealers, mutual funds, and futures commission merchants and introducing brokers in commodities.¹²⁰

All of the CDD requirement sections retain a cross-reference to the beneficial ownership information collection requirements for legal entity customers established by FinCEN's CDD Rule that are codified at 31 CFR 1010.230. The substance of the CDD Rule, and therefore the obligations of these covered financial institutions, may change as a result of FinCEN's revision of that rule, which is required under the CTA, and which must be completed by

January 1, 2025.¹²¹ Until that rulemaking process is completed, FinCEN is not planning to propose changes to financial institutions' CDD requirements.

a. Documented, Available AML/CFT Programs

Financial institutions already must have written AML/CFT programs, but there is some variation in the specific language used for different types of financial institutions.¹²² The proposed rule would provide a consistent standard by requiring that an AML/CFT program, and each of its components, be documented¹²³ and that such documentation be made available to FinCEN or its designee, which can include the appropriate agency with delegated examination authorities by FinCEN,¹²⁴ or the appropriate SRO.¹²⁵ In addition to promoting consistency across the program rules, these clarifications are intended to help financial institutions develop a structured AML/CFT program

¹²¹ See *supra* note 27. Section 6403(d) of the AML Act, a provision of the CTA, requires FinCEN to revise its CDD Rule no later than one year after the effective date of the regulations promulgated under 31 U.S.C. 5336(b)(4). As those regulations went into effect on January 1, 2024, the CDD Rule must be revised no later than January 1, 2025.

¹²² Current 31 CFR 1020.210(b) requires banks lacking a Federal functional regulator to establish, maintain, and make available a written anti-money laundering program. Banks with a Federal functional regulator are required to have written anti-money laundering programs under the regulators' existing rules. See 12 CFR 21.21(c)(1), 208.63(b)(1), 326.8(b)(1), and 748.2(b)(1). The current program rules require other types of financial institutions to have written programs at 31 CFR 1021.210(b)(1) (casinos), 1022.210(c) (MSBs), 1023.210 (broker-dealers), 1024.210(a) (mutual funds), 1025.210(a) (insurance companies), 1026.210 (futures commission merchants and introducing brokers in commodities), 1027.210(a)(1) (dealers in precious metals, precious stones, or jewels), 1028.210(a) (operators of credit card systems), 1029.210(a) (loan or finance companies), and 1030.210(a) (housing government sponsored enterprises).

¹²³ The proposed requirements for the AML/CFT program to be documented would be at 31 CFR 1020.210(b) (banks), 1021.210(b) (casinos), 1022.210(b) (MSBs), 1023.210(b) (broker-dealers), 1024.210(b) (mutual funds), 1025.210(b) (insurance companies), 1026.210(b) (futures commission merchants and introducing brokers in commodities), 1027.210(b) (dealers in precious metals, precious stones, or jewels), 1028.210(b) (operators of credit card systems), 1029.210(b) (loan or finance companies), and 1030.210(b) (housing government sponsored enterprises).

¹²⁴ 31 CFR 1010.810(b).

¹²⁵ For broker-dealers, FinCEN recognizes the SEC as the Federal functional regulator, and registered national securities exchanges or a national securities association, such as the Financial Industry Regulatory Authority (FINRA), as the SROs for member broker-dealers. Similarly, for futures commission merchants and introducing brokers in commodities, FinCEN recognizes the CFTC as the Federal functional regulator, and the National Futures Association (NFA) as the SRO.

understood across the enterprise. FinCEN does not intend for there to be a substantive change related to modifying the operative term from "in writing" or "written" to "documented." While the proposed rule is not establishing a new obligation with respect to program documentation, any additional costs or burdens would be based on a risk assessment process and its impact on the AML/CFT program and underlying components.

b. AML/CFT Program Approval and Oversight

The proposed rule would require a financial institution's AML/CFT program to be approved and overseen by the financial institution's board of directors or, if the financial institution does not have a board of directors, an equivalent governing body. For financial institutions without a board of directors, the equivalent governing body can take different forms. For example, for some small financial institutions, the equivalent governing body might be a sole proprietor, owner(s), general partner, trustee, senior officer(s), or other persons that have functions similar to a board of directors, including senior management. For the U.S. branch of a foreign bank, the equivalent governing body may be the foreign banking organization's board of directors or delegates acting under the board's express authority.¹²⁶ The proposed rule specifies that approval encompasses each of the components of the AML/CFT program. Alternatively, some financial institutions might have other individuals or groups with similar status or functions as directors. Such individuals may include Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individuals with similar status or function. Also, groups with oversight responsibilities may include board committees such as compliance or audit committees as well as a group of some, or all of these individuals with aforementioned titles, as senior management that can provide effective

¹²⁶ The Federal Reserve, the FDIC, and the OCC each require the U.S. branches, agencies, and representative offices of the foreign banks they supervise operating in the United States to develop written BSA compliance programs that are approved by their respective bank's board of directors and noted in the minutes, or that are approved by delegates acting under the express authority of their respective bank's board of directors to approve the BSA compliance programs. "Express authority" means the head office must be aware of its U.S. AML program requirements and there must be some indication of purposeful delegation.

¹¹⁹ For example, FINRA Rule 3310(c) provides for annual (on a calendar-year basis) independent testing for compliance to be conducted by member personnel or by a qualified outside party, unless the member does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading or conducts business only with other broker-dealers), in which case such independent testing is required every two years (on a calendar-year basis). FINRA Rule 3310.01 further provides that all members should undertake more frequent testing than required if circumstances warrant.

¹²⁰ See applicable program rules located at 31 CFR 1020.210(a)(2)(v) and (b)(2)(v) (banks), 1023.210(b)(5) (broker-dealers), 1024.210(b)(5) (mutual funds), and 1026.210(b)(5) (futures commission merchants and introducing brokers in commodities).

oversight of the AML/CFT program to comply with the proposed rule.¹²⁷

Although some financial institutions must already obtain board approval for their AML/CFT programs, or be subject to oversight by a board of directors, or an equivalent governing body, this approval and oversight requirement will represent a change in requirements for other financial institutions. For example, pursuant to the current program rules, a mutual fund's AML/CFT programs must be approved by the board of directors or trustees,¹²⁸ and a bank lacking a Federal functional regulator must have an AML/CFT program that is approved by the board of directors or equivalent governing body within the bank.¹²⁹ Banks with a Federal functional regulator already must have board approval for their AML/CFT programs under their regulators' existing rules.¹³⁰ Broker-dealers; insurance companies; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; operators of credit card systems; loan or finance companies; and housing government sponsored enterprises currently must obtain senior management level approval for their AML/CFT programs.¹³¹ The existing program rules for casinos and MSBs do not contain specific board approval or oversight requirements.¹³²

The proposed rule would modify the program rules to make the AML/CFT program approval and oversight requirements consistent across financial institution types. FinCEN is proposing to require board or board-equivalent approval and a new explicit requirement for oversight, explained further below, to ensure that there is sufficient oversight over AML/CFT programs by the governing bodies of financial institutions.¹³³ Finally, the

proposed rule would plainly require that the AML/CFT program be subject to board oversight, or oversight of an equivalent governing body. With this oversight requirement, the proposed rule makes clear that board approval of the AML/CFT program alone is not sufficient to meet program requirements, since the board, or the equivalent governing body, may approve AML/CFT programs without a reasonable understanding of a financial institution's risk profile or the measures necessary to identify, manage, and mitigate its ML/TF risks on an ongoing basis. The proposed new oversight requirement contemplates appropriate and effective oversight measures, such as governance mechanisms, escalation and reporting lines, to ensure that the board (or equivalent) can properly oversee whether AML/CFT programs are operating in an effective, risk-based, and reasonably designed manner. In some instances, the proposed rule's focus on board oversight may be a new obligation and require changes to the frequency and manner of reporting to the board, which in turn may result in additional costs and burdens; however, the risk-based nature of the proposed rule is intended to enable financial institutions to better focus their attention and resources in a manner consistent with their risk profiles.

c. Establishing, Maintaining, and Enforcing an AML/CFT Program by Persons in the United States

Section 6101(b)(2)(C) of the AML Act, codified at 31 U.S.C. 5318(h)(5), provides that the duty to establish, maintain, and enforce a financial institution's AML/CFT program shall remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary and the appropriate Federal functional regulator.¹³⁴ The proposed rule would incorporate this statutory requirement in the program rules by restating that the duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the financial institution's

Federal functional regulator, if applicable.¹³⁵

FinCEN recognizes financial institutions may currently have AML/CFT staff and operations outside of the United States, or contract out or delegate parts of their AML/CFT operations to third-party providers located outside of the United States. This may be to improve cost efficiencies, to enhance coordination particularly with respect to cross-border operations, or other reasons. FinCEN has requested comment on a variety of potential questions that may arise for financial institutions as they address this statutory requirement, including questions about the scope of the statutory requirement and the obligations of persons that are covered. FinCEN will evaluate comments on these points in considering whether any amendments would be appropriate in a final rule.

d. Other Changes for Modernization, Clarification, and Consistency

In addition to the previously described changes, the proposed rule would make other revisions to modernize the program rules and promote clarification and consistency. The majority of these changes are technical, such as renumbering provisions, amending cross-references, and updating statutory references based on changes to the BSA from the AML Act. There are minor, non-substantive updates being proposed to requirements for financial institutions subject to Customer Identification Program (CIP) rules¹³⁶ in which references to BSA/AML programs are updated to AML/CFT programs.

Additionally, as required under section 6101(b), FinCEN consulted with a number of Federal functional regulators, particularly the Agencies to inform this rulemaking and coordinate updates to the bank program rules. The proposed rule is removing the requirement for banks to comply with the program rule of its Federal functional regulators as the program rules for banks are consistent.

The proposed rules for broker-dealers and futures commission merchants and introducing brokers in commodities would retain requirements to comply with the rules, regulations, or requirements of their SROs that govern

¹²⁷ See, e.g., SEC Form BD, Schedule A, Item 2(a).

¹²⁸ See applicable program rule located at 31 CFR 1024.210(a) (mutual fund).

¹²⁹ See applicable program rule located at 31 CFR 1020.210(b) (banks lacking a Federal functional regulator).

¹³⁰ See 12 CFR 21.21(c)(1), 208.63(b)(1), 326.8(b)(1), and 748.2(b)(1).

¹³¹ See applicable program rules located at 31 CFR 1023.210 (broker-dealers), 1026.210 (futures commission merchants and introducing brokers in commodities), 1027.210(a)(1) (dealers in precious metals, precious stones, or jewels), 1028.210(a) (operators of credit card systems), 1029.210(a) (loan or finance companies), and 1030.210(a) (housing government sponsored enterprises).

¹³² See applicable program rules located at 31 CFR 1021.210 (casinos) and 1022.210 (MSBs).

¹³³ The proposed AML/CFT program approval and oversight requirements would be at 31 CFR 1020.210(b) (banks), 1021.210(b) (casinos), 1022.210(b) (MSBs), 1023.210(b) (broker-dealers), 1024.210(b) (mutual funds), 1025.210(b) (insurance

companies), 1026.210(b) (futures commission merchants and introducing brokers in commodities), 1027.210(b) (dealers in precious metals, precious stones, or jewels), 1028.210(b) (operators of credit card systems), 1029.210(b) (loan or finance companies), and 1030.210(b) (housing government sponsored enterprises).

¹³⁴ 31 U.S.C. 5318(h)(5).

¹³⁵ Not all financial institutions that are required to have AML/CFT programs have Federal functional regulators pursuant to 15 U.S.C. 6809.

¹³⁶ The CIP rules are located at 31 CFR 1020.220 (banks), 1023.220 (brokers or dealers in securities), 1024.220 (mutual funds), and 1026.220 (futures commission merchants and introducing brokers in commodities).

such programs, provided the rules, regulations, or requirements of the SRO governing such programs have been made effective under the Securities Exchange Act of 1934 for broker-dealers, or the Commodity Exchange Act for futures commission merchants or introducing brokers in commodities, by the appropriate Federal functional regulator in consultation with FinCEN.¹³⁷

The following sections describe changes that are more significant.

i. Combining the Bank Rules

Since 2020, banks lacking a Federal functional regulator have been subject to substantially similar AML/CFT program requirements as banks with a Federal functional regulator.¹³⁸ The proposed rule would combine the program rules for banks with a Federal functional regulator (31 CFR 1020.210(a)) and banks lacking a Federal functional regulator (31 CFR 1020.210(b)). The most significant difference between the existing program rules is that 31 CFR 1020.210(b)(3) requires banks lacking a Federal functional regulator to: (1) have their AML programs approved by the board of directors or, if the bank does not have a board of directors, an equivalent governing body within the bank; and (2) make a copy of its AML program available to FinCEN or its designee upon request. As previously discussed, the proposed rule would explicitly apply the approval, oversight, and availability requirements to all financial institutions, so it would no longer be necessary to have two sets of program rules for banks. Therefore, the proposed rule would consolidate 31 CFR 1020.210(a) and (b) into a single set of rules applicable to all banks.

ii. Conforming and Modernizing Program Rules

For purposes of consistency and clarity, the proposed rule would conform certain elements of the program rules for casinos and MSBs to the program rules for banks; brokers or dealers in securities; mutual funds; insurance companies; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; operators of credit card systems;

loan or finance companies; and housing government sponsored enterprises.

Additionally, for casinos, the proposed rule would remove the following requirement in 31 CFR 1021.210(b)(2)(vi): “(vi) For casinos that have automated data processing systems, the use of automated programs to aid in assuring compliance.” Similarly, for MSBs, the proposed rule would remove the following requirement in 31 CFR 1022.210(d)(1)(ii): “(ii) Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems.” The removal of the automated data processing requirement is not to eliminate any applicable, substantive requirements to comply with the BSA for casinos and MSBs, but the removal is intended to reflect the risk-based approach taken with across the various other program rules that may allow consideration of the use of automated data processing systems.

iii. Compliance and Implementation Dates

The proposed rule would remove certain compliance dates from the existing program rules.

Current 31 CFR 1022.210(e), 1027.210(c), 1029.210(d), and 1030.210(d) contain compliance and implementation dates for MSBs; dealers in precious metals, precious stones, or jewels; loan or finance companies; and housing government sponsored enterprises, respectively.

The proposed rule would retain implementation dates for MSBs and dealers in precious metals, precious stones, or jewels, respectively, since they set the time frames in which those specific financial institution types are required to comply once they conduct certain activities or thresholds that subject them to AML/CFT program requirements. The proposed rule would also update the citations for these provisions (to 31 CFR 1022.210(d) and 1027.210(e)) to reflect other changes made to 1022.210(d) and 1027.210(e).

The proposed rule, however, would amend these provisions as well as those of other types of financial institutions, such as loan or finance companies and housing government sponsored enterprises, to remove compliance dates that have passed and have no meaningful relevance to the applicability of AML/CFT program requirements to those financial institution types.

iv. Compliance With Other Rules

For clarification and consistency, the proposed rule would delete certain

unnecessary cross-references to other regulations. Specifically, the proposed rule would no longer state that banks, broker-dealers, and futures commission merchants and introducing brokers in commodities must comply with the 31 CFR 1010.610 and 1010.620 due diligence requirements for foreign correspondent and private banking accounts.¹³⁹ Additionally, the proposed rule would no longer state that banks must comply with the regulation of its Federal functional regulator. Those regulations apply even without the cross-references in the program rules, so FinCEN is proposing to remove the cross-references to streamline the program rules and promote consistency. FinCEN does not intend for these changes to have any substantive effect.

V. Final Rule Effective Date

Given that the proposed rule would affect many parties, including financial institutions, FinCEN is proposing an effective date of six months from the date of issuance of the final rule to allow sufficient time for review and implementation. FinCEN solicits comment on the proposed effective date.

VI. Request for Comment

FinCEN welcomes comment on all aspects of the proposed amendments but specifically seeks comment on the questions below. FinCEN encourages commenters to reference specific question numbers when responding.

Comments submitted in response to this proposed rule will be summarized and included in the request for Office of Management and Budget (OMB) approval. Comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Purpose Statement

1. Does the statement of purpose clearly define the goals of an effective,

¹³⁹ See applicable program rules located at 31 CFR 1020.210 (banks), 1023.210 (broker-dealers), and 1026.210 (futures commission merchants and introducing brokers in commodities).

¹³⁷ See *supra* note 125.

¹³⁸ See Customer Identification Programs, Anti-Money Laundering Programs, and Beneficial Ownership Requirements for Banks Lacking a Federal Functional Regulator, 85 FR 57129 (Sept. 15, 2020), available at <https://www.federalregister.gov/documents/2020/09/15/2020-20325/financial-crimes-enforcement-network-customer-identification-programs-anti-money-laundering-programs>.

risk-based, and reasonably designed AML/CFT program? If not, what changes would you recommend?

2. Should FinCEN incorporate the purpose statement into the rule text itself and if so, how?

Incorporation of AML/CFT Priorities

3. How can FinCEN make the AML/CFT Priorities most helpful to financial institutions in the context of the proposed rule?

4. What steps are financial institutions planning to take, or can they take, to incorporate the AML/CFT Priorities into their AML/CFT programs? What approaches would be appropriate for financial institutions to use to demonstrate the incorporation of the AML/CFT Priorities into the proposed risk assessment process of risk-based AML/CFT programs?

a. Is the incorporation of the AML/CFT Priorities under the risk assessment process as part of the financial institution's AML/CFT program sufficiently clear or does it warrant additional clarification?

b. What, if any, difficulties do financial institutions anticipate when incorporating the AML/CFT Priorities as part of the risk assessment process?

Risk Assessment Process

5. The proposed rule would require a financial institution to establish a risk assessment process. Are there other approaches for a financial institution to identify, manage, and mitigate illicit finance activity risks aside from a risk assessment process?

6. To what extent would the risk assessment process requirement in the proposed rule necessitate changes to existing AML/CFT programs? Please specify how and why. To the extent it supports your response, please explain how the proposed risk assessment process requirement differs from current practices.

7. Should a risk assessment process be required to take into account additional or different criteria or risks than those listed in the proposed rule? If so, please specify.

8. Financial institutions may discern there is a difference between a risk assessment and a risk assessment process. What would be those differences? Should the proposed rule distinguish between a risk assessment and a risk assessment process? If not, please comment on what additional information would be useful.

9. For financial institutions with an established risk assessment process, what is current practice for governance of the process? For example, is the risk assessment process approved and

overseen by a financial institution's board of directors, compliance committee, or senior level compliance official(s)?

10. Is the explanation of "distribution channels" discussed in the preamble consistent with how the term is generally understood by financial institutions? If not, please comment on how the term is generally understood by financial institutions.

11. Is the explanation of the term "intermediaries" discussed in the preamble consistent with how the term is generally understood by financial institutions? If not, please comment on how the term is generally understood by financial institutions.

12. The proposed rule would require financial institutions to consider the reports they file pursuant to 31 CFR chapter X as a component of the risk assessment process. To what extent do financial institutions currently leverage BSA reporting to identify and assess risk? Are there additional factors that should be considered with regard to this proposed requirement?

13. For financial institutions with an established risk assessment process, what is the analysis output? For example, does it include a risk assessment document? What are other methods and formats used for providing a comprehensive analysis of the financial institution's ML/TF and other illicit finance activity risks?

Updating the Risk Assessment

14. Should financial institutions be required to update their risk assessment using the process proposed in this rule, at a regular, specified interval (such as annually or every two years) or based on triggers such as the introduction of new products, services, distribution channels, customer categories, intermediaries, or geographies? Please comment on whether the proposed rule should also specify a particular frequency for the financial institution to update its risk assessment using the process proposed in this rule. If so, what time frame would be reasonable? What factors might a financial institution consider when determining the frequency of updating its risk assessment using the process proposed in this rule? Should financial institutions be required to document, and provide support, what they determine to be an appropriate frequency to update their risk assessments?

15. The proposed rule uses the term "material" to indicate when an AML/CFT program's risk assessment would need to be reviewed and updated using the process proposed in this rule. Does

the rule or preamble warrant further explanation of the meaning of the term "material" used in this context? What further description or explanation, if any, would be appropriate?

16. Please comment on whether a comprehensive update to the risk assessment using the process proposed in this rule is necessary each time there are material changes to the financial institution's risk profile, or whether updating only certain parts based on changes in the financial institution's risk profile would be sufficient. If the response depends on certain factors, please describe those factors.

Effective, Risk-Based, and Reasonably Designed

17. Do financial institutions expect any changes to any existing AML/CFT programs under the proposed rule, which explicitly sets out that AML/CFT programs be effective, risk-based, and reasonably designed?

18. The proposed rule is part of the establishment of national examination and supervision priorities under section 6101 of the AML Act. In what ways would a financial institution demonstrate that it has "effective, risk-based, and reasonably designed" AML/CFT programs?

19. The AML Act affirms that financial institutions' AML/CFT programs are to be "risk-based, including ensuring that more attention and resources of financial institutions should be directed toward higher-risk customers and activities, consistent with the risk profile of a financial institution, rather than toward lower risk customers and activities."¹⁴⁰ Does the proposed rule address this AML Act provision? If not, please comment on what would be useful to support resource allocation in this way.

20. FinCEN issued its guidance on the culture of compliance in 2014 and described the connection between a culture of compliance and the effectiveness of a financial institution's AML/CFT program. How have financial institutions incorporated this guidance into their organizations? How would financial institutions expect the proposed rule to impact their culture of compliance? What challenges do financial institutions face in developing and maintaining a culture of compliance? Are there aspects to culture of compliance that would benefit from additional clarification based on the proposed rule? Would there be significant value to financial institutions in updating this advisory? If so, what type of additional guidance is needed?

¹⁴⁰ 31 U.S.C. 5318(h)(2)(B).

21. What methods or approaches have financial institutions used to support their attention and resource considerations?

22. How do financial institutions expect the proposed rule affect their current methods or approaches used to support their attention and resource considerations?

23. How would financial institutions identify certain customers or activities are lower risk and higher risk before making changes to its compliance resources? Would financial institutions expect to document, based on a risk assessment process, that a product, service, distribution channel, customer, or geographic location is lower risk or higher risk before making changes to its compliance resources? What factor(s) and supporting evidence would be appropriate to include in such potential documentation?

24. Do financial institutions anticipate any challenges in assigning resources to a higher-risk product, service, or customer type that is not related to an AML/CFT Priority? Are there any additional changes or considerations that should be made?

Metrics for Law Enforcement Feedback

25. How should FinCEN consider soliciting and providing feedback from law enforcement about the highly useful BSA reports or records by financial institutions that can be incorporated into AML/CFT programs?

26. How should FinCEN approach the requirements in section 6203 of the AML Act to provide financial institutions with specific feedback on the usefulness of their SAR filings? Is there information in FinCEN's "Year in Review" publications that FinCEN should consider as part of particularized SAR feedback?

De-Risking and Financial Inclusion

27. The proposed rule encourages the consideration of innovative approaches to help financial institutions more effectively comply with the BSA and FinCEN's implementing regulations, and provide highly useful information to relevant government authorities. These approaches can include the adoption of emerging technologies, such as machine learning or artificial intelligence, that can allow for greater precision in assessing customer risk, improving efficiency of automated transaction monitoring systems by reducing false positives, or reducing overall costs and improving commercial viability with certain customer types and jurisdictions.

a. FinCEN invites further comments on how technology and innovation can

mitigate de-risking and encourage lower cost access to financial services and activities across communities and borders.

b. FinCEN also invites further comments on how to ensure that technology and innovation do not diminish access to financial services for the unbanked or underserved communities or prompt other related de-risking concerns.

28. A factor that FinCEN considered in prescribing the minimum AML/CFT standards is "[t]he extension of financial services to the unbanked and the facilitation of financial transactions, including remittances, coming from the United States and abroad in ways that simultaneously prevent criminals from abusing formal or informal financial services networks."¹⁴¹ Related to this factor, are there unique or specific considerations for the safe and easy transfer of financial transactions abroad, particularly for humanitarian aid and development funding, with respect to the proposed rule?

29. FinCEN invites comments on additional aspects of financial access challenges for correspondent banks, money services businesses, non-profits servicing high-risk jurisdictions, or specific communities or groups, including but not limited to ethnic and religious communities, and justice-impacted individuals of which Treasury should be aware with respect to the proposed rule, if finalized.

Other AML/CFT Program Components

30. The proposed rule would make explicit a long-standing supervisory expectation for certain financial institutions that the AML/CFT officer be qualified and that independent testing be conducted by qualified individuals. Please comment on whether and how the proposed rule's specific inclusion of the concepts: (1) "qualified" in the AML/CFT program component for the AML/CFT officer(s); and (2) "qualified," "independent," and "periodic" in the AML/CFT program component for independent testing, respectively, may change these components of the AML/CFT program.

31. In the process of standardizing the role and responsibilities of the AML/CFT officer, the proposed rule removed from various existing program rules the description of AML/CFT officers in terms of the type of duties, the coordination and monitoring of day-to-day compliance, and the creation, filing and retention of records in accordance

with the BSA.¹⁴² What are the advantages and disadvantages to FinCEN's approach?

Duty To Establish, Maintain, and Enforce an AML/CFT Program in the United States

32. Please address if and how the proposed rule would require changes to financial institutions' AML/CFT operations outside the United States. Some financial institutions have AML/CFT staff and operations located outside of the United States for a number of reasons. These reasons can range from cost efficiency considerations to enterprise-wide compliance purposes, particularly for financial institutions with cross-border activities. Please provide the reasons financial institutions have AML/CFT staff and operations located outside of the United States. Please address how financial institutions ensure AML/CFT staff and operations located outside of the United States fulfill and comply with the BSA, including the requirements of 31 U.S.C. 5318(h)(5), and implementing regulations?

33. The requirements of 31 U.S.C. 5318(h)(5) (as added by section 6101(b)(2)(C) of the AML Act) state that the "duty to establish, maintain and enforce" the financial institution's AML/CFT program "shall remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary of the Treasury and the appropriate Federal functional regulator." Is including this statutory language in the rule, as proposed, sufficient or is it necessary to otherwise clarify its meaning further in the rule?

34. Please comment on the following scenarios related to persons located outside the United States who perform actions related to an AML/CFT program:

a. Do these persons who perform duties that are only, or largely, ministerial, and do not involve the exercise of significant discretion or judgment subject to statutory

¹⁴² To promote consistency and reduce redundancy, the proposed rule would remove some examples of what it means to coordinate and monitor day-to-day compliance with AML/CFT requirements that are currently listed in the program rules for MSBs; insurance companies; dealers in precious metals, precious stones, or jewels; operators of credit card systems; loan or finance companies; and housing government sponsored enterprises. See applicable program rules located at 31 CFR 1022.210(d)(2) (MSBs), 1025.210(b)(2) (insurance companies), 1027.210(b)(2) (dealers in precious metals, precious stones, or jewels), 1028.210(b)(2) (operators of credit card systems), 1029.210(b)(2) (loan or finance companies), and 1030.210(b)(2) (housing government sponsored enterprises).

¹⁴¹ See *supra* note 39.

requirements related to the duty of establishing, maintaining, and enforcing financial institutions' AML/CFT programs? What types of functions, ministerial or otherwise, may not be subject to these statutory requirements?

b. Do these persons have a responsibility for an AML/CFT program and perform the duty for establishing, maintaining, and enforcing a financial institution's AML/CFT program? Please comment on whether "establish, maintain, and enforce" would also include quality assurance functions, independent testing obligations, or similar functions conducted by other parties.

35. How would financial institutions expect the requirements in 31 U.S.C. 5318(h)(5) to affect their AML/CFT operations that may be currently based wholly or partially outside of the United States, such as customer due diligence or suspicious activity monitoring and reporting systems and programs?

36. Please comment on implementation of the requirements in 31 U.S.C. 5318(h)(5) for "persons in the United States"?

a. What AML/CFT duties could appropriately be conducted by persons outside of the United States while remaining consistent with the requirements in 31 U.S.C. 5318(h)(5)? Should all persons involved in AML/CFT compliance for a financial institution be required to be in the United States, or should the requirement only apply to persons with certain responsibilities performing certain functions? If the requirement should only apply to persons with certain responsibilities performing certain functions, please explain which responsibilities and functions these should be.

b. Should "persons in the United States" as established in 31 U.S.C. 5318(h)(5) be interpreted to apply when such persons are performing their relevant duties while physically present in the United States, that they are employed by a U.S. financial institution, or something else?

c. How would a financial institution demonstrate "persons in the United States," as established in 31 U.S.C. 5318(h)(5), are accessible to, and subject to oversight and supervision by, the Secretary and the appropriate Federal functional regulator?

37. Please comment on if and how the requirements in the proposed rule and 31 U.S.C. 5318(h)(5) should apply to foreign agents of a financial institution, contractors, or to third-party service providers. Should the same requirements apply regardless of

whether persons are direct employees of the financial institution?

Innovative Approaches

38. The proposed rule provides for the consideration of innovative approaches to help financial institutions more effectively comply with the BSA, but does not require that institutions use such approaches. Should alternative methods for encouraging innovation be considered in lieu of a regulatory provision?

39. Under the proposed rule, a financial institution's internal policies, procedures, and controls may provide for "consideration, evaluation, and, as warranted by the [financial institution's] risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations[.]" Please comment on the following issues related to this provision.

a. Is this provision sufficiently clear on what financial institutions can consider, evaluate, and implement with respect to innovative approaches, while also meeting their compliance obligations?

b. Does this provision provide sufficient regulatory flexibility for financial institutions to implement innovative approaches if appropriate?

c. Are there aspects of the proposed rule that may be considered barriers to innovation or that would add regulatory burden?

d. Please describe what innovative approaches and technology financial institutions currently use, or are considering using, including but not limited to artificial intelligence and machine learning, for their AML/CFT programs. What benefits do financial institutions currently realize, or anticipate, from these innovative approaches and how do they evaluate their benefits versus associated costs?

40. Are there specific further considerations that FinCEN should take into account in the proposed rule related to how financial institutions may use technology and innovation to increase the effectiveness, risk-based nature, and reasonable design of AML/CFT programs?

Board Approval and Oversight

41. Is the proposed rule's requirement for board (or equivalent governing body) approval and oversight of AML/CFT programs consistent with current industry practice? Does the requirement for the AML/CFT program to be approved and overseen by an appropriate governing board need additional clarification?

42. Should the proposed rule specify the frequency with which the board of directors or an equivalent governing body must review and approve and oversee the AML/CFT program? If so, what factors are relevant to determining the frequency with which a board of directors should review and approve the AML/CFT program?

43. How does a financial institution's board of directors, or equivalent governing body, currently determine what resources are necessary for the financial institution to implement and maintain an effective, risk-based and reasonably designed AML/CFT program?

Technical Updates

44. FinCEN is proposing changes to the program rules of various financial institution types for the purposes of clarity and consistency. FinCEN generally views these changes as technical updates, and not substantive. FinCEN invites comments on any of the proposed changes to the program rules. In particular, FinCEN welcomes comments with respect to the following:

a. FinCEN is considering updates to the rules for casinos and card clubs and MSBs related to automated data processing systems. These updates are intended to harmonize program rules with other types of financial institutions. FinCEN is not removing any BSA requirements applicable to casinos and card clubs and MSBs.

b. FinCEN is considering updates to the rules of financial institutions that cross-reference another regulatory agency's requirements and authorities (e.g., banks, broker-dealers, mutual funds, and futures commission merchants and introducing brokers in commodities). These updates are intended to harmonize program rules with other types of financial institutions.

Implementation

45. Is the proposed effective date of six months from the date of the issuance of the final rule appropriate? If not, how long should financial institutions have from the date of issuance of the final rule, and why?

VII. Regulatory Impact Analysis

FinCEN has analyzed the proposed rule as required under Executive Orders 12866, 13563, and 14094 (E.O. 12866 and its amendments), the Regulatory Flexibility Act (RFA),¹⁴³ the Unfunded Mandates Reform Act of 1995 (UMRA),¹⁴⁴ and the Paperwork

¹⁴³ 5 U.S.C. 601 *et seq.*

¹⁴⁴ 2 U.S.C. 1532(a).

Reduction Act (PRA).¹⁴⁵ This proposed rule has been determined to be a “significant regulatory action” under Section 3(f)(1) of E.O. 12866 and its amendments, as it is expected to have an annual effect on the economy of \$200 million or more. Pursuant to the RFA, FinCEN has included an Initial Regulatory Flexibility Analysis (IRFA) under the expectation that the proposed rule may have a significant impact on a substantial number of certain types of affected small entities.¹⁴⁶ Furthermore, pursuant to the UMRA, FinCEN anticipates that the proposed rule, if implemented, would result in an expenditure of more than \$183 million annually by State, local, and Tribal governments or by the private sector.¹⁴⁷

As described above, the proposed rule would require financial institutions to establish, implement, and maintain effective, risk-based, and reasonably designed AML/CFT programs with certain minimum components, including a mandatory risk assessment process and board oversight.¹⁴⁸ The proposed rule also would require financial institutions to review AML/CFT priorities and incorporate them, as appropriate, into risk-based programs. The proposed rule would also establish a new statement describing the purpose of the AML/CFT program requirement.¹⁴⁹ In so doing, FinCEN contemplates a number of benefits for covered financial institutions, law enforcement, and the general public that would flow from a better harmonized standard of program requirements, more clearly aligned with national priorities, that better empowers effective

deployment of resources to necessary AML/CFT efforts and activities.

The following regulatory impact analysis (RIA) first describes the broad economic analysis FinCEN undertook to inform its expectations of the proposed rule’s impact and burden.¹⁵⁰ This is followed by certain pieces of additional and, in some cases, more specifically tailored analysis as required by E.O. 12866 and its amendments,¹⁵¹ the RFA,¹⁵² the UMRA,¹⁵³ and the PRA,¹⁵⁴ respectively. Requests for comment related to the RIA—regarding specific findings, assumptions, or expectations, or with respect to the analysis in its entirety—can be found in the final subsection¹⁵⁵ and have been previewed and cross-referenced throughout the RIA.

A. Assessment of Impact

Consistent with certain identified best practices in regulatory economic analysis, the assessment of impact conducted in this section begins with an overview of some broad economic considerations,¹⁵⁶ identifying, among other things, the need for the policy intervention.¹⁵⁷ Next, the analysis turns to details of the current regulatory requirements and background practices against which the proposed rule would introduce changes, establishes baseline estimates of the number of covered financial institutions, and identifies certain other groups of entities that FinCEN expects could be affected in a given year.¹⁵⁸ The analysis then briefly reviews the content of the proposed rules with a focus on the specifically relevant elements of the proposed definitions and requirements that most directly inform how FinCEN contemplates compliance with the proposed requirements would be operationalized.¹⁵⁹ Next, the analysis proceeds to outline the estimated costs to the respective affected parties that would be associated with such operationalization as well as the anticipated attendant benefits.¹⁶⁰

Finally, the assessment concludes with a brief discussion of select alternative policies FinCEN considered and could have proposed, including an evaluation of the relative economic merits of each against the expected value of the rule as proposed.¹⁶¹

1. Broad Economic Considerations

In performing its assessment of impact, FinCEN took into consideration certain fundamental economic problems that the proposed rule is expected to address¹⁶² as well as the general social and economic costs that may ensue from an AML/CFT regime that is ineffective.¹⁶³

As recent economic analysis in other FinCEN rulemaking has already highlighted, illicit finance activity risks can impose profound societal and economic costs.¹⁶⁴ While the costs borne by society due to illicit finance activity risks are generally incalculable, “[in 2023] an estimated \$3.1 trillion in illicit funds flowed through the global financial system.”¹⁶⁵ To combat these risks, financial institutions are required, among other measures, to establish AML/CFT programs and comply with the BSA and FinCEN’s implementing regulations. Effective AML/CFT programs “safeguard national security and generate significant public benefits by preventing the flow of illicit funds in the financial system and by assisting law enforcement and national security

¹⁶¹ See *infra* section VII.A.5.

¹⁶² This analysis has been undertaken in compliance with the requirements of E.O. 12866 and its amendments. As discussed in OMB Circular A–4, section 5, “if an agency identifies that a regulation is necessary to implement or interpret a statute, that does not end the inquiry. Instead, analysts should conduct reasonable inquiries to identify any relevant potential needs for regulatory action—such as correcting a market failure—because doing so may inform the analysis of important categories of benefits and costs.”

¹⁶³ The extent to which these broad economic considerations apply uniformly to the various components of the proposed rule may in some instances be limited. FinCEN’s analysis is not intended to speak to (or in place of) the views of Congress regarding the fundamental economic problems that animate the proposed rule but are expected to be generally consistent with what AML Act section 6101(b), as promulgated, was intended to accomplish. The discussion in this section pertains primarily to the components of the rule that are being proposed at FinCEN’s discretion.

¹⁶⁴ See, e.g., Notice of Proposed Rulemaking, Anti-Money Laundering Regulations for Residential Real Estate, 89 FR 12424, 12444 (Feb. 16, 2024) (discussing the social costs of crimes that can be facilitated by money laundering), available at <https://www.federalregister.gov/documents/2024/02/16/2024-02565/anti-money-laundering-regulations-for-residential-real-estate-transfers>; see also U.S. Department of Justice, Bureau of Justice Statistics, “Costs of Crime,” available at <https://bjs.ojp.gov/costs-crime>.

¹⁶⁵ Nasdaq, 2024 Global Financial Crime Report, available at <https://www.nasdaq.com/global-financial-crime-report>.

¹⁴⁵ 44 U.S.C. 3506(c)(2)(A).

¹⁴⁶ This economic expectation is sensitive to certain key assumptions about how covered financial institutions would respond to the proposed requirements. FinCEN is requesting public comment regarding if it would instead be more reasonable to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. See *infra* section VII.F.

¹⁴⁷ The UMRA requires an assessment of mandates with an annual expenditure of \$100 million or more, adjusted for inflation. 2 U.S.C. 1532(a). FinCEN has not anticipated material changes in expenditures for State, local, and Tribal governments, insofar as they would not participate in the primary activities of monitoring or enforcing compliance of the newly proposed requirements in a way that differs from current involvement, thereby incurring novel incremental costs. But because the proposed rule would affect entities in the private sector that are covered financial institutions, FinCEN has considered expenditures these private entities may incur, pursuant to the UMRA, as part of the regulatory impact in its assessment below.

¹⁴⁸ See generally *supra* section IV.D; see specifically discussion of risk assessment processes *supra* section IV.D.1; see also discussion of board oversight requirements *supra* section IV.D.6.b.

¹⁴⁹ See *supra* section III.

¹⁵⁰ See *infra* section VII.A.

¹⁵¹ See *infra* section VII.B.

¹⁵² See *infra* section VII.C.

¹⁵³ See *infra* section VII.D.

¹⁵⁴ See *infra* section VII.E.

¹⁵⁵ See *infra* section VII.F.

¹⁵⁶ See *infra* section VII.A.1.

¹⁵⁷ See E.O. 12866, Regulatory Planning and Review, 58 FR 51736 (Oct. 4, 1993), sec. 1(b)(1) (“Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.”); see also OMB Circular A–4 (2023), “Section 5. Identifying the Potential Needs for Federal Regulatory Action.”

¹⁵⁸ See *infra* section VII.A.2.

¹⁵⁹ See *infra* section VII.A.3.

¹⁶⁰ See *infra* section VII.A.4.

agencies with the identification and prosecution of persons attempting to launder money and undertake other illicit activity through the financial system.”¹⁶⁶ Consequently, impediments to the effectiveness of AML/CFT programs reduce the public benefits these programs can provide and can facilitate criminal activities that threaten public safety and economic well-being.

FinCEN considered, and—in part—has proposed this rulemaking to help alleviate, certain underlying economic problems that can impede the effectiveness of AML/CFT programs.¹⁶⁷ These include potential problems that flow from the presence of certain information asymmetries and certain reporting-related externalities. The expected benefits of the proposed rule, as discussed below,¹⁶⁸ are therefore linked by the extent to which the new and amended program requirements would address these fundamental economic problems because doing so would enhance AML/CFT program effectiveness and thereby “strengthen, modernize and improve” the U.S. AML/CFT regime.¹⁶⁹

First, certain impediments to an effective AML/CFT program can arise as a consequence of information asymmetries.¹⁷⁰ As part of its broader efforts to prevent or mitigate the flow of illicit finance through the U.S. financial system, Congress established the BSA to counter these risks through a combination of public and private sector measures. For the private sector, those measures take the form of program, reporting, recordkeeping, and in some cases, registration requirements. Private sector entities are thus enlisted to perform certain tasks to further the objectives of the BSA in the course of their ordinary business operations. As FinCEN and other financial regulators

generally do not observe, monitor, or participate in these day-to-day ordinary business operations, the precise amount of effort or the full scope of activities a private business undertakes that supports the work of U.S. national security, intelligence, and law enforcement against illicit finance activity may not be directly observable, fully measurable, or verifiable, though the scope may be correlated with certain observable activities that can be quantified or otherwise measured. However, when the identification of illicit behavior is in some way stochastic or dependent on the joint probability of commission and detection, the observable indicia of a covered financial institution’s full scope of efforts cannot fully represent those efforts.¹⁷¹ This wedge between effort and observability can distort the incentives covered financial institutions face because it can create a gap between what makes a program more economically efficient and what makes it more effective in furtherance of the BSA objectives and other national priorities.

Second, private sector measures create externalities, both positive and negative; and because both certain benefits and certain costs of AML/CFT program activities are not internalized by the covered financial institution, this can also distort the incentives it faces and the program activities in undertakes. With the AML Act, Congress recognized “[f]inancial institutions are spending private compliance funds for a public and private benefit, including protecting the United States financial system from illicit finance risks.”¹⁷² In stating this, Congress highlights certain positive externalities for which a covered financial institution is not fully compensated. Economic theory would suggest that this inability to reap the full benefits of its efforts can disincentivize such a covered financial institution from undertaking the socially optimal level of program activities. Exacerbating this phenomenon is the concurrent reality that, by participating in the U.S. financial system, the same covered financial institution also benefits from the public good quality of the AML/CFT program activities undertaken by other covered financial institutions, which

can also have disincentivizing effect. Therefore, the positive externalities generated by AML/CFT program activities may doubly distort a covered financial institution’s incentives away from effective, socially optimal levels (*i.e.*, levels that appropriately support BSA objectives and adequately promote national security) because: (1) the institution is not fully compensated for the benefits that its program creates, and (2) the institution is able to benefit from the program activities undertaken by other institutions.

At the same time that the presence of positive externalities may under-incentivize effective AML/CFT program activity, other problems can flow from certain negative externalities. FinCEN notes that while the production of effective deterrence and timely, useful information for law enforcement or national security purposes creates a public good, the converse is also true. Deterrence of legitimate economic activities and the production of information that is not useful, while it may be of no perceived value, is not cost-free. While FinCEN acknowledges that covered institutions often bear the direct costs of these limited-value activities, such institutions are generally not forced to internalize the broader social costs including: the dilutive effects to reported information,¹⁷³ which can increase search costs to law enforcement and national security agencies; the costs to the U.S. government and the public of processing and storing records of private financial transactions that are of limited actionable value; and forgone or deterred economic activity that would not have been counter to BSA objectives, including select de-risking activities and the systematic underservice of certain groups by the financial services industry. Because the full scope of these costs is not internalized, this can distort the incentives of covered financial institutions towards the overproduction of reports and investment in activities that detract from the overall effectiveness of the AML/CFT regime.

The intention of the proposed program rule is to mitigate the potential for these kinds of distortions of covered financial institutions’ incentives, whether from information asymmetries or externalities, to limit the

¹⁶⁶ 31 U.S.C. 5318(h)(2)(B)(iii).

¹⁶⁷ See OMB Circular A–4 (2023), citing Richard E. Just, Darrell L. Hueth, & Andrew Schmitz, “The Welfare Analysis of Public Policy: A Practical Approach to Project and Policy Evaluation” (2004) (“Modeling underlying market, institutional, or behavioral distortions is a standard starting point for conducting benefit-cost analysis of a regulatory action or other government intervention.”).

¹⁶⁸ See *infra* section VII.A.4.a.

¹⁶⁹ See *supra* note 13.

¹⁷⁰ In economic terms, these may take the form of hidden action problems, hidden information problems, or a combination of the two, but all cases have the potential to limit the effectiveness of a covered financial institution’s program efforts because of the disincentives or the non-remunerated costs the information asymmetry imposes on either party to the transaction. For a general introduction, see, e.g., Andreu Mas-Colell, Michael D. Whinston, & Jerry R. Green, “Microeconomic Theory” (1995), ch. 14; for a more detailed review, see Patrick Bolton & Mathias Dewatripont, “Contract Theory” (2005).

¹⁷¹ An alternative model-framework that is similarly applicable in the setting and can yield comparable results treats effort as multidimensional. See, e.g., Holmstrom, B. and P. Milgrom, “Multi-task Principal Agent Analyses: Incentive Contracts, Asset Ownership, and Job Design.” *Journal of Law, Economics, and Organizations* (1991).

¹⁷² 31 U.S.C. 5318(h)(2)(B)(i).

¹⁷³ See Elöd Takáts, “A Theory of ‘Crying Wolf’: The Economics of Money Laundering Enforcement,” *Journal of Law, Economics, & Organization* (2011), pp. 32–78, available at <http://www.jstor.org/stable/41261712> (finding “excessive reporting, called ‘crying wolf,’ can dilute the information value of reports and how more reports can mean less information.”).

effectiveness of their AML/CFT programs individually and consequently the national AMF/CFT regime. Additionally, FinCEN anticipates the proposed rule, by emphasizing the risk-based and reasonably designed criteria of an AML/CFT program, may enhance resource allocation by improving the alignment between program requirements and the elements of a covered financial institution's compliance burden that are unobservable. Such gains are considered a source from which the anticipated economic benefits of the proposed rule may flow in preventing money laundering and financing of terrorism with improvements to detecting, preventing, and identifying illicit financial activity.

2. Institutional Baseline and Affected Parties

In proposing this rule, FinCEN considered the incremental impacts of the proposed requirements relative to the current state of the affected markets and their participants.¹⁷⁴ This baseline analysis of the parties that would be affected by the proposed rule, their current obligations, and current program compliance activities satisfies certain analytical best practices by detailing the implied alternative of not pursuing the proposed, or any other, novel regulatory

action.¹⁷⁵ In each case, for amended and new requirements, the RIA has attempted to identify the discrete incremental expected economic effects of each component of the proposal as precisely as practicable against this baseline; nevertheless, in certain cases only a qualitative assessment can be made.

As a first step in the process of isolating these anticipated marginal effects, FinCEN undertook an assessment of the current landscape of the covered financial institutions that would be affected by the proposed rule, including their current regulatory requirements, the current population and relevant sub-population sizes of the various types of covered financial institutions, and certain relevant economic features of their current compliance activities. Certain other categories of persons and entities that FinCEN expects to be affected by the proposed rule are also enumerated and briefly discussed. FinCEN acknowledges that the discussion below does not include an assessment of the baseline level of general compliance with existing program requirements and must therefore caveat that the incremental effects estimated in subsequent sections below¹⁷⁶ are based on the presumption of full compliance with the current rules. No attempt is made to estimate a baseline population of currently non-compliant entities that FinCEN

qualitatively might expect to be differently affected by the rule because it is unclear that the proposed rule would, independently, alter the compliance choices already made by those covered financial institutions.

a. Regulatory Baseline

FinCEN began its baseline analysis by taking into account the salient features and variation in the existing framework of regulatory requirements for the covered financial institutions that would be affected by the proposed program rule, including the existence of concurrent statutory requirements, regulatory requirements at the State-level, or the presence of other regulatory regimes with which a covered financial institution must concurrently comply. In particular, the analysis takes into account the current program rule requirements that the proposed rulemaking would amend and to which it would add new requirements as well as the broader framework of AML/CFT compliance requirements that each type of covered financial institutions' program is meant to guide and ensure are met.¹⁷⁷

Tables 1 and 2 below provide a brief overview of certain features of the current program requirements that various components of the proposed rule would further harmonize and illustrate the extent to which elements of the proposal do (or do not) mark a departure from current, baseline requirements.

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¹⁷⁷ See *supra* section IV.D for a description of current program requirements, and the proposed amendments.

¹⁷⁴ This baseline also forms the counterfactual against which the quantifiable effects of the rule are measured; therefore, substantive errors in or omissions of relevant data, facts, or other information may affect the conclusions formed regarding the general and/or economically significant impacts of the rule.

¹⁷⁵ See E.O. 12866, section 1(a) ("In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.").

¹⁷⁶ See *infra* section VII.A.4.b; see also *infra* sections VII.C and VII.E.

Table 1. The Program Components and Certain Other Components of Current Requirements

31 CFR Chapter X Section	Covered Financial Institution Type		Current Textual Location of Program Requirement w/in Section				Reports Required	Upon request, a written copy of a covered financial institution's program should be made available to
			Internal PPCs ¹	Designated Individual(s) ²	Training ³	Testing ⁴		
1020.210	Banks	with an FFR	(a)(2)(i)	(a)(2)(iii)	(a)(2)(iv)	(a)(2)(ii)	CTR | SAR	n/a
		without an FFR	(b)(2)(i)	(b)(2)(iii)	(b)(2)(iv)	(b)(2)(ii)	CTR | SAR	FinCEN or its designee
1021.210	Casinos		(b)(2)(i)	(b)(2)(iv)	(b)(2)(iii)	(b)(2)(ii)	CTR | SAR	Not specified
1022.210	MSBs		(d)(1)	(d)(2)	(d)(3)	(d)(4)	CTR | SAR	Department of the Treasury
1023.210	Brokers or Dealers in Securities (B-Ds)		(b)(1)	(b)(3)	(b)(4)	(b)(2)	CTR | SAR	Not specified ⁵
1024.210	Mutual Funds		(b)(1)	(b)(3)	(b)(4)	(b)(2)	CTR | SAR	U.S. SEC
1025.210	Insurance Companies		(b)(1)	(b)(2)	(b)(3)	(b)(4)	SAR	Department of the Treasury, FinCEN, or their designee
1026.210	Futures Commissions Merchants and Introducing Brokers in Commodities (FCMs and IBCs)		(b)(1)	(b)(3)	(b)(4)	(b)(2)	CTR | SAR	Not specified
1027.210	Dealers in Precious Metals, Precious Stones, or Jewels (DPMSJs)		(b)(1)	(b)(2)	(b)(3)	(b)(4)	CTR	Department of the Treasury through FinCEN or its designee
1028.210	Operators of Credit Card Systems		(b)(1)	(b)(2)	(b)(3)	(b)(4)	CTR	Department of the Treasury or appropriate Federal Regulator
1029.210	Loan or Finance Companies		(b)(1)	(b)(2)	(b)(3)	(b)(4)	SAR	FinCEN or its designee
1030.210	Housing Government Sponsored Enterprises (Housing GSEs)		(b)(1)	(b)(2)	(b)(3)	(b)(4)	SAR	FinCEN or its designee

¹ See *supra* section IV.D.2 for a discussion of proposed internal policies, procedures, and controls (PPC) amendments. The language in existing program internal PPC requirements varies slightly by type of covered financial institution. For example, for banks and casinos, current rules require that internal controls “assure ongoing compliance”; for MSBs, the requirement is

simply “to ensure that the money services business complies”; while for broker-dealers, internal PPCs must be “reasonably designed to achieve compliance.” These examples present a non-exhaustive list of the current linguistic variation in program rules. *See generally* 31 CFR parts 1020-1023.

² *See supra* section IV.D.3 for a discussion of proposed designated AML/CFT officer(s) amendments. The language in existing program designated individual(s) requirements varies slightly by type of covered financial institution. As non-exhaustive examples, certain covered financial institutions must currently designate “an individual or individuals responsible for coordinating and monitoring day-to-day compliance” whereas others must currently designate someone(s) “responsible for implementing and monitoring the operations and internal controls” of a program.

³ *See supra* section IV.D.4 for a discussion of proposed training requirements.

⁴ *See supra* section IV.D.5 for a discussion of proposed independent testing requirements.

⁵ FinCEN has delegated authority to examine broker-dealers’ compliance with FinCEN regulations to the SEC. 31 CFR 1010.810(b)(6). Thus, while the FinCEN regulation regarding broker-dealer AML/CFT programs, 31 CFR 1023.210, does not itself grant SEC authority to examine a broker-dealer’s AML/CFT program, the SEC has authority pursuant to 31 CFR 1010.810(b)(6), in combination with 31 CFR 1023.210, to request a written copy of a broker-dealer’s AML/CFT program.

Table 2. Select Other Components of the Regulatory Baseline from 31 CFR Parts 1010 through 1030

31 CFR Chapter X Part	Covered Financial Institution Type		Program Attributes				CIP	Additional DD ¹
			Written	CFT	Approved by	CDD		
1020	Banks	with an FFR	no	no	not required	yes	yes	yes
		without an FFR	yes	no	board of directors or equivalent governing body	yes	yes	yes
1021	Casinos		yes	yes	not required	no ²	yes ³	no
1022	MSB	Principal - P/S PPA ⁴	yes	yes	not required	no	yes ⁵	no
		Principal - Other	yes	yes	not required	no	no	no
		Agent	yes	yes	not required	no	no	no
1023	B-Ds		yes	no	senior management	yes	yes	yes
1024	Mutual Funds		yes	yes	board of directors or trustees	yes	yes	no
1025	Insurance Companies		yes	yes	senior management	no	no	no
1026	FCMs and IBCs		yes	yes	senior management	yes	yes	yes
1027	DPMSJs		yes	yes	senior management	no	no	no
1028	Operators of Credit Card Systems		yes	yes	senior management	no ⁶	no ⁷	no
1029	Loan or Finance Companies		yes	yes	senior management	no	no	no
1030	Housing GSEs		yes	yes	senior management	no	no	no

¹ Additional Due Diligence (DD) requirements as set forth in 31 CFR 1010.610, and also for private banking accounts, as described in 31 CFR 1010.620, are included in program requirements.

² While there is no companion customer due diligence (CDD) section to the casino AML program requirements, there are certain CDD-like requirements for casinos under particular circumstances. *See, e.g.*, 31 CFR 1021.210(b)(2)(v)(A).

³ While there is no directly comparable customer identification program (CIP) section to the casino AML program requirements, there are nevertheless CIP-like requirements in 31 CFR 1021.210(b)(2)(v)(A); a casino's program needs to include procedures for determining information and verification of a person.

⁴ A Provider or Seller of Prepaid Access (P/S PPA) includes principal MSBs as defined in 31 CFR 1010.100(ff)(4)(i)-(ii) (provider) or 31 CFR 1010.100(ff)(7)(i)-(ii) (seller), or both.

⁵ While there is no directly comparable CIP section to the MSB program requirements, there are nevertheless CIP-like requirements for P/S PPAs, in 31 CFR 1022.210(d)(1)(i)-(iv).

⁶ Despite the absence of a CDD AML program requirement for operators of credit card systems, compliance with the AML program requirements necessitates some CDD-like activities for such operators of credit card systems. *See* 31 CFR 1028.210(b)(1)(i)-(ii).

⁷ The program rules applicable to operators of credit card systems do not contain a formal CIP requirement, however, program compliance in certain cases necessitates some CIP-like activities. *See* 31 CFR 1028.210(b).

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b. Baseline of Affected Parties

FinCEN has identified the following populations as the primary populations the proposed rule is expected to affect

directly.¹⁷⁸ These are: (1) covered financial institutions; (2) regulators and other compliance examiners; and (3) law enforcement and national security agencies.

¹⁷⁸ Effects on the general public, while important and potentially substantial, are expected to be indirect.

i. Covered Financial Institutions

The parties expected to comply with the proposed new requirements and amendments to existing requirements include all covered financial institutions as defined in 31 CFR 1010.100(t) and with existing program obligations prescribed in 31 CFR chapter X, parts 1020 through 1030,

including banks; casinos; MSBs; broker-dealers; mutual funds; insurance companies; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; operators of credit card systems; loan or

finance companies; and housing government sponsored enterprises.¹⁷⁹ Table 3 (below) reports FinCEN’s most recent annual estimates of the total number of entities that meet the

¹⁷⁹ See *supra* note 1; see also *supra* section I.

¹⁸⁰ 31 CFR 1010.100(t).

¹⁸¹ 13 CFR 121.201; see generally *infra* section VII.C.

respective regulatory definitions of covered financial institutions.¹⁸⁰ Based on these estimates, FinCEN expects that the proposed rule would affect approximately 298,000 total financial institutions, of which approximately 291,000 would qualify as small financial institutions for IRFA purposes.¹⁸¹

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Table 3. Number of Covered Financial Institutions

Type of financial institution	Number of financial institutions
Banks with an FFR	9,462 ¹
Banks lacking an FFR	600 ²
Casinos	1,277 ³
Principal MSBs ⁴	27,500 ⁵
Agent MSBs	229,161 ⁶
B-Ds	3,478 ⁷
Mutual funds	1,400 ⁸
Insurance companies	4,678 ⁹
FCMs and IBCs	954 ¹⁰
DPMSJs	6,700 ¹¹
Operators of credit card systems	4 ¹²
Loan or finance companies	13,000 ¹³
Federal home loan banks (FHLBs) and Housing GSEs	13 ¹⁴
Total	298,227

¹ This estimate of the total number of banks with a Federal functional regulator, including credit unions, is based on end of year 2023 data as provided by each of the Agencies, respectively.

² This estimate of active entities as of year-end 2023 incorporates data from both public and non-public sources, including: Call Reports; various State banking/financial institution regulators' websites and directories; the Federal Reserve Board of Governors' Master Account and Services database (<https://www.federalreserve.gov/paymentsystems/master-account-and-services-database-existing-access.htm>); and data from the OCIF (Oficina del Comisionado de Instituciones Financieras); and was derived in consultation with staff from the Internal Revenue Service's Small Business/Self-Employed Division.

³ Estimate based on the American Gaming Association (AGA) "State of Play," reporting 486 commercial casinos and 525 Tribal casinos as of December 31, 2023 (available at <https://www.americangaming.org/state-of-play/>, accessed February 28, 2024). As of December 31, 2022, there were also 266 card rooms as published in the AGA's "State of the States" annual report, p. 16 (available at <https://www.americangaming.org/wp-content/uploads/2023/05/AGA-State-of-the-States-2023.pdf>, accessed February 28, 2024).

⁴ The definition of MSB covers both principal MSBs and agents. Under 31 CFR 1022.210(d)(1)(iii), a person that is an MSB solely because it is an agent for another MSB and the MSB for which it serves as an agent (the principal MSB) may by agreement allocate between themselves responsibility for developing policies, procedures, and internal controls. However, neither the agent nor the principal MSB can avoid liability for failing to establish or maintain an effective AML program by pointing to a contract assigning the responsibility to the other party.

⁵ This value represents the number of uniquely identifiable principal MSBs with indicia of ongoing operations as of year-end 2023. The estimate is derived from FinCEN's publicly available MSB data, available at <https://www.fincen.gov/msb-registrant-search>, accessed February 28, 2024.

⁶ In the absence of public comments in prior renewals of the OMB control number applicable to this regulatory requirement, FinCEN considers it reasonable to continue to rely upon its previous estimate that the number of agent MSBs remains approximately 229,161. This value was previously published in the 2020 notice to renew OMB control numbers 1506-0020, 1506-0030, and 1506-0035 (85 FR 49420 (Aug. 13, 2020)).

⁷ Estimate based on December 2023 file downloaded "from Data - Company Information About Active Broker-Dealers," <https://www.sec.gov/help/foiadocsbdfioa>, accessed February 28, 2024.

⁸ This estimate of the number of active mutual funds as of year-end 2023 is based on Form N-CEN filings received by the U.S. Securities and Exchange Commission through January 20, 2023, as represented by data downloaded from SEC Open Data (<https://www.sec.gov/dera/data/form-n-cen-data-sets>), accessed February 29, 2024.

⁹ This estimate includes 667 life and health (L&H) insurers, 2,656 property and casualty (P&C) insurers, and 1,355 health insurers licensed in the United States during 2022. From U.S. Treasury "Annual Report on the Insurance Industry," (Sept. 2023), available at <https://home.treasury.gov/system/files/311/FIO%20Annual%20Report%202023%209292023.pdf>, accessed February 28, 2024. Neither the estimate presented here nor the estimate of broker-dealers controls for entities that may be both a broker-dealer and an insurance company; thus, a certain number of affected entities may be double-counted. However, based on consultation with staff of other Federal regulators, FinCEN believes this population of dually affected entities may be relatively small and unlikely to significantly distort the overall assessment of regulatory impact.

¹⁰ The number of futures commissions merchants as of December 31, 2023 was obtained from data available at <https://www.cftc.gov/MarketReports/financialfcmdata/index.htm>, accessed March 1, 2024. To prevent double counting in burden estimates, 35 covered financial institutions that are also affected entities as broker-dealers were removed from the count; the count of introducing brokers in commodities as of year-end 2023 was provided by the CFTC.

¹¹ This estimate is based on data on entities with NAICS code 423940 (Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers) published at year-end 2023 in the 2021 Survey of U.S. Businesses (<https://www.census.gov/data/datasets/2021/econ/susb/2021-susb.html>), accessed March 1, 2024.

¹² This value is based on FinCEN review of active, U.S. based market participants at year end 2023.

¹³ This estimate is based on data on entities with NAICS codes 522292 (Real Estate Credit) and 522310 (Mortgage and Non-Mortgage Loan Brokers) published at year end 2023 in the 2021 Survey of U.S. Businesses (<https://www.census.gov/data/datasets/2021/econ/susb/2021-susb.html>), accessed March 1, 2024.

¹⁴ Data on regional Federal home loan banks (FHLBs) was obtained from the Federal Housing Finance Agency (see About FHLBank System | Federal Housing Finance Agency (fhfa.gov)). Housing government sponsored entities (GSEs) are U.S. Government-sponsored enterprises and include Fannie Mae and Freddie Mac.

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ii. Regulators and Other Compliance Examiners

Because AML Act section 6101(b) requires that the incorporation of the AML/CFT Priorities, as appropriate, into risk-based AML/CFT programs must be included as a measure on which financial institutions are supervised and examined for compliance with those obligations,¹⁸² the proposed rule is expected to directly affect FinCEN as well as other Federal financial regulators and other compliance examiners,¹⁸³ including approximately 8,000 to 10,000 Federal examiners.¹⁸⁴ FinCEN additionally anticipates being uniquely affected as the agency to which certain AML/CFT program-related reports are submitted and as the entity that then coordinates how that information may in turn support law enforcement and national security efforts.¹⁸⁵

iii. Law Enforcement and National Security Agencies

The proposed rule is intended to support the efforts of law enforcement and the national security agencies by promoting AML/CFT program design and implementation that is responsive and better tailored to these entities' evolving needs.¹⁸⁶ FinCEN estimates that approximately 14,000 users currently directly access and make use of reports and other data provided to FinCEN in compliance with AML/CFT

program requirements and other applicable BSA requirements.¹⁸⁷

c. Current Market Practices

FinCEN took certain data and features of the covered financial institutions' current practices into consideration when estimating the expected incremental impact of the proposed rule. Among these features were the presence of third-party services, industry-specific associations, or other organizations that currently facilitate compliance with BSA/AML requirements as well as information about the costs of currently operating AML/CFT programs.

General public commentary has at times suggested that maintaining an AML/CFT program under current practice is considered costly or burdensome by covered financial institutions and, in some cases, of perceived limited value.¹⁸⁸ However, a paucity of publicly available data exists that would facilitate forming an estimate of the aggregate burden—to the U.S. economy, generally, or to the unique industry groups to which the proposed rules would apply, specifically—of program compliance as it has been understood and operationalized to date. Absent more reliable comprehensive baseline data, it will not be feasible for FinCEN to estimate (with any meaningful degree of certainty) or assess either the substitutability of activities or the potential for aggregate cost savings covered institutions might benefit from

in complying with the proposed rule.¹⁸⁹ Despite this and other limits to generalization, FinCEN determined it would still be valuable to incorporate existing baseline market data, including certain publicly available estimates¹⁹⁰ of the costs of compliance with the current program rules, as a benchmark against which the proposed new and amended requirements might be assessed, including estimates FinCEN has previously published to provide notice and to solicit public comment.¹⁹¹

¹⁸⁹ Nevertheless, for the reasons articulated below, such benefits are anticipated to be strictly non-zero, positive for some groups of covered financial institutions (See *infra* section VII.A.4.a).

¹⁹⁰ See FDIC Supporting Statement to OMB Control No. 3064-0087: Procedures for Monitoring Bank Secrecy Act Compliance (July 17, 2023), available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202304-3064-005; FRB Supporting Statement to OMB Control No. 7100-0310: Recordkeeping Requirements of Regulation H and Regulation K Associated with the Procedures for Monitoring Bank Secrecy Act Compliance (May 17, 2022), available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202205-7100-004; OCC Supporting Statement to OMB Control No. 1557-0180: Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program—12 CFR parts 21 and 163 (Mar. 14, 2022), available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202203-1557-002; NCUA Supporting Statement to OMB Control No. 3133-0108: Monitoring Bank Secrecy Act Compliance (Sept. 12, 2023), available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202308-3133-009.

¹⁹¹ See FinCEN Supporting Statement to OMB Control No. 1506-0035: Anti-Money Laundering Programs for Insurance Companies, Non-Bank Residential Mortgage Lenders and Originators, and Banks Lacking a Federal Functional Regulator (Oct. 29, 2020), available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202010-1506-011; FinCEN Supporting Statement to OMB Control No. 1506-0020: Anti-Money Laundering programs for money services business, mutual funds, operators of credit card systems, and providers of prepaid access (Oct. 29, 2020), available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202010-1506-009; FinCEN Supporting Statement to OMB Control No. 1506-0051: AML Program Requirements for Casinos (Feb. 24, 2021), available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202102-1506-004; FinCEN Supporting Statement to OMB Control No. 1506-

¹⁸² See *supra* section II.B.

¹⁸³ See *supra* section III.B.

¹⁸⁴ These figures represent an approximate number of Federal examiners provided by Federal functional regulators with AML/CFT supervisory responsibilities. These estimates do not include persons performing examinations on behalf of SROs, though FinCEN expects that such parties may also be affected.

¹⁸⁵ See *supra* section III.B (discussion of additional FinCEN activities).

¹⁸⁶ See *supra* section III.B.

¹⁸⁷ Statement of FinCEN Director Andrea Gacki before the House Committee on Financial Services (Feb. 14, 2024), available at <https://www.fincen.gov/news/testimony/statement-fincen-director-andrea-gacki-house-committee-financial-services>.

¹⁸⁸ See Comments to Advance Notice of Proposed Rulemaking, Anti-Money Laundering Program Effectiveness, 85 FR 58034 (Sept. 17, 2020), available at <https://www.regulations.gov/docket/FINCEN-2020-0011/comments>. See also Comments to Request for Information, Review of Bank Secrecy Act Regulations and Guidance, 86 FR 71201 (Dec. 15, 2021), available at <https://www.regulations.gov/docket/FINCEN-2021-0008/comments>.

Tables 4 and 5 (below) summarize certain features of the current market practices associated with BSA

compliance as reported by the Federal agencies that regulate banks and credit unions, which comprise one of the

eleven types of covered financial institutions to which the proposed rule would apply.

Table 4. Recent¹ Estimates of Banks' Current BSA-Related Compliance Costs

PRA Components	FDIC	FRB	NCUA	OCC	FinCEN
Wages/Time Cost per hour	\$46.56	\$60.45	n/a	\$114.17	\$84.77
# of occupations ²	3	4	n/a	6	6
Weighted Average Burden/FI	\$5,194.01	\$242.60	n/a	\$65,371.86	\$183.67
# of components ³	1	2	1	4,5	4
Small ⁴	Yes	No	No	Yes	Yes
Threshold	\$500 MM	\$600 MM	not disclosed	not disclosed	all ⁵

¹ See *supra* note 190 (sources of estimates for the Agencies) and note 191 (sources of recent estimates for FinCEN).

² Denotes the number of different occupational categories included in the respective agency's burden estimates.

³ Denotes the number of an agency's distinctly itemized components to compliance with current BSA requirements.

⁴ Identifies if the agency estimated a different expected burden for covered entities that it defines or identifies as 'small' as defined by being below the agency's reported threshold value.

⁵ Banks whose BSA compliance burden falls under a FinCEN OMB control number are exclusively those lacking another Federal functional regulator. Because these institutions generally have fewer assets than banks regulated by the Agencies, for estimating purposes, FinCEN has historically assumed all banks of this type would be below the then-applicable Small Business Administration-prescribed threshold that would define an entity as small.

As table 4 illustrates, there can be considerable variation in how AML/CFT program compliance, as a component of broader BSA compliance, is contemplated to be operationalized. This includes variations in the types of work/labor that are expected to be involved in current (baseline) program activities, the wages at which that labor

can be obtained, and the total burden of time needed to meet current obligations. Table 5 further demonstrates that within a category of covered financial institution, by type, the burden of compliance can also vary substantially with the size and complexity of the covered institution. Both table 4 and table 5 also highlight certain variation

across Federal agencies in how the work of compliance is conceptualized in terms of discrete components, and thus why they might reasonably differ in expectations about the economic impact of the same proposed requirements.

Table 6 summarizes the baseline of how FinCEN has historically conceptualized the discrete components of program compliance for different types of covered financial institutions and present its associated estimates of burden. Applying the composite wage used elsewhere in this analysis,¹⁹² the estimated aggregate annual burden of compliance with baseline requirements for these covered financial institutions would be approximately \$33.8 million annually. FinCEN notes that because its own previously published expected burden and time costs may, in many cases, appear low, the anticipated change in burden associated with the time needed to perform the proposed new compliance activities might seem relatively large. This magnitude of

¹⁹² See *infra* section VII.E.3 for a discussion of composite wage estimation.

change, in FinCEN's views, reflects less that the proposed rules' requirements are expected to in fact introduce such a comparatively large increase in the burden of compliance and more that, despite the relative absence of public feedback asserting that current (previously published) burden estimates may be inadequate or providing substantiating data that is broadly generalizable, certain recent assessments of PRA-related burden may significantly underrepresent the full costs of complying with the current program rules.¹⁹³ In part, this may be the result of historical differences in interpretation of what "recordkeeping" and "reporting" are, for accounting purposes, intended to encompass. FinCEN notes that it has been iteratively

¹⁹³ See *supra* note 191.

updating its burden estimates as better and more data becomes incorporated into improved estimation methods subject to feedback via the public notice and comment process. For example, in FinCEN's recent proposal to apply program and SAR requirements to certain investment advisers,¹⁹⁴ FinCEN estimated costs between \$17,000 and \$25,000 to maintain an AML/CFT program conforming to current requirements in the years following initial start-up. If those burden estimates were generalizable to all existing covered financial institutions with program requirements, the annual program burden would be between \$5.1 and \$7.5 billion.

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¹⁹⁴ See *supra* note 2.

¹⁹⁵ See *supra* notes 190 and 191.

Table 5. Itemized Estimated Burdens of Certain Current BSA Compliance Requirements for Banks¹⁹⁵

Type of Financial Institution (FI)	Primary Regulator	OMB FI Count	Certain BSA Compliance Requirements Estimated Burdens as Reported by Primary Regulator		Time Burden per Component/Type (Hours)	Annual # of Component/Type	Hourly Wage Burden	Total Component Burden	Total PRA Estimated Burden
Banks with an FFR	FDIC	3,038	Large Banks	Recordkeeping	450	61	\$46.56	\$1,278,072.00	\$15,779,416.80
			Medium Banks		250	964	\$46.56	\$11,220,960.00	
			Small Banks		35	2,013	\$46.56	\$3,280,384.80	
	FRB	907	New Bank	Establish a compliance program	16	1	\$60.45	\$967.20	\$220,038.00
			Existing Bank	Maintain a compliance program	4	906	\$60.45	\$219,070.80	
	OCC	1,233	All Banks	Board and Security Officer - Recordkeeping	1	1,233	\$114.17	\$140,771.61	\$80,603,506.24
			All Banks	SAR - Reporting	1	518,103	\$114.17	\$59,151,819.51	
			All Banks	SAR - Recordkeeping	1.5	1,233	\$114.17	\$211,157.42	
			Banks	SAR - Exemption Request	50	5	\$114.17	\$28,542.50	
			Large Banks	Recordkeeping	450	99	\$114.17	\$5,086,273.50	
			Mid-Size		250	408	\$114.17	\$11,645,340.00	
			Community Banks		35	1,086	\$114.17	\$4,339,601.70	
	NCUA	4,686	Credit Unions	Recordkeeping	16	4,686	n/a	n/a	Hours: 74,976
Banks lacking an FFR	FinCEN	567	Banks w/o an FFR	Maintain & update a compliance program	1	567	\$49.00	\$27,783.00	\$104,139.00
				Store the written AML program	1/12		\$34.00	\$1,606.50	
				Produce the AML program upon request	1/12		\$34.00	\$1,606.50	
				Board of directors/trustees approval of the AML program	1		\$129.00	\$73,143.00	

Table 6. Estimated Burden of Compliance with Current Program Requirements

		Number of financial institutions	A. Maintaining and updating the written AML program	B. Storing the written AML program	C. Producing the AML program upon request	D. Board of directors/trustees approval of the AML program	E. Obtaining, verifying, and storing cardholder identifying information	F. Ongoing Compliance with the requirements in 31 CFR 1021.210(b)(2)(v) and (vi)
Agency OMB Control Number	Type of Financial Institution		1	1/12	1/12	1	1/30	99
FinCEN 1506-0020	Principal MSBs	27,500	27,500	2,292	2,292	-	-	-
	Principal MSB – Provider/Seller of PPA	2,605	-	-	-	-	86,667	-
	Agent MSBs	229,161	-	19,097	19,097	-	-	-
	Mutual funds	1,400	1,400	117	117	1,400	-	-
	Operators of credit card systems	4	4	0	0	-	-	-
FinCEN 1506-0030	DPMSJs	6,700	6,700	558	558	-	-	-
FinCEN 1506-0035	Banks lacking an FFR	600	600	50	50	600	-	-
	Insurance companies	4,678	4,678	390	390	-	-	-
	Loan or finance companies	13,000	13,000	1,083	1,083	-	-	-
FinCEN 1506-0051	Casinos	1,277	1,277	106	106	-	-	126,423
	Total	284,320	55,159	23,693	23,693	2,000	86,667	126,423
		Time Cost (wages)	\$5,863,401.70	\$ 2,518,601.33	\$2,518,601.33	\$ 212,600.00	\$9,212,666.67	\$ 13,438,764.90
		Total Time Burden (hours)		317,635				
		Total Time Cost (wages)		\$33,764,635.93				

As highlighted in the regulatory baseline in Section VII.A.2.a (table 2), certain types of covered financial institutions are already required to obtain approval from their board or senior management. For these entities,

therefore, the incremental burden of the proposed requirement for board oversight of the AML/CFT program may be somewhat smaller than for financial institutions that do not currently have a formal requirement. As previously discussed, limited data is publicly available to estimate the baseline burden associated with board approval requirements for covered financial

institutions or properly assess any potential substitutability of that activity with the proposed requirement for board oversight. However, table 7 presents some estimates of this monetized burden that have been previously published and subject to public notice and comment. Imputing an average per financial institution cost of obtaining board approval from these

estimates and applying that to the remaining covered financial institutions for which data is not available suggests the baseline board approval burden would be approximately \$4 million annually across all covered financial institutions with a current regulatory requirement, of which \$398,777.61 is based on published and publicly reviewed data.

Table 7. Recently Published Estimates of Board Approval Burden at Covered Financial Institutions

Type of Financial Institution	Number of Financial Institutions	Baseline Approval Requirement	Most Recent Itemized Burden Estimate (Hours)	Most Recent Burden Estimate: \$, unadjusted
Banks regulated by the OCC	1,233	board and security officer ¹	1	\$140,771.61
Banks lacking an FFR	600	board of directors or equivalent governing body	1	\$77,400.00
Casinos	1,277	none	0	\$ -
Principal MSBs	27,500	none	0	\$ -
B-Ds	3,478	senior management	0	\$ -
Mutual funds	1,400	board of directors or trustees	1	\$180,600.00
Insurance companies	4,678	senior management	0	\$ -
FCMs and IBCs	954	senior management	0	\$ -
DPMSJs	6,700	senior management	0	\$ -
Operators of credit card systems	4	senior management	0	\$ -
Loan or finance companies	13000	senior management	0	\$ -
FHLBs and Housing GSEs	13	senior management	0	\$ -
Total	59,604		Total	\$398,771.61

¹ See OCC Supporting Statement *supra* note 190.

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3. Description of Proposed Requirements

For purposes of the RIA, FinCEN considered the various components of the proposed rule—including its proposed amendments to existing rules

and proposed new requirements—with a view towards the specific features or elements that are expected to generate, either directly or indirectly, an economic benefit or cost, or lead to changes in market participant incentives in a way that may generate either

economic benefits or costs.¹⁹⁶ Additionally, for components of the proposed rule that FinCEN analysis has not assigned a quantified burden (in

¹⁹⁶ See *infra* section VII.A.4.

hours or dollar-value), the reason for doing so is briefly described below.

a. New or Amended Language and Definitions

As discussed in further detail in section IV.B, FinCEN is proposing certain changes to the program rules. One category of amendments provided by the proposed rule is the introduction of a purpose statement at 31 CFR 1010.210(a) and certain definitional revisions. These changes are proposed with a view to improve the consistency and alignment of the program rules across the categories of covered financial institutions.

First, FinCEN is proposing to include a purpose statement at 31 CFR 1010.210(a) that would articulate the overarching goals and objectives of an AML/CFT program.¹⁹⁷ While the proposed purpose statement would not introduce new requirements, the statement articulates FinCEN's views of the goals of an AML/CFT program against which a program's effectiveness and reasonableness of design could be assessed. FinCEN has not assigned a quantified cost to this component of the proposed rule in the following burden analysis but is soliciting public comment about its potential burden.¹⁹⁸

Second, FinCEN is proposing to replace the existing terms in 31 CFR chapter X such as "anti-money laundering program" and "compliance program" with the newly defined term "AML/CFT program," which would standardize the incorporation of the phrase "countering the financing of terrorism" into the stated objectives of a program's effective, risk-based, and reasonable design.¹⁹⁹ This amendment to existing language would newly insert CFT-language into the program requirements for only two of the eleven types of covered financial institutions—banks and broker-dealers in securities. As discussed in section IV.B, the existing requirements in 31 CFR chapter X already include CFT-language for the majority of existing program rules²⁰⁰ as the USA PATRIOT Act required financial institutions to account for risks

related to terrorist financing.

Accordingly, FinCEN expects that any changes to existing AML/CFT programs from these amendments described in this subsection are likely to be more technical than substantive in nature.

Third, FinCEN also proposes to define "AML/CFT Priorities" such that when the term is used throughout 31 CFR chapter X (the proposed rule would concurrently be standardizing the language and order of program requirements across the eleven types of covered financial institutions' respective program sections), it is clear that only the most recently published version²⁰¹ of the AML/CFT Priorities is being referenced. The extent to which defining the priorities this way may have an effect on expected burdens would depend on how path-dependent programmatic best-practices would otherwise be and the magnitude of changes in AML/CFT Priorities between one publication and the next.

Another component of the proposed rule is a number of technical amendments that, without introducing or removing requirements, would make several other non-substantive changes. These changes include the consolidation of the two bank program rules (one for banks with a Federal functional regulator and one for banks without) into one framework; removal of compliance dates from the program rules;²⁰² and the removal of certain cross-references to other regulations. FinCEN expects the costs, if any, associated with these provisions to be *de minimis*, and that there would be non-quantifiable benefits to having clarity and consistency across the program rules.

b. New or Amended Requirements

As discussed in greater detail in Section IV, the proposed rule includes, among others, new requirements such as a risk assessment process that incorporates the AML/CFT Priorities (as newly defined), which is itself incorporated into the covered financial institution's AML/CFT program (which would be newly required to be "effective, risk based, and reasonably designed"), and board oversight provision that may result in substantive economic effects.

As discussed in Section IV.D.1, existing regulations already require insurance companies; dealers in precious metals, precious stones, or jewels; loan or finance companies; and housing government sponsored enterprises to perform some type of

assessment of ML risks. FinCEN believes that most of the remaining financial institutions already have some risk assessment process in place.²⁰³ However, the proposed rule would require incorporating the AML/CFT Priorities and the specific additional factors.²⁰⁴ Furthermore, financial institutions that do not already have a risk assessment process would need to develop one.²⁰⁵

Section IV additionally details certain component indicia that a program is effective, risk-based, and reasonably designed that do not markedly differ from existing program components and are therefore not expected to have a substantive economic effect, including the designation of AML/CFT officers. There are no substantive changes to these requirements under the proposed rule. Additionally, under the proposed rule, the policies, procedures, and internal controls must now reasonably manage and mitigate risks, but existing policies, procedures and internal controls may already be doing this. FinCEN notes that training is identified as a fourth important component effective, risk-based, reasonably designed AML/CFT programs. Under the proposed rule, no substantive changes are being made to the training requirements. However, the employee training tools and protocols may need to be updated to reflect the other changes set forth under this rule. In the cost estimates below, this component is included in the estimated burden of program updates. Finally, all financial institutions must already conduct independent testing, and the proposed rule would not make substantive changes to this requirement.

The proposed rule establishes a requirement for a financial institution's board of directors, or an equivalent governing body, to provide oversight of the AML/CFT program. As discussed above, some financial institutions may already subject their AML/CFT programs to board oversight. However, this oversight requirement will represent a change in requirements for other financial institutions. This new oversight requirement is expected to have a substantive economic effect since the proposed rule makes clear that board approval of the AML/CFT program alone is not sufficient to meet the new oversight requirements, since a board may approve the AML/CFT program without a reasonable understanding of a financial institution's risk profile or the measures

¹⁹⁷ See *supra* section IV.A.

¹⁹⁸ See *supra* section VI.

¹⁹⁹ See *supra* section IV.B.

²⁰⁰ The current program rules with CFT-language are located at 31 CFR 1021.210(b)(2)(ii) (casinos); 31 CFR 1022.210(a) (MSBs); 31 CFR 1024.210(a) (mutual funds); 31 CFR 1025.210(a) (insurance companies); 31 CFR 1026.210(b)(1) (futures commission merchants and introducing brokers in commodities); 31 CFR 1027.210(a)(1) (dealers in precious metals, precious stones, or jewels); 31 CFR 1028.210(a) (operators of credit card systems); 31 CFR 1029.210(a) (loan or finance companies); and 31 CFR 1030.210(a) (housing government sponsored enterprises).

²⁰¹ See *supra* note 17.

²⁰² See *supra* section IV.D.6.d.iii.

²⁰³ See *supra* section IV.D.1.a.ii and iii.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

necessary to identify, manage, and mitigate its ML/TF risks on an ongoing basis. The proposed new oversight requirement contemplates appropriate and effective oversight measures, such as governance mechanisms, escalation and reporting lines, to ensure that the board can properly oversee whether AML/CFT programs are operating in an effective, risk-based, and reasonably designed manner. Accordingly, a financial institution may need to implement changes to the frequency and manner of reporting to the board that are expected to result in additional costs and burdens.

The proposed rule would also newly incorporate the existing statutory requirement that a covered financial institution's activities to establish, maintain, and enforce a financial institution's AML/CFT program remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary and the appropriate Federal functional regulator.²⁰⁶ While compliance with this newly introduced requirements could result in non-trivial expenses or logistical burdens for certain covered financial institutions, such costs may not readily distinguishable from the costs incurred as result of a concurrent need to satisfy statutory requirements. As such, FinCEN has not attempted to quantify the incremental burden uniquely attributable to this component of the proposed rule throughout the following analyses.

4. Anticipated Economic Effects

Ideally, a regulatory impact analysis would be able to identify and monetize, with a high degree of certainty, all of a regulation's attendant economic effects. This would then allow policymakers to comparatively evaluate different regulatory options' costs and benefits and select the option with the greatest net benefits. In practice, however, financial regulations include both cost and benefit components that cannot be quantified with any degree of certainty, making simple cost-benefit comparisons potentially misleading, "because the calculation of net benefits in such cases does not provide a full evaluation of all relevant benefits and costs."²⁰⁷ In its analysis, FinCEN has therefore sought to include an evaluation of certain foreseeable non-quantified economic effects in addition to quantified costs to more comprehensively assess the potential net benefit of the proposed rule and select alternatives.

Additionally, because program rules are a minimum standard,²⁰⁸ FinCEN preemptively qualifies its analysis as likely to overstate both the costs and the benefit of the proposed rule to covered financial institutions that already strive for best practices or whose programs already meet or surpass the proposed requirements. However, because the lack of an incremental effect for these institutions would affect both costs and benefits, it should not, affect an assessment of the overall balance of net effects as the differences on both sides should offset each other.

a. Benefits²⁰⁹

The proposed rule is anticipated to result in certain nonquantifiable benefits to covered financial institutions, law enforcement and national security agencies, other Federal agencies, and the general public. As discussed in Section VII.A.1, these benefits are expected to flow from the extent to which the new and amended program requirements are better able to address the fundamental economic problems that might otherwise limit current AMF/CFT program and regime effectiveness.

The proposed rule may result in benefits to certain covered financial institutions individually. In other instances, groups of covered financial institutions may benefit collectively.

The risk assessment process requirement would require every covered financial institution to engage in a risk assessment process as well as to review and evaluate SARs, CTRs, and other relevant information under the proposed rule. While some financial institutions already engage in such practices, the proposed rule would require *every* financial institution under the BSA to undertake such a process. For the individual affected covered financial institution, this could better enable the entity to understand its own illicit finance activity risks and could help it detect threat patterns or trends that would then be incorporated into its risk assessment process.

Among other things, the proposed rule would also enable financial institutions to utilize a holistic

approach that would integrate consideration and calibration of illicit finance activity risks throughout the AML/CFT program and more broadly the financial institution, allowing them to not only better understand their risks but also adjust their focus and attention to shifting risks on a more dynamic basis. This holistic approach is expected to empower a covered financial institution to be more responsive to evolving illicit finance activity risks or equally responsive at lower cost. The proposed requirement that financial institutions have a board (or equivalent governing body) oversee the AML/CFT program may also enhance responsiveness, as certain financial institutions may benefit from the decisive nature of their board's (or equivalent governing body) or senior management's direction. Additionally, by explicitly allowing (but not requiring) financial institutions to use technological innovation, financial institutions may be better-positioned to incur benefits from being encouraged to use newer methods to identify and thwart illicit finance activity risks with a broader view to value of doing so.²¹⁰

The proposed changes in AML/CFT program requirements may also reduce the distortion in incentives of certain covered financial institutions that currently benefit disproportionately from the positive externalities of other institutions by more explicitly limiting their ability to underinvest in their own efforts. While this would result in an incremental change in expenditures to the affected covered financial institutions, both peer institutions and the affected financial institution may benefit from the change. FinCEN anticipates that financial institutions would also incur benefits from being better positioned to identify, deter, and detect illicit financial activity because financial crime not only impacts the public at large, but can also disrupt financial institutions directly impacted by financial crime or used as conduits to facilitate such crimes. Moreover, financial institutions with ineffective AML/CFT programs are exposed to the risks of criminal, regulatory, and civil investigations, penalties, and actions, where restrictions to engage in mergers and acquisitions may be applied to certain covered financial institutions with ineffective AML records.²¹¹ Thus financial institutions with effective, risk-based, and reasonably designed programs would incur tangible benefits

²⁰⁸ See *supra* section I.

²⁰⁹ FinCEN recognizes the distinction between benefits that accrue to a given party as the result of costs incurred by another (*i.e.*, a transfer; see OMB Circular A-4 (2023), Chapter 9) and benefits that exceed or are otherwise independent of costs (such as net benefits) and acknowledges that conflating the two could lead to an overestimate of the expected economic benefit of the proposed rule. To clarify this distinction in the following section, "benefit" is intended in the transfer sense when used as a verb and is intended to denote an expected net benefit when used as a noun.

²⁰⁶ See *supra* section IV.D.6.c.

²⁰⁷ OMB Circular A-4 (2023), at 5.

²¹⁰ See *supra* section VII.A.1 for a discussion of current impediments to technology uptake.

²¹¹ See USA PATRIOT Act, Public Law 107-56, 115 Stat. 318, section 327 (Oct. 26, 2001).

in avoiding litigation costs, investigation costs, and monetary penalties associated with ineffective AML/CFT programs.

Further, as a result of the collective enhancements to a covered financial institution's AMF/CFT program, the institution itself, or the group of financial institutions to which it belongs, may also experience reputational benefit if they come to be viewed as better insulated from such disruptions and/or potentially become generally perceived as more reliable or transparent in their financial services or activities.

The proposed rule may also benefit U.S. national security, intelligence, and law enforcement efforts against illicit finance activity risks, including money laundering and terrorist financing. The proposed changes that would render AML/CFT programs more risk-based, including a risk assessment process requirement and ensuring that AML/CFT programs focus attention and resources in a manner consistent with financial institutions' risk profiles, would increase the likelihood that the information provided to law enforcement and national security agencies from AML/CFT programs would be highly useful. Moreover, under the proposed rule, financial institutions would be able to focus resources and attention consistent with their risk profiles, allowing AML/CFT programs to shift in response to evolving risks that the financial institutions may face. Such risk-focused structure of AML/CFT programs would lead to information that enhances U.S. agencies' ability to investigate, prosecute, and disrupt financing of terrorism, other transnational security threats, and domestic and transnational illicit financial activity.

The proposed rule's requirement to incorporate the AML/CFT Priorities would further promote AML/CFT programs to produce information that is highly useful to law enforcement, particularly with respect to specific threats to U.S. financial system and national security that have been identified as government-wide priorities, as the AML/CFT Priorities, which have been issued in consultation with various U.S. and State government agencies,²¹² would be incorporated into financial institutions' risk assessment processes as appropriate. As such, law

enforcement efforts with respect to these AML/CFT Priorities, such as investigations and prosecutions, data analytics, and policy analysis and decision making, would benefit. There is also corollary benefit from the proposed rule in *reducing* BSA records and reporting that are not highly useful since such "not highly useful" records and reports degrade the ability of law enforcement and national security to efficiently and effectively identify illicit finance activity relevant to their investigations, prosecutions, and risk assessments. Additionally, the proposed rule would provide financial institutions with the flexibility to innovate responsibly. In doing so, law enforcement and national security efforts may reap the benefits of financial institutions' utilization of technological innovation to detect and disrupt illicit financial activity.

Finally, the proposed rule is expected to benefit the public. FinCEN anticipates that this public benefit would result from both the potential for a more effective AML/CFT regime to better deter illicit activity and the potential for a better calibrated regime to reduce certain low value activities and unintended social costs. The proposed rule is expected to enhance the deterrent effect of AML/CFT programs. The proposed rule's focus on effective and risk-based programs would better help financial institutions identify and detect illicit financial activity as well aid in government agencies' ability to disrupt threats. Such enhanced detection would aid in deterrence of illicit financial activity and ultimately enhance transparency and financial integrity in the financial system. While FinCEN expects the proposed rule to enhance the deterrent effect of current AML/CFT programs at covered financial institutions, it is difficult to estimate how much additional economic loss the proposed requirements would prevent. FinCEN lacks data that would be necessary to quantify how much money laundering and the financing of terrorism could be reduced as a result of the proposed rule, or how much other illegal activity would be curbed by this reduction in money laundering and terrorist financing.²¹³ However, money laundering and other illicit financing is related to human trafficking, drug trafficking, terrorism, public corruption, the proliferation of weapons of mass destruction, fraud, and other crimes and illicit activities that cause substantial

monetary and nonmonetary damages.²¹⁴ Thus despite an inability to precisely quantify the magnitude of anticipated effects, qualitatively, FinCEN anticipates that by reducing money laundering and broader illicit finance activity risks, and by extension its associated crimes, the proposed rule would create economic benefits by reducing those harms.

This proposed rule is also intended, among other considerations, to ensure that AML/CFT programs are "risk-based, including ensuring that more attention and resources of financial institutions should be directed toward higher-risk customers and activities, consistent with the risk profile of a financial institution, rather than toward lower-risk customers and activities."²¹⁵ To the extent that this programmatic direction would redirect attention and resources from their current uses, the proposed rule may reduce the expense of time and money on activities that do not create value. Additionally, it may reduce other social costs as previously discussed in FinCEN's broad considerations.²¹⁶

b. Costs

In its general analysis of the proposed rule's economic impact, FinCEN considered the incremental burdens that compliance would engender for the various parties it expects to be affected by the rule. This includes: (1) covered financial institutions for whom FinCEN is the primary regulator, (2) covered financial institutions primarily regulated by other agencies, and (3) FinCEN. The anticipated total burden to these groups of affected parties, collectively, is between approximately \$545 and \$918 million in a year when substantive program updating is necessary and between approximately \$478 and \$ 851 million in a year when updates are more modest.²¹⁷

²¹⁴ For further discussion of the harms and risks associated with money laundering, see Treasury, National Strategy for Combating Terrorist and Other Illicit Financing (2018), available at https://home.treasury.gov/system/files/136/national_strategy_for_combating_terrorist_and_other_illicit_financing.pdf; see also Treasury, National Money Laundering Risk Assessment (2024), available at <https://home.treasury.gov/system/files/136/2024-National-Money-Laundering-Risk-Assessment.pdf>.

²¹⁵ 31 U.S.C. 5318(h)(2)(B)(iv)(II).

²¹⁶ See *supra* section VII.A.1 for a discussion of negative externalities.

²¹⁷ For purposes of these topline estimates, which include all banks, FinCEN has assumed that the regulatory burden of the proposed rule to banks supervised by the Agencies would be comparable to the novel program costs expected to be incurred by other covered financial institutions other than the board oversight provision, to which banks supervised by the Agencies are already subject. To the extent that such an assumption differs from practice, these topline estimates may be of more

²¹² The agencies include Treasury's Offices of Terrorist Financing and Financial Crimes, Foreign Assets Control (OFAC), and Intelligence and Analysis, as well as the Attorney General, Federal functional regulators, relevant State financial regulators, and relevant law enforcement and national security agencies. See *supra* note 28.

²¹³ See *infra* section VII.F for a request for comment about the availability of such data.

FinCEN notes that, where quantified, the costs articulated below reflect only the monetized value of the time (at current market rates) that the various affected parties, in general and on average, are expected to need to spend on newly complying with the rule as

proposed.²¹⁸ FinCEN acknowledges that this approach does not lend itself to a facile assessment of the expected net benefit of the rule in dollar terms because no comparable monetization of certain opportunity costs, general equilibrium effects, or the benefits is

feasible. Nevertheless, where possible, the analysis has taken these into consideration and includes certain qualitative assessments of anticipated benefits and costs.

Table 8. Estimated Total Costs of Proposed Rule

	Year of Substantive Change		Year without Substantive Change	
	Low	High	Low	High
Covered Financial Institutions				
Program Updates	\$263,104,847.81	\$263,104,847.81	\$197,328,635.86	\$197,328,635.86
Board Oversight	\$425,390,914.80	\$797,700,286.80	\$425,390,914.80	\$797,700,286.80
Government Costs				
FinCEN	\$2,994,752.70	\$2,994,752.70	\$1,728,556.76	\$1,728,556.76
Total	\$691,490,515.31	\$1,063,799,887.31	\$624,448,107.41	\$996,757,479.41

i. Affected Financial Institutions

As an aggregate of its estimates of total average costs, FinCEN has calculated that the potential quantifiable time costs to covered financial institutions associated with this proposed rule could be as much as approximately \$1.06 billion (\$263.1 million + \$797.7 million) each year in those years that require covered financial institutions to conduct a more substantive review and revision to an existing program (such as when a risk assessment process must be formalized, the newest FinCEN AML/CFT priorities are published, or there is a material change to the risk profile of covered financial institutions) and up to approximately \$996.8 million in years characterized by little or no substantive changes. These estimates should be interpreted as an upper bound of expected time costs because they were formed to anticipate a realized state of the world in which all affected covered financial institutions must either undertake maximum effort to substantively revise their programs (\$1.06 billion) or, in the absence of substantive changes, nevertheless

engage the maximum level of board oversight of AML/CFT program activities (\$996.8 million). Given that many financial institutions already have robust or sufficiently effective AML/CFT programs, FinCEN considers the likelihood of this outcome to be low.

These aggregate estimates reflect average²¹⁹ per institution compliance burden estimates as detailed in table 11. These estimates are described in further detail below.²²⁰

Program Updates—FinCEN assumes it would take small financial institutions a full business day, or eight (8) hours, and large institutions three (3) business days, or 24 hours, to formalize or update their current risk assessment processes-like activities to conform to the specifications of the proposed rule and accordingly update general policies, procedures, and internal controls and training materials in a year when substantive updates to an existing program are required. Financial institutions will also need to maintain and continue to evaluate the appropriateness of their risk assessment processes in years without substantive changes, but FinCEN expects those costs to be modest, requiring an expected six

hours at a small covered financial institution and 18 hours at large financial institutions ongoing operational expenses.

Therefore, FinCEN estimates the incremental compliance burden for substantively updating the appropriate components of an effective, risk-based, and reasonably designed program would be approximately \$850 per small financial institution²²¹ and approximately \$2,550 per large financial institution.²²² Correspondingly, FinCEN anticipates the cost to small financial institutions would be approximately \$640—and the cost to large financial institutions \$1,900—in years when substantive updates are not required.

FinCEN notes that while the proposed rule requires written documentation of an AML/CFT program and each of its components, financial institutions already are required, either expressly or tacitly, to have written programs. While financial institutions may need to update their documentation to reflect the changes in the proposed rule, FinCEN has incorporated this cost into the burden estimates discussed below for ensuring an effective and reasonably designed program described above.

limited value than those provided in further detail in the remaining analysis, which generally exclude banks with a Federal functional regulator (*see infra* section VII.C; *see also infra* section VII.E).

²¹⁸ FinCEN assumes that the burden estimates calculated in this analysis are the average impact associated with each component of the proposed rule. However, FinCEN recognizes that in practice,

there would be heterogeneity across institutions regarding the estimated impact associated with each of these components.

²¹⁹ FinCEN notes that because, in its approach to calculating expected time costs, different burden estimates apply (1) to different types of covered financial institutions, and (2) to different sizes of covered financial institutions, average values may

not meaningfully represent the economic burden that any single, particular covered financial institution may expect to incur.

²²⁰ *See* table 11 for a summary of costs per type of financial institution.

²²¹ (8 hours × \$106.30 per hour).

²²² (24 hours × \$106.30 per hour).

Therefore, to avoid duplicative counting of burden, FinCEN assumes this requirement of having written documentation imposes no additional burden on financial institutions.

Board Oversight—Tables 9 and 10 provide details of how FinCEN burden estimates for the proposed board oversight requirement were derived.

The range in burden hours, because of how it is incorporated into final cost estimate using a composite wage,²²³ can be interpreted as reflecting a six (24) hour burden per board member per year (where a small (large) board consists of three (seven) members) for boards that already have (do not have) a current board or senior management oversight

program requirement. Or it can be interpreted as one (four) hours of work by each of the six occupational categories that comprise the composite wage per board member per year for boards that already have (do not have) a current board or senior management oversight program requirement.

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Table 9. Estimated Additional Time Burden of Board Oversight at Covered Financial Institutions

Type of Financial Institution	Number of Financial Institutions	Baseline Approval Requirement	Additional Hours per Person	Small Board	Large Board
Banks lacking an FFR	600	board of directors or equivalent governing body	6	18	42
Casinos	1,277	none	24	72	168
Principal MSBs	27,500	none	24	72	168
Agent MSBs*	229,161	none	6	6	6
B-Ds	3,478	senior management	6	18	42
Mutual funds	1,400	board of directors or trustees	6	18	42
Insurance companies	4,678	senior management	6	18	42
FCMs and IBCs	954	senior management	6	18	42
DPMSJs	6,700	senior management	6	18	42
Operators of credit card systems	4	senior management	6	18	42
Loans or finance companies	13,000	senior management	6	18	42
FHLBs and Housing GSEs	13	senior management	6	18	42
Total	288,765		Total	2,543,940	7,304,322

* Because Agent MSBs are to be solely responsible for implementation of program requirements, but are usually small, FinCEN treats an agent MSB's "board" size as always one. The burden on this "board member" (senior manager) may either reflect additional time needed to prepare/format information for presentation to a principal MSB and/or its board, or implement new activities under its own direction or pursuant to its principal's revisions to policies, procedures, and internal controls.

²²³ See *infra* section VILE.3 for a description of composite wage calculation.

Table 10. Estimated Additional Time Cost of Board Oversight at Covered Financial Institutions

Type of financial institution	Low Burden	High Burden
Banks lacking an FFR	\$1,148,040.00	\$2,678,760.00
Casinos	\$9,773,647.20	\$22,805,176.80
Principal MSBs	\$210,474,000.00	\$491,106,000.00
Agent MSBs	\$146,158,885.80	\$146,158,885.80
B-Ds	\$6,654,805.20	\$15,527,878.80
Mutual funds	\$2,678,760.00	\$6,250,440.00
Insurance companies	\$8,950,885.20	\$20,885,398.80
FCMs and IBCs	\$1,825,383.60	\$4,259,228.40
DPMSJs	\$12,819,780.00	\$29,912,820.00
Operators of credit card systems	\$7,653.60	\$17,858.40
Loans or finance companies	\$24,874,200.00	\$58,039,800.00
FHLBs and Housing GSEs	\$24,874.20	\$58,039.80
Total	\$425,390,914.80	\$797,700,286.80

Table 11. Expected Costs to the Average Covered Financial Institution

		Program Updates		Board Oversight		Total Cost - Year with Substantive Change		Total Cost - Year without Substantive Change	
		Substantive	General	Small Board	Large Board	Small Board	Large Board	Small Board	Large Board
Board Approval Currently Required	Large Financial Institution	\$2,551.20	\$1,913.40	\$1,913	\$4,465	\$4,464.60	\$7,015.80	\$3,826.80	\$6,378.00
	Small Financial Institution	\$850.40	\$637.80	\$1,913	\$4,465	\$2,763.80	\$5,315.00	\$2,551.20	\$5,102.40
Board Approval Not Currently Required	Large Financial Institution	\$2,551.20	\$1,913.40	\$7,654	\$17,858	\$10,204.80	\$20,409.60	\$3,826.80	\$6,378.00
	Small Financial Institution	\$850.40	\$637.80	\$7,654	\$17,858	\$8,504.00	\$18,708.80	\$2,551.20	\$5,102.40

Overall, FinCEN estimates the potential quantifiable costs to covered financial institutions associated with the proposed rule could be as much as approximately \$918 million in a hypothetical year that requires all covered financial institutions to make substantive program updates requiring maximal board oversight, and as little as approximately \$478 million in a hypothetical year in which no substantive update is required at any covered financial institution and minimal board oversight is required. While these estimates may give the impression that the proposed rule would impose a substantial burden, FinCEN notes that they would equate to an average cost per covered financial institution of approximately \$3,500 and \$1,600 respectively.

FinCEN notes that certain other expenses may accrue to certain types of covered financial institutions in the event that non-routine updates to technological infrastructure is required. FinCEN has not included an estimated technological component but is requesting comment in the event that such costs are expected to be broadly relevant or unavoidable for a substantial number of affected financial institutions.²²⁴

ii. Government Costs

To implement the proposed rule, FinCEN expects to incur certain operating costs that would include approximately \$2.99 million in a year that FinCEN publishes updates to its priorities and approximately \$1.73 million each year in which priorities are unchanged from the most recent publication. These estimates include anticipated expenses related to stakeholder outreach and informational support, compliance monitoring, and potential enforcement activities as well as certain incremental increases to pre-existing administrative and logistic expenses.

While such operating costs are not typically considered part of the general economic cost of a proposed rule, FinCEN acknowledges that this treatment implicitly assumes that increased resources commensurate with any novel operating costs exist. If this assumption does not hold, then operating costs associated with a rule may impose certain economic costs on the public in the form of opportunity costs from the agency's forgone alternative activities and those activities' attendant benefits. Putting that into the context of this proposed rule, and benchmarking against

FinCEN's actual appropriated budget for fiscal year 2024 (\$190,193,000),²²⁵ the corresponding opportunity cost could resemble forgoing up to 1.57 (0.91) percent of current activities annually in years with (without) newly published AML/CFT priorities. However, to the extent that activities FinCEN would undertake as a function of the proposed rule would functionally substitute for or otherwise replace foregone activities, such an estimate likely overstates the potential economic costs to FinCEN and, consequently, the public.

However, FinCEN notes that these estimates do not include the potential costs borne by other regulators or entities engaged in informational outreach, examinations (such as those by SROs), or related enforcement activities as a consequence of the proposal, and acknowledges that, as such, the cost estimates here will understate the burden of activities required to promote compliance with the rules as proposed and the full scope of government costs.

iii. Clients or Customers of Affected Financial Institutions

In proposing this suite of amendments to the existing program requirements, FinCEN is mindful of concerns certain parties may have regarding the potential for unintended effects, or other indirect costs, that would be borne by the clients or customers of affected financial institutions. For instance, there may be concerns about the risk of increased inequities in access to financial services (or other consequences of overbroad de-risking strategies) and the potential for inequalities in report-filing on the basis of characteristics unrelated (or insufficiently related) to the underlying nature of risk reported.

FinCEN's general expectation is that the advancements in this proposed rule toward more effective, risk-based, and reasonably designed programs would generally reduce, not increase, such burdens and benefit such persons who may otherwise face unduly limited—or a complete absence of—access to the services of various financial institutions. This is because FinCEN expects that, in complying with changes in the proposed rule, if adopted, financial institutions would be more empowered to provide services in a manner that is more appropriately tailored to their respective risk profiles (as identified by their risk assessment processes), which would incorporate client risk profiles. Thus, by reducing those institutions' prior disincentives to providing

underserved communities with more efficient levels of services and access to the U.S. financial system, FinCEN expects that financial institutions and customers would benefit from the increase in economic activity.

FinCEN invites comment on its evaluation of potential economic burden that would be borne by clients or customers of affected financial institutions under this proposed rule. This may include data, studies, or anecdotal evidence.

5. Consideration of Policy Alternatives

FinCEN considered several alternatives to the currently proposed rule. The alternatives described below are scenarios that may, incur reduced burdens for certain affected financial institutions. However, for the reasons described below, FinCEN decided not to pursue these alternatives.

a. Risk Assessment Process Alternatives

The first alternative would be to not require a formal risk assessment process for financial institutions that do not already have such a requirement. Risk assessments would be required under the proposed rule as a component of an effective and reasonably designed program. Removing the risk assessment process requirement in this alternative scenario could eliminate the most costly component of the proposed rule for entities that do not have any formal risk assessment process already in place. Existing regulations already require insurance companies; dealers in precious metals, precious stones, or jewels; loan or finance companies; and housing government sponsored enterprises to have some type of risk assessment process. Furthermore, FinCEN believes that most of the remaining financial institutions already have some risk assessment process in place. While FinCEN does not know how many financial institutions do not have a formal risk assessment process in place, FinCEN believes the number would be few, but not requiring a formal risk assessment would be a cost savings for this subset of financial institutions. FinCEN believes that on average it could take approximately six weeks for a financial institution that does not currently have a process in operation to implement a formal risk assessment process. By not requiring a formal risk assessment process, this would result in a per affected institution implementation cost savings of approximately \$25,512.²²⁶

²²⁴ See *infra* section VII.F.

²²⁵ Further Consolidated Appropriations Act, 2024, Public Law 118–47 (Mar. 23, 2024) div. B.

²²⁶ (6 weeks × 5 days per week × 8 hours per day × \$106.30 per hour).

While this alternative could reduce costs for certain financial institutions, it would result in certain limitations. First, it would not ensure regulatory consistency of AML/CFT program rules across all financial institutions. Second, as previously described, FinCEN believes that risk assessments are a critical component of having an effective and reasonably designed AML/CFT program because identifying risks is a necessary step in implementing a risk-based AML/CFT program. Section 6101(b) of the AML Act also affirms that AML/CFT programs should be risk-based.²²⁷ For these and other reasons, FinCEN decided not to propose this alternative. Instead, FinCEN built flexibility into the risk assessment requirement by directing institutions to focus on their risk assessment process rather than on a specific, singular approach. Introducing this regulatory flexibility under the proposed rule would allow institutions to use any of various methods and approaches to comply with the proposed rule's risk assessment process requirement.²²⁸

b. An Alternative Effective Date for Small Entities

FinCEN acknowledges that, because of both (1) the baseline heterogeneity in types of covered financial institutions, and (2) the variation in resource-availability across the size spectrum of institutions by type of entities that would be affected by the proposed rule, achieving compliance within six

months of the final rule's adoption may be more burdensome for some affected parties than others. To this end, FinCEN considered proposing an alternative effective date of one year following the adoption of the final rule for small covered financial institutions.²²⁹ FinCEN considered specifically this scope of accommodation because of the meaningful differences in baseline requirements and industry characteristics that define such categories of covered financial institutions.²³⁰ For these small entities, that would allow for an additional six months to transition to compliance with the final rule as adopted than what is being proposed.

FinCEN is not proposing to adopt this graduated approach at this time for a number of reasons. One practical area of concern relates to how small, for purposes of the accommodation, would be operationally defined. Unlike certain other Federal agencies, which have adopted agency-specific size categories²³¹ informed by practice, or, in cases like the SEC and the NCUA, engaged with the Small Business Administration (SBA) to adopt agency-specific definitions of "small,"²³² FinCEN has not yet undertaken such activities. While prescribed definitions for small entities in industries (as organized by North American Industry Classification System (NAICS) codes) that include small covered financial institution are provided by the SBA in

13 CFR 121.201, FinCEN considers these thresholds unlikely to have contemplated the need for deliberated tailoring to a specific break-point at which time accommodations would be most efficiently assigned for purposes of FinCEN rules generally and the proposed program rule specifically. As such, these size cut-offs may not be the most appropriate for use in determining which financial institutions affected by the proposed rule should be allowed an additional six months to transition. FinCEN concluded that further agency-specific research and engagement with small covered financial institutions and their advocates would be necessary before an informed decision about the appropriate size threshold for additional time accommodations can be made.

Second, FinCEN considered the relative benefits of an extended transition period as weighed against the potential costs and risks associated with delayed compliance. Because of the relatively large proportion of entities that would meet the SBA's prespecified size thresholds, this accommodation would lead to less than one out of every five affected financial institutions being required to comply in the year following the final rule. Therefore, an additional six month accommodation would in practice lead to an additional year before the majority of covered financial institutions would undertake the activities newly required by the proposed rule, several years after Congress originally expressed a belief that the promulgation of and adherence to these rules is necessary and in the public interest. In the event that FinCEN has underappreciated the relative value to affected small businesses that the alternative additional three months to transition compliance to the proposed new and amended program requirements would afford, public comment is being solicited.²³³ In particular, FinCEN is requesting comments that include data or qualitative information that would assist in quantifying this value.

²²⁷ 31 U.S.C. 5318(h)(2)(B)(iv)(II).

²²⁸ See *supra* section IV.D.1. See also note 19 where commenters to the Effectiveness ANPRM offered a wide spectrum of views on the proposed risk assessment requirement, with many commenters noting that risk assessment is a standard practice and encouraging flexibility. A common concern in comments was that a risk assessment regulation would be too prescriptive, rather than allowing for an appropriate level of flexibility. For example, industry commenters requested that financial institutions have the ability to determine how to incorporate the proposed national AML priorities into their respective AML/CFT programs and that they be provided with sufficient time to make those changes. The commenters also advocated for the flexibility to assess risks in a manner tailored to the institution's specific activities and risk profile.

²²⁹ See 13 CFR 121.201 for the size standards applied to small covered financial institutions as defined by the Small Business Administration (SBA).

²³⁰ See discussion *supra* section VII.A.2.c; see also discussion *infra* section VII.C.2.

²³¹ See *supra* note 190.

²³² See, e.g., SEC definitions of small broker-dealer (17 CFR 240.0–10(c)) and small mutual fund/investment company (17 CFR 270.0–10(a)); NCUA IRPS 81–4, 46 FR 29248 (June 1, 1981), available at <https://www.federalregister.gov/citation/46-FR-29248>; NCUA IRPS 87–2, 52 FR 35213 (Sept. 18, 1987), available at <https://ncua.gov/files/publications/irps/IRPS1987-2.pdf>. (In 1981, the NCUA defined small credit union for purposes of the RFA, as any credit union having less than one million dollars in assets. IRPS 87–2 superseded IRPS 81–4 but continued to define small credit unions for purposes of the RFA as those with less than one million dollars in assets.)

²³³ See *infra* section VII.F.

B. E.O. 12866 and Its Amendments

E.O. 12866 and its amendments direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. E.O. 13563 also recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify.²³⁴

This proposed rule has been designated a “significant regulatory action”; accordingly, it has been reviewed by the Office of Management and Budget (OMB).

C. Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the RFA²³⁵ requires the agency either to provide an initial regulatory flexibility analysis (IRFA) with a proposed rule or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Because the proposed rule may have a significant economic impact on a substantial number of small entities in certain affected industries, FinCEN undertook the following analysis. In the event that FinCEN has potentially overestimated the anticipated economic burden of the proposed rule, and certification would instead be more appropriate, public comments to this effect—including studies, data, or other evidence—are invited.²³⁶

1. The Proposed Rule: Objectives, Description, and Legal Basis

The proposed rule would amend FinCEN’s regulations that prescribe the minimum requirements for AML/CFT programs for financial institutions as described in section IV.D.

The objectives of the proposed rule are to increase the effectiveness, efficiency, and flexibility of AML/CFT programs; to support the establishment, implementation, and maintenance of

risk-based AML/CFT programs; to strengthen the cooperation between financial institutions and the government; for improvements to be more responsive to evolving ML/TF risk; and to reinforce the focus of AML/CFT programs toward a more risk-based and innovative approach to combating financial crime and safeguarding national security.

The legal basis for the proposed rule is the AML Act of 2020. The purposes of the AML Act, among others, include to “modernize anti-money laundering and counter the financing of terrorism laws to adapt the government and private sector response to new and emerging threats”; “to encourage technological innovation and the adoption of new technology by financial institutions to more effectively counter money laundering and the financing of terrorism”; and “to reinforce that the anti-money laundering and countering the financing of terrorism policies, procedures, and controls of financial institutions shall be risk-based”²³⁷ as part of the broader initiative to “strengthen, modernize, and improve” the U.S. AML/CFT regime. Specifically, section 6101(b)(2)(B)(ii) of the AML Act of 2020 provides that Treasury, when prescribing minimum standards for AML/CFT programs, take into account as a factor that AML/CFT programs should be “reasonably designed to assure and monitor compliance with the BSA and its implementing regulations and be risk based.”²³⁸ FinCEN intends for this new regulatory requirement to provide clarity that AML/CFT programs must be effective, risk-based, and reasonably designed such that they yield useful outcomes that support the purposes of the BSA. The proposed rule would meet these objectives.

The proposed rule would, among other things,²³⁹ establish a new statement describing the purpose of the AML/CFT program requirement, which is to ensure that a financial institution implements an effective, risk-based, and reasonably designed AML/CFT program that: (1) identifies, manages, and mitigates illicit finance risks; (2) complies with the requirements of the BSA and implementing regulations; (3) focuses attention and resources in a manner consistent with the risk profile of the financial institution; (4) includes consideration and evaluation of innovative approaches to meet its AML/CFT compliance obligations; (5)

provides highly useful reports or reports to relevant government authorities; (6) protects the financial system of the United States from criminal abuse; (7) and safeguards the national security of the United States, (8) including by preventing the flow of illicit funds into the financial system.

In addition, with this proposed rule, FinCEN is addressing its first AML/CFT Priorities. FinCEN published the first AML/CFT Priorities on June 30, 2021, as required under 31 U.S.C. 5318(h)(4)(A). In the proposed rule, FinCEN is proposing to add a new definition of “AML/CFT Priorities” at 31 CFR 1010.100(nnn) to support the promulgation of regulations pursuant to 31 U.S.C. 5318(h)(4)(D). According to the proposed definition, “AML/CFT Priorities” would refer to the most recent statement of AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4).

2. The Expected Impact on Small Entities

To identify whether a financial institution is small, FinCEN incorporated both the Small Business Administration’s (SBA’s) latest annual size standards for small entities in a given industry and data from certain other Federal agencies. FinCEN also uses receipts data from the U.S. Census Bureau’s publicly available 2017 Statistics of U.S. Businesses survey (Census survey data) as a proxy for revenue.²⁴⁰ FinCEN applies SBA size standards (whether by annual revenue or by employment size) to the corresponding industry in the 2017 Census survey data and determine what proportion of a given industry is deemed small, on average.²⁴¹ FinCEN considers a financial institution to be large if it has total annual revenues (or employees) greater than the SBA’s annual small size standard for that industry. FinCEN considers a financial institution to be small if it has total annual revenues (or employees) less than the annual SBA small entity size standard for that industry. FinCEN applies these estimated proportions to FinCEN’s current financial institution counts for each industry other than banks with a Federal functional regulator to approximate the proportion

²³⁴ E.O. 13563, Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), section 1(c) (“Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity . . . and distributive impacts.”)

²³⁵ 5 U.S.C. 601 *et seq.*

²³⁶ See *infra* section VII.F.

²³⁷ AML Act, section 6002(2)–(4) (Purposes).

²³⁸ 31 U.S.C. 5318(h)(2)(B)(9)(iv)(II).

²³⁹ See *supra* section IV for a discussion of proposed rule; see also *supra* section VII.A.3 for a summary discussion of proposed rule.

²⁴⁰ See “Statistics of U.S. Businesses” (SUSB), available at <https://www.census.gov/programs-surveys/susb.html>. The annual SUSB only includes receipts data once every five years, with 2017 (published in 2021) being the most recent survey year.

²⁴¹ FinCEN does not apply survey population proportions to 229,161 agent MSBs, as FinCEN believes all agent MSBs are small. FinCEN also does not apply survey proportions for operators of credit card systems, FHLBs, and GSEs, as they are all large.

of current small financial institutions. Using this methodology, approximately [293,000] small financial institutions and approximately [5,400] large financial institutions would be affected

by the proposed rule. FinCEN estimates the following proportion of each group of covered financial institutions by type consists of entities that would be considered small by the respective

*COM007*standard of small (see table *COM007*12 below).

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Table 12. Small Entities as a Proportion of Covered Financial Institutions

	Number of Financial Institutions ¹		Estimated % Small
Banks with an FFR	9,462	Fed: 878	52.8%
		OCC: 1,044	60.9%
		FDIC: 2,936	75.6%
		NCUA: 4,604	65.1%
Banks lacking an FFR	600		99.8% ²
Casinos	1,277		41% ³
Principal MSBs ⁴	27,500		96.4% ⁴
Agent MSBs	229,161		100.0% ⁵
B-Ds	3,478		97.5% ⁶
Mutual funds	1,400		97.3% ⁷
Insurance companies	4,678		75.2% ⁸
FCMs and IBCs	954		92.6% ⁹
DPMSJs	6,700		99.0% ¹⁰
Operators of credit card systems	4		0.0% ¹¹
Loan or finance companies	13,000		96.8% ¹²
Federal home loan banks and Housing GSEs	13		0.0% ¹³

¹ See *supra* table 3.

² This estimate is based on FinCEN's knowledge of only one bank lacking a Federal functional regulator that does not meet \$850 million threshold criteria for 'small.'

³ This estimate is informed by SUSB 2021 data for NAICS codes 713210 and 713290 that has been modified to more closely approximate casinos that meet the criteria of covered financial institutions as defined in 31 CFR 1010.100(t)5-6.

⁴ This estimate is informed by SUSB 2021 data for NAICS codes 522320 and 522390.

⁵ This estimate is based on the assumption that all agent MSBs are small entities.

⁶ This estimate is informed by SUSB 2021 data for NAICS codes 523110, 523120, and 523210.

⁷ This estimate is informed by SUSB 2021 data for NAICS codes 523910 and 525920.

⁸ This estimate is informed by SUSB 2021 data for NAICS code 524113.

⁹ This estimate is informed by SUSB 2021 data for NAICS codes 523130 and 523140.

¹⁰ This estimate is informed by SUSB 2021 data for NAICS code 423940.

¹¹ This estimate is based on FinCEN's assessment that no entities in this category would qualify as a small entity.

¹² This estimate is informed by SUSB 2021 data for NAICS codes 522292 and 522310.

¹³ This estimate is based on FinCEN's assessment that no entities in this category would qualify as a small entity.

FinCEN has further estimated the proposed rule may impose the following aggregated average costs on small

entities by type of covered financial institution in table 13 below.²⁴²

²⁴² Because FinCEN and the Agencies are concurrently proposing program rules that each

include an RFA-required analysis, FinCEN estimates here are limited to the covered financial institutions not already covered in the Agencies' analysis.

Table 13. Estimate of Incremental Aggregate Costs to Small Covered Financial Institutions by Type

	Program Updates		Board Oversight		Total Cost - Substantive Change		Total Cost - General	
	Substantive	General	Small Board	Large Board	Small Board	Large Board	Small Board	Large Board
Banks without an FFR	\$510,240.00	\$382,680.00	\$1,148,040.00	\$2,678,760.00	\$1,658,280.00	\$3,189,000.00	\$1,530,720.00	\$3,061,440.00
Casinos and card rooms	\$445,243.93	\$333,932.95	\$4,007,195.35	\$9,350,122.49	\$4,452,439.28	\$9,795,366.42	\$1,335,731.78	\$2,671,463.57
Principal MSBs	\$22,544,104.00	\$16,908,078.00	\$202,896,936.00	\$473,426,184.00	\$225,441,040.00	\$495,970,288.00	\$219,805,014.00	\$490,334,262.00
Agent MSBs	\$ -	\$ -	\$146,158,885.80	\$146,158,885.80	\$146,158,885.80	\$146,158,885.80	\$146,158,885.80	\$146,158,885.80
B-Ds	\$2,883,748.92	\$2,162,811.69	\$6,488,435.07	\$15,139,681.83	\$9,372,183.99	\$18,023,430.75	\$8,651,246.76	\$17,302,493.52
Mutual funds	\$1,158,414.88	\$868,811.16	\$2,606,433.48	\$6,081,678.12	\$3,764,848.36	\$7,240,093.00	\$3,475,244.64	\$6,950,489.28
Insurance companies	\$2,991,584.74	\$2,243,688.56	\$6,731,065.67	\$15,705,819.90	\$9,722,650.41	\$18,697,404.64	\$8,974,754.23	\$17,949,508.45
FCMs and IBCs	\$20,474.23	\$15,355.67	\$46,067.02	\$107,489.71	\$66,541.25	\$127,963.94	\$61,422.69	\$122,845.38
DPMSJs	5,639,563.66	\$4,229,672.75	\$12,689,018.24	\$118,430,836.94	\$18,328,581.91	\$124,070,400.61	\$16,918,690.99	\$122,660,509.69
Loan or finance companies	\$10,701,433.60	\$8,026,075.20	\$24,078,225.60	\$56,182,526.40	\$34,779,659.20	\$66,883,960.00	\$32,104,300.80	\$64,208,601.60
Total - All Small FIs (excluding Banks w/ an FFR)	\$46,894,807.96	\$35,171,105.97	\$406,850,302.23	\$843,261,985.19	\$453,745,110.20	\$890,156,793.15	\$439,016,011.69	\$871,420,499.30

These estimates correspond to the associated reporting, recordkeeping, and proposed rule as described above in itemized burdens that are expected to be compliance requirements of the Section VII.A.4.b.i and as calculated

below in Section VII.E. Tables 14 and 15 below summarize the portions that pertain to small entities.

Table 14. Expected Burden Hours to the Average Small Covered Financial Institution

	Program Updates		Board Oversight		Total Cost - Substantive Change		Total Cost - General	
	Substantive	General	Small Board	Large Board	Small Board	Large Board	Small Board	Large Board
Board Approval Currently Required	8	6	18	42	26	50	24	48
Board Approval Not Currently Required	8	6	72	168	80	176	24	48

Table 15. Expected Costs to the Average Small Covered Financial Institution

	Program Updates		Board Oversight		Total Cost - Substantive Change		Total Cost - General	
	Substantive	General	Small Board	Large Board	Small Board	Large Board	Small Board	Large Board
Board Approval Currently Required	\$ 850.40	\$ 637.80	\$ 1,913.40	\$ 4,464.60	\$ 2,763.80	\$ 5,315.00	\$ 2,551.20	\$ 5,102.40
Board Approval Not Currently Required	\$ 850.40	\$ 637.80	\$ 7,653.60	\$ 17,858.40	\$ 8,504.00	\$ 18,708.80	\$ 2,551.20	\$ 5,102.40

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3. Other Matters: Duplicate, Overlapping, Conflicting, and Alternative Requirements

FinCEN is unaware of any existing Federal regulations that would overlap or conflict with the proposed rule.²⁴³

Additionally, FinCEN has considered certain alternatives to the proposed rule that take into consideration the expected costs and potential benefits to small entities.²⁴⁴ As discussed in greater detail in Section VII.A.5, the first alternative FinCEN considered would be to not require a covered financial institution that has not already done so to formalize its risk assessment activities into a risk assessment process. While FinCEN acknowledges that this may significantly reduce the costs of compliance with the proposed rule for those institutions, it would not ensure regulatory consistency of AML/CFT program rules across all financial

institutions. Additionally, because FinCEN believes that risk assessments are a critical component of having an effective and reasonably designed AML/CFT program, this alternative would risk undermining the objective of the rule because identifying risks in a well-designed, consistent manner is a necessary step in implementing an effective risk-based AML/CFT program.

The second alternative FinCEN considered was to propose a delayed effective date for smaller entities that would provide an additional six months to come into compliance with the final rule. FinCEN has determined that at this time it lacks sufficient evidence that the current thresholds (that would be used to determine which entities are eligible for the additional time accommodation) would generate a meaningfully beneficial staggered adoption, given that they were not originally designed with this use case in mind. It is not clear that the programmatic costs of an additional six months to come into compliance would appropriately be offset by the benefits to qualifying small entities, particularly when measured against the potential risks that might accompany a full year in delayed compliance for the

vast majority²⁴⁵ of financial institutions. The public, generally, and small entities, specifically,²⁴⁶ have been invited to provide comment on these alternatives.

D. Unfunded Mandates Reform Act

The UMRA requires that an agency prepare a statement before promulgating a rule that may result in expenditure by the state, local, and Tribal governments, in the aggregate, or by the private sector, of \$183 million or more in any one year (\$100 million in 1995, adjusted for inflation).²⁴⁷ Section 202 of UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN believes that the preceding assessment of impact,²⁴⁸ generally, and consideration of policy alternatives,²⁴⁹ specifically,

²⁴³ 5 U.S.C. 603(b)(5) (requiring initial regulatory flexibility analysis to identify, to the extent practicable, an identification, to the extent practicable, all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule).

²⁴⁴ See *supra* section VII.A.5.

²⁴⁵ FinCEN notes that, as depicted in table 12, for categories of affected financial institutions that include small businesses (as defined by the existing SBA thresholds), such entities are expected to constitute 41 to 100 percent (on average, 84.4 percent) of the respective affected categories.

²⁴⁶ See *supra* section VII.F.

²⁴⁷ 2 U.S.C. 1532(a).

²⁴⁸ See *supra* section VII.A.

²⁴⁹ See *supra* section VII.A.5.

satisfy the UMRA's analytical requirements, but invites public comment on any additional factors that, if considered, would materially alter the conclusions of the RIA.²⁵⁰

E. Paperwork Reduction Act

The reporting requirements in the proposed rule are being submitted to OMB for review in accordance with the PRA.²⁵¹ Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Written comments and recommendations for the proposed information collection can be submitted by visiting www.reginfo.gov/public/do/PRAMain. Find this particular document by selecting "Currently Under Review—Open for Public Comments" or by using the search function. Comments are welcome and must be received by September 3, 2024. In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information as it relates to the amendments to covered financial institutions' AML program regulations is presented to assist those persons wishing to comment on the information collection.

1. Description of Impacted Financial Institutions and OMB Control Numbers

OMB Control Numbers: 1506–0020, 1506–0030, 1506–0035, and 1506–0051.

FinCEN has historically accounted for the existing reporting and recordkeeping burdens associated with the program rules using the following OMB control numbers: 1506–0020 (MSBs, mutual funds, and operators of credit card systems); 1506–0030 (dealers in precious metals, precious stones, or jewels); 1506–0035 (insurance companies, loan or finance companies, and banks lacking a Federal functional regulator); and 1506–0051 (casinos). FinCEN does not maintain existing OMB control numbers for the AML/CFT program requirements for banks,²⁵² brokers-dealers, futures commission merchants or introducing brokers in commodities,²⁵³ or housing government

sponsored enterprises,²⁵⁴ but has elsewhere in the RIA provided certain estimates of the anticipated compliance burden,²⁵⁵ including the general paperwork-related burden for all financial institutions that would be impacted by the proposed rule but for whom those costs are not otherwise counted under another agency's control number or analysis.

This scoping of the population for purposes of PRA estimates avoids double counting the reporting and recordkeeping burdens of the proposed rule for entities regulated by the Agencies. FinCEN separately notes that certain covered financial institutions not already covered by an existing control number may undertake new reporting and recordkeeping activities as a consequence of the proposed rule that would not be reflected in the burden estimates below.²⁵⁶ Thus, the total burden estimates associated with the rule as discussed in Section VII.A.4. will exceed the values in this section. Nevertheless, the accounting of burden estimates for OMB purposes, when aggregated across the relevant control numbers, should be generally

Rule, 67 FR 21110 (Apr. 29, 2002), available at <https://www.federalregister.gov/documents/2002/04/29/02-10452/financial-crimes-enforcement-network-anti-money-laundering-programs-for-financial-institutions>. In the 2002 interim final rule, FinCEN noted it was appropriate to implement section 5318(h)(1) of the BSA with respect to brokers or dealers in securities and futures commission merchants through their respective SROs, because the Securities and Exchange Commission (SEC) and the Commodity Futures Trade Commission (CFTC) and their SROs significantly accelerated the implementation of AML programs for their regulated financial institutions. Accordingly, 31 CFR 1023.210 and 31 CFR 1026.210 provided that brokers or dealers in securities, and futures commission merchants and introducing brokers in commodities, respectively, would be deemed to be in compliance with the requirements of section 5318(h)(1) of the BSA if they comply with any applicable regulation of their Federal functional regulator governing the establishment and implementation of AML programs. As noted earlier, FinCEN recognizes the SEC as the Federal functional regulator, and registered national securities exchanges or a national securities association, such as the Financial Industry Regulatory Authority (FINRA), as the SROs for member broker-dealers. Each SRO may have its own AML program requirements (see, e.g., FINRA Rule 3310). The CFTC's SRO is the National Futures Association (NFA). The AML program requirements for futures commission merchant and introducing brokers in commodities are set out in NFA Rule 2–9(c). The SROs are not required to comply with the PRA. Therefore, there are no OMB control numbers for the AML program regulatory requirements of brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities.

²⁵⁴ The PRA does not apply to the collection of information by one Federal agency (FinCEN) from another Federal entity (the housing GSEs).

²⁵⁵ See generally *supra* section VII.A.; see specifically *supra* section VII.A.4.b.

²⁵⁶ See *infra* note 259.

comparable for the common program-related components considered in both this and the Agencies' respective analytical exercises to the extent that the same assumptions about incremental burden apply.²⁵⁷

FinCEN further notes that it is only estimating the paperwork burden associated with the specific program components proposed in this notice of proposed rulemaking (NPRM) in this PRA analysis, as other components of the full burden associated with existing program rules are concurrently open to public comment in connection with the renewal of certain OMB control numbers.²⁵⁸ FinCEN has also recently solicited public comment on burden estimates associated with applying the requirements of the existing program rules to certain registered investment advisers and exempt reporting advisers (collectively, investment advisers).²⁵⁹ The incremental reporting and recordkeeping burden associated with an update from the current program requirements to those proposed in this NPRM for those investment advisers, should they become subject to program rule requirements, is not included in this analysis.

Estimated Number of Respondents: 298,565 financial institutions.²⁶⁰

Table 16 below, represents the same population estimates from the baseline analysis above, but appends the respective agency OMB control numbers to illustrate the differences in aggregate estimates that are attributable to the inclusion or exclusion of covered financial institutions accounted for under other agency's control numbers or unassigned to a control number. This is followed by table 17, which includes only the covered financial institutions whose burdens are estimated in this PRA, grouped by their respective control numbers.

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²⁵⁷ FinCEN notes that the Agencies' concurrently released program rule NPRM includes certain other components that are not included in this rulemaking's proposed program amendments and new requirements, for example, a proposed codification of customer due diligence requirements.

²⁵⁸ See FinCEN, Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Anti-Money Laundering Programs for Certain Financial Institutions, 89 FR 29427 (Apr. 22, 2024), available at <https://www.federalregister.gov/documents/2024/04/22/2024-08529/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of>.

²⁵⁹ See *supra* note 2.

²⁶⁰ This estimate includes all financial institutions in table 15 where the agency OMB control numbers leads with 'FinCEN' or is listed as 'N/A.'

²⁵⁰ See *infra* section VII.F.

²⁵¹ See 44 U.S.C. 3506(c)(2)(A).

²⁵² Banks with a Federal functional regulator have OMB control numbers that are maintained by the Agencies, as follows: 1) OCC (OMB control number 1557–0180); 2) FRB (OMB control number 7100–0310); 3) FDIC (OMB control number 3064–0087); and 4) NCUA (OMB control number 3133–0108).

²⁵³ See FinCEN, Anti-Money Laundering Programs for Financial Institutions Interim Final

Table 16. Number of Covered Financial Institutions by Agency OMB Control Number

Type of Financial Institution	Number of Financial Institutions ¹	Agency OMB Control Number
Banks with an FFR	9,800	FDIC 3064-0087
		FRB 7100-0310
		OCC 1557-0180
		NCUA 3133-0108
Banks lacking an FFR	600	FinCEN 1506-0035
Casinos	1,277	FinCEN 1506-0051
Principal MSBs	27,500	FinCEN 1506-0020
Agent MSBs	229,161	FinCEN 1506-0020
B-Ds	3,478	N/A
Mutual funds	1,400	FinCEN 1506-0020
Insurance companies	4,678	FinCEN 1506-0035
FCMs and IBCs	954	N/A
DPMSJs	6,700	FinCEN 1506-0030
Operators of credit card systems	4	FinCEN 1506-0020
Loan or finance companies	13,000	FinCEN 1506-0035
FHLBs and Housing GSEs	13	N/A
Total	298,565	

¹ See *supra* table 3 notes 1-14.

Table 17. Covered Financial Institutions included in PRA Analysis

Type of Financial Institution	Number of Financial Institutions	Agency OMB Control Number
Principal MSBs	27,500	FinCEN 1506-0020
Principal MSB - Provider/Seller of PPA	2,605	
Agent MSBs	229,161	
Mutual funds	1,400	
Operators of credit card systems	4	
DPMSJs	6,700	FinCEN 1506-0030
Banks lacking an FFR	600	FinCEN 1506-0035
Insurance companies	4,678	
Loan or finance companies	13,000	
Casinos	1,277	FinCEN 1506-0051
Total	284,320	

2. Estimated Annual Burden Hours

The annual paperwork burden and cost estimates in this analysis are associated with creating or updating an effective and reasonably designed AML/

CFT program (Action A) and board/senior management oversight of the AML/CFT (Action B) as discussed in greater detail above.²⁶¹ Table 18 below presents the estimates of the total

burden per firm by type, combining Actions A and B.

The estimated hourly burden associated with each portion of the annual estimate is as follows:

For Action A:

	Create/Update Program	
	Substantive	General
Large Financial Institution	24	18
Small Financial Institution	8	6

For Action B:

	Board Oversight	
	Small Board	Large Board
Board Approval Currently Required	18	42
Board Approval Not Currently Required	72	168

²⁶¹ See *supra* section VII.A.4.b.i.

Table 18. Expected Total Burden Hours for the Average Covered Financial Institution

		Total Hours - Substantive Change		Total Hours - General	
		Small Board	Large Board	Small Board	Large Board
Board Approval Currently Required	Large Financial Institution	42	66	36	60
	Small Financial Institution	26	50	24	48
Board Approval Not Currently Required	Large Financial Institution	96	192	36	60
	Small Financial Institution	80	176	24	48

BILLING CODE 4810-02-C**3. Estimated Annual Cost**

FinCEN recognizes that a covered financial institution's allocation choices between labor and technology utilized to comply with the proposed incremental changes to existing programs will vary by the facts and circumstances of the affected financial institution. FinCEN further recognizes that within the allocation of labor, the allocation of certain tasks to persons employed in different occupational roles may vary systematically by type of covered financial institution affected. For these reasons, among others, assigning a general wage or cost of time to the anticipated burden hours estimated above is an imprecise exercise. Nevertheless, to facilitate a generalized analysis for purposes of the PRA, FinCEN identified six roles and corresponding staff positions involved in maintaining an AML/CFT program in order to estimate the hourly costs associated with the burden hour estimates calculated above. Those are: (1) general oversight (providing institution-level process approval); (2) general supervision (providing process oversight); (3) direct supervision (reviewing operational-level work and cross-checking all or a sample of the work product against their supporting documentation); (4) clerical work (engaging in research and administrative review and filing and producing the AML/CFT program on request); (5) legal compliance (ensuring the reporting process is in legal compliance); and (6) computer support (ensuring feasibility of electronic submission and housing reports internally).

Throughout the analysis, FinCEN uses an estimated compensation rate of approximately \$106.30 per hour as the

equally weighted mean wage across these six categories to represent the cost of time based on occupational wage data from the U.S. Bureau of Labor Statistics (BLS).²⁶² The most recent occupational wage data from the BLS corresponds to May 2022 wages, released in May 2023. FinCEN took the equally-weighted average of reported hourly wages for six occupations across nine financial industries that currently have BSA compliance requirements.²⁶³ Included financial industries were identified at the most granular NAICS code available for banks (as defined in 31 CFR 1010.100(d)); casinos; MSBs; broker-dealers; mutual funds; insurance companies; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; operators of credit card systems; and loan or finance companies. This resulted in an average hourly wage estimate of approximately \$74.86. Multiplying this hourly wage estimate by a benefit factor of 1.42²⁶⁴ produces

²⁶² See Bureau of Labor Statistics website, "May 2022 National Occupational Employment and Wage Estimates," available at <https://www.bls.gov/oes/current/oesosci.htm>.

²⁶³ Consistent with the burden analysis for FinCEN's publication "Agency Information Collection Activities: Proposed Renewal; Comment Request; Renewal without Change of Anti-Money Laundering Programs for Certain Financial Institutions," FinCEN uses hourly wage data for the following occupations: chief executives, financial managers, compliance officers, and financial clerks. FinCEN also includes the hourly wages for lawyers and judicial clerks, as well as for computer and information systems managers. See 85 FR 49418 (Aug. 13, 2020), available at <https://www.federalregister.gov/documents/2020/08/13/2020-17696/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of>.

²⁶⁴ The ratio between benefits and wages for private industry workers is (hourly benefits/hourly

the fully loaded hourly compensation amount of approximately \$106.30 per hour. As such, FinCEN estimates that, in general and on average,²⁶⁵ the time cost of each hour of burden is approximately \$106.30.

Table 19 below applies this cost estimate to the anticipated aggregate burden hours by type of covered financial institutions under two scenarios intended to function as upper and lower bounds of anticipated costs. Scenario 1 ("Total—Substantive Change") assumes that all covered financial institutions must undertake the work necessary to make a substantive change or update to their existing program,²⁶⁶ and therefore presents a range of upper bound values. Scenario 2 ("Total—General"), the lower bound, assumes that while certain *de minimis* updates and board oversight occur, no covered financial institution needs to make substantive changes to either its existing program or its existing level of board oversight.²⁶⁷

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wages) = 0.42, as of December 2023. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. See U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation Historical Listing," available at <https://www.bls.gov/web/ecec/ececqrtn.pdf>. The private industry workers series data for December 2023 is available at <https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx>.

²⁶⁵ "In general" reflects that the estimate would not be an appropriate representation of expected costs to outliers (e.g., financial institutions with AML programs with complexities that are uncommonly higher or lower than those of the population at large). "On average" refers to the mean of the distribution of each subset of the population.

²⁶⁶ See discussion *supra* section VII.A.4.b.i.

²⁶⁷ Where a "substantive change to board oversight" comprises a move from no pre-existing board program approval requirement to the proposed required board oversight.

Table 19. Estimate of Incremental Aggregate Costs by Covered Financial Institution Type (totals in bold)

	Program Updates		Board Oversight		Total Cost - Substantive Change		Total Cost - General	
	Substantive	General	Small Board	Large Board	Small Board	Large Board	Small Board	Large Board
Banks without an FFR								
Small	\$510,240.00	\$382,680.00	\$1,148,040.00	\$2,678,760.00	\$1,658,280.00	\$3,189,000.00	\$1,530,720.00	\$3,061,440.00
Casinos and Card Rooms								
Large	\$1,922,150.62	\$1,441,612.96	\$5,766,451.85	\$13,455,054.31	\$7,688,602.46	\$15,377,204.93	\$2,883,225.92	\$4,805,376.54
Small	\$445,243.93	\$333,932.95	\$4,007,195.35	\$9,350,122.49	\$4,452,439.28	\$9,795,366.42	\$1,335,731.78	\$2,671,463.57
MSBs								
Principal - Large	\$2,525,688.00	\$1,894,266.00	\$7,577,064.00	\$17,679,816.00	\$10,102,752.00	\$20,205,504.00	\$9,471,330.00	\$19,574,082.00
Principal - Small	\$22,544,104.00	\$16,908,078.00	\$202,896,936.00	\$473,426,184.00	\$225,441,040.00	\$495,970,288.00	\$219,805,014.00	\$490,334,262.00
Agent - Small	\$ -	\$ -	\$146,158,885.80	\$146,158,885.80	\$146,158,885.80	\$146,158,885.80	\$146,158,885.80	\$146,158,885.80
B-Ds								
Large	\$221,826.84	\$166,370.13	\$166,370.13	\$388,196.97	\$388,196.97	\$610,023.81	\$332,740.26	\$554,567.10
Small	\$2,883,748.92	\$2,162,811.69	\$6,488,435.07	\$15,139,681.83	\$9,372,183.99	\$18,023,430.75	\$8,651,246.76	\$17,302,493.52
Mutual funds								
Large	\$96,435.36	\$72,326.52	\$72,326.52	\$168,761.88	\$168,761.88	\$265,197.24	\$144,653.04	\$241,088.40
Small	\$1,158,414.88	\$868,811.16	\$2,606,433.48	\$6,081,678.12	\$3,764,848.36	\$7,240,093.00	\$3,475,244.64	\$6,950,489.28
Insurance companies								
Large	\$2,959,759.37	\$2,219,819.53	\$2,219,819.53	\$5,179,578.90	\$5,179,578.90	\$8,139,338.28	\$4,439,639.06	\$7,399,398.43
Small	\$2,991,584.74	\$2,243,688.56	\$6,731,065.67	\$15,705,819.90	\$9,722,650.41	\$18,697,404.64	\$8,974,754.23	\$17,949,508.45
FCMs and IBCs								
Large	\$4,908.51	\$3,681.38	\$3,681.38	\$8,589.89	\$8,589.89	\$13,498.40	\$7,362.76	\$12,271.27

Table 19. Estimate of Incremental Aggregate Costs by Covered Financial Institution Type (totals in bold)

	Program Updates		Board Oversight		Total Cost - Substantive Change		Total Cost - General	
	Substantive	General	Small Board	Large Board	Small Board	Large Board	Small Board	Large Board
Small	\$20,474.23	\$15,355.67	\$46,067.02	\$107,489.71	\$66,541.25	\$127,963.94	\$61,422.69	\$122,845.38
DPMSJs								
Large	\$174,349.01	\$130,761.76	\$130,761.76	\$305,110.76	\$305,110.76	\$479,459.77	\$261,523.51	\$435,872.52
Small	\$5,639,563.66	\$4,229,672.75	\$12,689,018.24	\$118,430,836.94	\$18,328,581.91	\$124,070,400.61	\$16,918,690.99	\$122,660,509.69
Operators of credit card systems								
Large	\$10,204.80	\$7,653.60	\$7,653.60	\$17,858.40	\$17,858.40	\$28,063.20	\$15,307.20	\$25,512.00
Loan or finance companies								
Large	\$1,061,299.20	\$795,974.40	\$795,974.40	\$1,857,273.60	\$1,857,273.60	\$2,918,572.80	\$1,591,948.80	\$2,653,248.00
Small	\$10,701,433.60	\$8,026,075.20	\$24,078,225.60	\$56,182,526.40	\$34,779,659.20	\$66,883,960.00	\$32,104,300.80	\$64,208,601.60
Housing GSEs								
Large	\$33,165.60	\$24,874.20	\$24,874.20	\$58,039.80	\$58,039.80	\$91,205.40	\$49,748.40	\$82,914.00
Total - All FIs , excluding Banks w/ an FFR	\$55,904,595.27	\$41,928,446.45	\$423,615,279.60	\$882,380,265.71	\$479,519,874.87	\$938,284,860.98	\$458,213,490.65	\$907,204,829.56
Total - All FIs under FinCEN OMB control #s	\$51,485,620.93	\$38,614,215.70	\$414,207,091.80	\$860,427,827.51	\$465,692,712.73	\$911,913,448.44	\$445,491,072.10	\$881,938,160.61

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4. Summary of Burden and Cost Estimates

Throughout its analysis, FinCEN has attempted to be mindful of the heterogeneity in affected covered financial institutions and to present estimates that would facilitate readers', and potential commenters', understanding of FinCEN's expectations of impact with respect to their unique facts and circumstances. To facilitate this type of evaluation, estimates have been presented in range format. Nevertheless, FinCEN recognizes that to fulfill certain obligations, it is necessary to condense a range of foreseeable outcomes to certain point estimates, however imprecisely such estimates might represent expectations. For purposes of the topline numbers in this PRA analysis, FinCEN conservatively applies the upper-bound values of its range of cost estimates and treats all hours spent on compliance-related activities as associated with recordkeeping. Public comment is invited on the suitability of this approach.²⁶⁸

Estimated Number of Respondents: 284,320.

Estimated Total Annual Responses: as required.

Estimated Total Annual Recordkeeping Burden: 7,204,570 hours.

Estimated Total Annual Recordkeeping Cost: \$765,845,768.04.

5. General Request for Comments Under the Paperwork Reduction Act

Comments submitted in response to this proposed rule will be summarized and included in a request for OMB approval. All comments will become a matter of public record. Comments are invited on the following categories: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on reporting persons, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

F. Additional Requests for Comment

Baseline Estimates

46. Are FinCEN's baseline expectations about the current prevalence of a risk assessment process reasonably accurate? What proportion of covered financial institutions currently have a risk assessment process?

47. For a given type of covered financial institution, what form does a risk assessment process take at present? How much does a typical financial institution spend to implement their current risk assessment processes? How much does a typical small institution spend to implement their current risk assessment processes?

48. Because the proposed rule would encourage but not require technological innovation, FinCEN's estimates of regulatory cost do not include a line item of technology cost per institution. Is this approach reasonable? If not, please explain.

49. What is the likelihood that a covered financial institution or group of covered financial institutions, by type, will invest in updating or new technology as a result of the rule as proposed? Are there modifications to the proposed rule that would significantly increase (or decrease) this likelihood? If so, please describe. Where possible, please explain why the described modification is expected to change the likelihood.

Potential Efficiencies and Burden

50. As described the RIA, FinCEN has attempted to quantify certain identifiable sources of burden that would result from the changes described in the proposed rule. Are there additional categories of burden that FinCEN should articulate and quantify as part of its calculated burden estimates? If so, what are they, and what is the estimated burden per financial institution? Conversely, if any of the categories of burden in the estimates should not be included, identify those categories and explain why.

51. FinCEN's analysis has estimated certain costs associated with the burden of compliance with current program requirements. Would implementing any changes necessary to comply with the proposed rule be expected to increase or decrease that amount and by how much? For example, are there any current compliance costs that would be reduced by the shift to a risk-based regime that encourages innovation?

52. With respect to the economic analysis, in its entirety, are there comments as to the specific findings, assumptions, or expectations?

IRFA

53. FinCEN has provided estimates of the anticipated financial burden on small institutions pursuant to requirements under the RFA. Are there specific sources of empirical evidence or data that would suggest these estimates should be revised? Please provide either qualitative or quantitative evidence that would support the suggested alternative cost estimates.

54. FinCEN estimates of expected economic burden suggest that, for certain types of covered financial institutions, the proposed rule may have a significant impact on a substantial number of small entities. To the extent that this expectation is based on assumptions about necessary changes in activity relative to current program-related activities, would certification to the contrary be more appropriate?

55. FinCEN is requesting data, studies, or anecdotal evidence that would otherwise demonstrate that compliance with current program requirements generally suggests small entities would not incur incremental time burden and costs as estimated.

56. Please provide comments on the relative value assigned by FinCEN to affected small businesses that the alternative additional three months to transition to compliance would allow. Would an alternative effective date of nine months following the adoption of the final rule (that is, an additional three months to transition to compliance with the final rule as adopted), be a more appropriate effective date for small entities?

57. Is there other data or qualitative information that would assist in quantifying the value of the relative benefits of an extended transition period for compliance, against the potential costs and risks associated with delayed compliance?

UMRA

58. FinCEN does not expect the proposed rule to result in any new or economically significant burdens to State, Local, or Tribal governments. Is this assumption reasonable? If not, what studies, data, or anecdotal evidence should be taken into consideration that would update this expectation?

PRA

59. FinCEN invites comments on the general appropriateness and usefulness of the methodological approach it employed to provide its PRA-specific estimates for public review, including the construction of the wage estimate and the conservative use of the maximum burden value as a point-

²⁶⁸ See *infra* section VII.E.5; see also *infra* section VII.F for requests for comment on the PRA analysis.

estimate of aggregate annual burden and costs. For example, would the average of a weighted range have been more informative?

List of Subjects

31 CFR Part 1010

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Banks and banking, Brokers, Business and industry, Commodity futures, Currency, Citizenship and naturalization, Electronic filing, Federal savings associations, Federal-States relations, Foreign persons, Holding companies, Indian—law, Indians, Indians—Tribal government, Insurance companies, Investment advisers, Investment companies, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Small businesses, Securities, Terrorism, Time.

31 CFR Part 1020

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Foreign currencies, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

31 CFR Part 1021

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 1022

Administrative practice and procedure, Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 1023

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 1024

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 1025

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations,

Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 1026

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 1027

Administrative practice and procedure, Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 1028

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 1029

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

31 CFR Part 1030

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Chapter X

Authority and Issuance

For the reasons set forth in the preamble, the U.S. Department of the Treasury and Financial Crimes Enforcement Network propose to amend 31 CFR parts 1010, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, and 1030 as follows:

PART 1010—GENERAL PROVISIONS

- 1. The authority citation for part 1010 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 2006, Pub. L. 114–41, 129 Stat. 457; sec. 701, Pub. L. 114–74, 129 Stat. 599; sec. 6403, Pub. L. 116–283, 134 Stat. 4605.

- 2. Amend § 1010.100 by revising paragraphs (e) and (r) and adding paragraphs (nnn) and (ooo) to read as follows:

§ 1010.100 General definitions.

* * * * *

(e) *Bank Secrecy Act*. Certain parts of the Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the Bank Secrecy Act. These statutes are codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311–5314 and 5316–5336 and notes thereto.

* * * * *

(r) *Federal functional regulator*. (1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The National Credit Union Administration;

(5) The Securities and Exchange Commission; or

(6) The Commodity Futures Trading Commission.

* * * * *

(nnn) *AML/CFT Priorities*. As used in this chapter, AML/CFT Priorities means the most recent statement of Anti-Money Laundering and Countering the Financing of Terrorism National Priorities issued pursuant to 31 U.S.C. 5318(h)(4).

(ooo) *AML/CFT program*. As used in this chapter, an AML/CFT program means a system of internal policies, procedures, and controls meant to ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter and to prevent an institution from being used for money laundering, terrorist financing, or other illicit finance activity risks. The minimum requirements for a financial institution's AML/CFT program are governed by the applicable regulatory part.

- 3. Revise § 1010.210 to read as follows:

§ 1010.210 Purpose of Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) Program Requirement.

(a) The purpose of this section is to ensure that a financial institution implements an effective, risk-based, and reasonably designed AML/CFT program to identify, manage, and mitigate illicit finance activity risks that: complies with the Bank Secrecy Act and the requirements and prohibitions of this chapter; focuses attention and resources in a manner consistent with the risk profile of the financial institution; may include consideration and evaluation of innovative approaches to meet its AML/

CFT compliance obligations; provides highly useful reports or records to relevant government authorities; protects the financial system of the United States from criminal abuse; and safeguards the national security of the United States, including by preventing the flow of illicit funds in the financial system.

(b) Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to subpart B of its chapter X part for any additional anti-money laundering program requirements.

PART 1020—RULES FOR BANKS

■ 4. The authority citation for part 1020 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 5. Revise § 1020.210 to read as follows:

§ 1020.210 AML/CFT program requirements for banks.

A bank must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the bank's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the bank's AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (6) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the bank's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the bank based on the bank's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the bank pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under this paragraph (a)(1) on a periodic basis, including, at a minimum, when there are material changes to the bank's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a bank's consideration, evaluation, and, as warranted by the bank's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program;

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified bank personnel or by a qualified outside party; and

(6) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. For purposes of this paragraph, customer information must include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230 of this chapter);

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (6) of this section, must be documented and approved by the bank's board of directors or, if the bank does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the bank's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

■ 6. Amend § 1020.220 by revising paragraphs (a)(1) and (a)(6)(iii) to read as follows:

§ 1020.220 Customer identification program requirements for banks.

(a) * * *

(1) *In general.* A bank required to have an AML/CFT program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1) must implement a written Customer Identification Program (CIP) appropriate for the bank's size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the AML/CFT program.

* * * * *

(6) * * *

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its AML/CFT program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

* * * * *

PART 1021—RULES FOR CASINOS AND CARD CLUBS

■ 7. The authority citation for part 1021 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 8. Revise § 1021.210 to read as follows:

§ 1021.210 AML/CFT program requirements for casinos.

A casino must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the casino's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the casino's AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (6) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the casino's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the casino based on the

casino's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the casino pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the casino's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a casino's consideration, evaluation, and, as warranted by the casino's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program, including training in the identification of unusual or suspicious transactions, to the extent that the reporting of such transactions is required by this chapter, by other applicable law or regulation, or by the casino's own administrative and compliance policies;

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified casino personnel or by a qualified outside party;

(6) Include procedures for using all available information to determine:

(i) When required by this chapter, the name, address, social security number, and other information, and verification of the same, of a person;

(ii) The occurrence of any transactions or patterns of transactions required to be reported pursuant to § 1021.320; and

(iii) Whether any record as described in subpart D of part 1010 of this chapter or subpart D of this part must be made and retained;

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (6) of this section, must be documented and approved by the casino's board of directors or, if the casino does not have a board of directors, an equivalent governing body. Such documentation

must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the casino's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

■ 10. Amend § 1021.410 by revising paragraph (b)(10) to read as follows:

§ 1021.410 Additional records to be made and retained by casinos.

* * * * *

(b) * * *

(10) A copy of the AML/CFT program described in § 1021.210.

* * * * *

PART 1022—RULES FOR MONEY SERVICES BUSINESSES

■ 11. The authority citation for part 1022 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 12. Revise § 1022.210 to read as follows:

§ 1022.210 AML/CFT program requirements for money services businesses.

A money services business, as defined by § 1010.100(ff) of this chapter, must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the money service business's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the money services business's AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (5) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the money services business's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance

activity risks of the money services business based on the money services business's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the money services business pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the money services business's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks, ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a money services business's consideration, evaluation, and, as warranted by the money services business's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(i) Internal policies, procedures, and controls developed and implemented under this section must include provisions for complying with the requirements of this chapter including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification, including as set forth in paragraph (a)(2)(iii) of this section;

(B) Filing reports;

(C) Creating and retaining records; and

(D) Responding to law enforcement requests.

(ii) A person that is a money services business solely because it is an agent for another money services business, as set forth in § 1022.380(a)(3), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of internal policies, procedures, and controls required by this paragraph (a)(2). Each money services business will remain solely responsible for implementation of the requirements set forth in this section, and nothing in this paragraph (a)(2) relieves any money services business from its obligation to establish, implement, and maintain an effective AML/CFT program.

(iii) A money services business that is a provider or seller of prepaid access must establish, implement, and maintain procedures to verify the identity of a person who obtains prepaid access under a prepaid program and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Sellers of prepaid access must also establish, implement, and maintain procedures to verify the identity of a person who obtains prepaid access to funds that exceed \$10,000 during any one day and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Providers of prepaid access must retain access to such identifying information for five years after the last use of the prepaid access device or vehicle; such information obtained by sellers of prepaid access must be retained for five years from the date of the sale of the prepaid access device or vehicle.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program; and

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the money services business or by a qualified outside party.

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (5) of this section, must be documented and approved by the money services business's board of directors or, if the money services business does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the money services business's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program shall remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

(d) A money services business must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the end of the 90-day period beginning on the day following the date the business is established.

PART 1023—RULES FOR BROKERS OR DEALERS IN SECURITIES

■ 12. The authority citation for part 1023 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 13. Revise § 1023.210 to read as follows:

§ 1023.210 AML/CFT program requirements for broker-dealers.

A broker-dealer must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the broker-dealer's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the broker-dealer's AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (6) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the broker-dealer's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the broker-dealer based on the broker-dealer's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the broker-dealer pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the broker-dealer's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide

for a broker-dealer's consideration, evaluation, and, as warranted by the broker-dealer's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program;

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the broker-dealer or by a qualified outside party; and

(6) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. For purposes of this paragraph, customer information must include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230 of this chapter).

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (6) of this section, must be documented and approved by the broker-dealer's board of directors or, if the broker-dealer does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the broker-dealer's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

(d) The AML/CFT program must comply with the rules, regulations, or requirements of the broker-dealer's self-regulatory organization that govern such programs, provided that the rules, regulations, or requirements of the self-regulatory organization governing such programs have been made effective under the Securities Exchange Act of 1934 by the appropriate Federal functional regulator in consultation with FinCEN.

■ 14. Amend § 1023.220 by revising paragraphs (a)(1) and (a)(6)(iii) to read as follows:

§ 1023.220 Customer identification programs for broker-dealers.

(a) * * *

(1) *In general.* A broker-dealer must establish, document, and maintain a written Customer Identification Program (“CIP”) appropriate for its size and the type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the broker-dealer’s AML/CFT program required under 31 U.S.C. 5318(h).

* * * * *

(6) * * *

(iii) The other financial institution enters into a contract requiring it to certify annually to the broker-dealer that it has implemented its AML/CFT program, and that it will perform (or its agent will perform) the specified requirements of the broker-dealer’s CIP.

* * * * *

PART 1024—RULES FOR MUTUAL FUNDS

■ 15. The authority citation for part 1024 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 16. Revise § 1024.210 to read as follows:

§ 1024.210 AML/CFT program requirements for mutual funds.

A mutual fund must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the mutual fund’s risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the mutual fund’s AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (6) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the mutual fund’s money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the mutual fund based on the mutual fund’s business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the mutual fund pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the mutual fund’s money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a mutual fund’s consideration, evaluation, and, as warranted by the mutual fund’s risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program;

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the mutual fund or by a qualified outside party; and

(6) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. For purposes of this paragraph, customer information must include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230 of this chapter).

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (6) of this section, must be documented and approved by the mutual fund’s board of directors or, if the mutual fund does not

have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the mutual fund’s board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

■ 17. Amend § 1024.220 by revising paragraphs (a)(1) and (a)(6)(iii) to read as follows:

§ 1024.220 Customer identification programs for mutual funds.

(a) * * *

(1) *In general.* A mutual fund must implement a written Customer Identification Program (“CIP”) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the mutual fund’s AML/CFT program required under the regulations implementing 31 U.S.C. 5318(h).’’

* * * * *

(6) * * *

(iii) The other financial institution enters into a contract requiring it to certify annually to the mutual fund that it has implemented its AML/CFT program, and that it will perform (or its agent will perform) the specified requirements of the mutual fund’s CIP.

* * * * *

PART 1025—RULES FOR INSURANCE COMPANIES

■ 18. The authority citation for part 1025 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 19. Revise § 1025.210 to read as follows:

§ 1025.210 AML/CFT program requirements for insurance companies.

An insurance company must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program applicable to its covered products.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the insurance company’s risk profile that takes into account higher-risk and lower-risk

customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the insurance company's AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (5) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the insurance company's money laundering, terrorist financing, and other illicit finance activity risks associated with its covered products, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the insurance company based on the insurance company's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the insurance company pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the insurance company's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for an insurance company's consideration, evaluation, and, as warranted by the insurance company's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter. Internal policies, procedures, and controls developed and implemented by an insurance company under this section must include provisions for integrating the company's insurance agents and insurance brokers into its AML/CFT program and for obtaining all relevant customer-related information.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program. An insurance

company may satisfy this requirement with respect to its employees, insurance agents, and insurance brokers by directly training such persons or verifying that persons have received training by another insurance company or by a competent third party with respect to the covered products offered by the insurance company; and

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the insurance company or by a qualified outside party. The testing must include an evaluation of the compliance of the insurance company's insurance agents and insurance brokers with their obligations under the AML/CFT program applicable to its covered products.

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (5) of this section, must be documented and approved by the insurance company's board of directors or, if the insurance company does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the insurance company's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

(d) An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities will be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company is required to establish and has established an AML/CFT program pursuant to § 1023.210 of this chapter and complies with such program.

PART 1026—RULES FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

■ 20. The authority citation for part 1026 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 21. Revise § 1026.210 to read as follows:

§ 1026.210 AML/CFT program requirements for futures commission merchants and introducing brokers in commodities.

A futures commission merchant and an introducing broker in commodities must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the risk profile of the futures commission merchant or introducing broker in commodities that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (6) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the risks of the futures commission merchant or introducing broker in commodities, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the futures commission merchant or introducing broker in commodities based on its business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the futures commission merchant or introducing broker in commodities pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the money laundering, terrorist financing, or other illicit finance activity risks of the futures commission merchant or introducing broker in commodities;

(2) Reasonably manage and mitigate money laundering, terrorist financing, or other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a futures commission merchant's or an introducing broker's in commodities consideration, evaluation, and, as

warranted by the futures commission merchant's or introducing broker's in commodities risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program;

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the futures commission merchant or introducing broker in commodities or by a qualified outside party;

(6) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. For purposes of this paragraph, customer information must include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230 of this chapter); and

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (6) of this section, must be documented and approved by the board of directors or, if the futures commission merchant or introducing broker in commodities does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the board of directors, or equivalent governing body, of the futures commission merchant or introducing broker in commodities.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

(d) The AML/CFT program must comply with the rules, regulations, or requirements of the futures commission merchant's or introducing broker's in commodities self-regulatory organization that govern such programs, provided that the rules, regulations, or requirements of the self-regulatory organization governing such programs

have been made effective under the Commodity Exchange Act by the appropriate Federal functional regulator in consultation with FinCEN.

■ 22. Amend § 1026.220 by revising paragraphs (a)(1) and (a)(6)(iii) to read as follows:

§ 1026.220 Customer identification programs for futures commission merchants and introducing brokers.

(a) * * *

(1) *In general.* Each futures commission merchant and introducing broker must implement a written Customer Identification Program (CIP) appropriate for its size and the type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of each futures commission merchant's and introducing broker's AML/CFT program required under 31 U.S.C. 5318(h).

* * * * *

(6) * * *

(iii) The other financial institution enters into a contract requiring it to certify annually to the futures commission merchant or introducing broker that it has implemented its AML/CFT program, and that it will perform (or its agent will perform) the specified requirements of the futures commission merchant's or introducing broker's CIP.

* * * * *

PART 1027—RULES FOR DEALERS IN PRECIOUS METALS, PRECIOUS STONES, OR JEWELS

■ 23. The authority citation for part 1027 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 24. Amend § 1027.100 by revising paragraph (b)(4) to read as follows:

§ 1027.100 Definitions.

* * * * *

(b) * * *

(4) For purposes of this paragraph (b) and § 1027.210, the terms “purchase” and “sale” do not include the purchase of jewels, precious metals, or precious stones that are incorporated into machinery or equipment to be used for industrial purposes, and the purchase and sale of such machinery or equipment.

* * * * *

■ 25. Revise § 1027.210 to read as follows:

§ 1027.210 AML/CFT program requirements for dealers in precious metals, precious stones, or jewels.

A dealer must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program applicable to the purchase and sale of covered goods.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the dealer's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the dealer's AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (6) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the dealer's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the dealer based on its business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations;

(C) As applicable, the reports filed by the dealer pursuant to this chapter;

(D) The extent to which the dealer engages in transactions other than with established customers or sources of supply, or other dealers subject to this rule; and

(E) Whether the dealer engages in transactions for which payment or account reconciliation is routed to or from accounts located in a country whose government has been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371; designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States representative or organization concurs; or designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the broker's money

laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, or other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a dealer's consideration, evaluation, and, as warranted by the dealer's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter. The internal policies, procedures, and controls must assist the dealer in identifying transactions that may involve use of the dealer to facilitate money laundering, terrorist financing, or other illicit finance activity, including provisions for making reasonable inquiries to determine whether a transaction involves money laundering or terrorist financing, and for refusing to consummate, withdrawing from, or terminating such transactions. Factors that may indicate a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing include, but are not limited to:

(i) Unusual payment methods, such as the use of large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's checks, or payment from third parties;

(ii) Unwillingness by a customer or supplier to provide complete or accurate contact information, financial references, or business affiliations;

(iii) Attempts by a customer or supplier to maintain an unusual degree of secrecy with respect to the transaction, such as a request that normal business records not be kept;

(iv) Purchases or sales that are unusual for the particular customer or supplier, or type of customer or supplier; and

(v) Purchases or sales that are not in conformity with standard industry practice;

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program; and

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the dealer or by a qualified outside party.

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (5) of this section, must be documented and approved by the dealer's board of directors or, if the dealer does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the dealer's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN.

(d) To the extent that a retailer's purchases from persons other than dealers and other retailers exceeds the \$50,000 threshold contained in § 1027.100(b)(2)(i), the AML/CFT program required of the retailer under this paragraph need only address such purchases.

(e) A dealer must develop and implement an anti-money laundering program that complies with the requirements of this section on or before six months after the date a dealer becomes subject to the requirements of this section.

PART 1028—RULES FOR OPERATORS OF CREDIT CARD SYSTEMS

■ 26. The authority citation for part 1028 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 27. Revise § 1028.210 to read as follows:

§ 1028.210 AML/CFT program requirements for operators of credit card systems.

An operator of a credit card system must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the operator's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (5) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the operator's money laundering,

terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the operator of a credit card system based on the operator's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) As applicable, reports filed by the operator pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the operator's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, or other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks, ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for an operator's consideration, evaluation, and, as warranted by the operator's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter. An operator's AML/CFT program must incorporate internal policies, procedures, and controls designed to ensure the following:

(i) That the operator does not authorize, or maintain authorization for, any person to serve as an issuing or acquiring institution without the operator taking appropriate steps, based upon the operator's money laundering, terrorist financing, or other illicit finance activity risk assessment, required by paragraph (a)(1) of this section, to guard against that person issuing the operator's credit card or acquiring merchants who accept the operator's credit card in circumstances that facilitate money laundering or the financing of terrorist activities; and

(ii) For purposes of making the risk assessment required by paragraph (a)(1) of this section, the following persons are presumed to pose a heightened risk of money laundering or terrorist financing when evaluating whether and under what circumstances to authorize, or to maintain authorization for, any such

person to serve as an issuing or acquiring institution:

(A) A foreign shell bank that is not a regulated affiliate, as those terms are defined in § 1010.605(g) and (n) of this chapter;

(B) A person appearing on the Specially Designated Nationals and Blocked Persons List issued by the Department of the Treasury's Office of Foreign Assets Control;

(C) A person located in, or operating under a license issued by, a country whose government has been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371;

(D) A foreign bank operating under an offshore banking license, other than a branch of a foreign bank if such foreign bank has been found by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act (12 U.S.C. 1841, *et seq.*) or the International Banking Act (12 U.S.C. 3101, *et seq.*) to be subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in that jurisdiction;

(E) A person located in, or operating under a license issued by, a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which designation the United States representative to the group or organization concurs; and

(F) A person located in, or operating under a license issued by, a jurisdiction that has been designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns;

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program; and

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the operator or by a qualified outside party.

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (5) of this section, must be documented and approved by the operator's board of directors or, if the operator does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by

the operator's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

PART 1029—RULES FOR LOAN OR FINANCE COMPANIES

■ 28. The authority citation for part 1029 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307.

■ 29. Revise § 1029.210 to read as follows:

§ 1029.210 AML/CFT program requirements for loan or finance companies.

A loan or finance company must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the loan or finance company's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (5) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the loan or finance company's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the company based on the company's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the loan or finance company pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a

minimum, when there are material changes to the company's money laundering, terrorist financing, and other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks, ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a loan or finance company's consideration, evaluation, and, as warranted by the loan or finance company's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter. Internal policies, procedures, and controls developed and implemented by the loan or finance company under this section must include provisions for integrating the loan or finance company's agents and brokers, and for obtaining all relevant customer-related information.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program. A loan or finance company may satisfy this requirement with respect to its employees, agents, and brokers by directly training such persons or verifying that such persons have received training by a competent third party with respect to the products and services offered by the loan or finance company; and

(5) Include independent, periodic AML/CFT program testing to be conducted by the qualified loan or finance company personnel or by a qualified outside party. The testing must include an evaluation of the compliance of the loan or finance company's agents and brokers with their obligations under the AML/CFT program.

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (5) of this section, must be documented and approved by the company's board of directors or, if the loan or finance company does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the loan or finance company's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and

be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

§ 1029.320 [Amended]

- 30. Amend § 1029.320 by removing paragraph (g).

PART 1030—RULES FOR HOUSING GOVERNMENT SPONSORED ENTERPRISES

- 31. The authority citation for part 1030 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307.

- 32. Revise § 1030.210 to read as follows:

§ 1030.210 AML/CFT program requirements for housing government sponsored enterprises.

A housing government sponsored enterprise must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the bank's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (5) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the housing government sponsored enterprise's money laundering, terrorist financing, and other illicit finance

activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the housing government sponsored enterprise based on its business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the housing government sponsored enterprise pursuant to this chapter;

(ii) Provide for updating the housing government sponsored enterprise's risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the housing government sponsored enterprise's money laundering, terrorist financing, and other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a housing government sponsored enterprise's consideration, evaluation, and, as warranted by the housing government sponsored enterprise's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(3) Designate one or more qualified individuals to be responsible for

coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program. A housing government sponsored enterprise may satisfy this requirement by training such persons or verifying that such persons have received training by a competent third party with respect to the products and services offered by the housing government sponsored enterprise; and

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the housing government sponsored enterprise or by a qualified outside party.

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (5) of this section, must be documented and approved by the housing government sponsored enterprise's board of directors. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the housing government sponsored enterprise's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

§ 1030.320 [Amended]

- 33. Amend § 1030.320 by removing paragraph (g).

Andrea M. Gacki,

Director, Financial Crimes Enforcement Network.

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